INTERNATIONAL LAW ASSOCIATION

BASELINES UNDER THE INTERNATIONAL LAW OF THE SEA

FINAL REPORT (2018)

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[+] Professor Kwiatkowska passed away on 3 February 2015.

[*] Judge Nelson passed away on 18 July 2016.

[#] Professor Tanaka passed away on 12 November 2014.

I. Background

1. The International Law Association (ILA) Committee on Baselines under the International Law of the Sea was formed with the approval of the ILA Executive Council in November 2008. The Committee's final report was considered at the Sofia Conference (2012) and in Resolution No. 1/2012 the 75th Conference of the ILA noted the conclusions of the Committee and requested the Secretary-General of the ILA to forward the Report to relevant Parties. The Committee's original four-year mandate ended in 2012.

2. Two matters were identified during the conclusion of the final report in 2012. The first was a recognition that substantial territorial loss resulting from sea-level rise is an issue that extends beyond baselines and the law of the sea and encompasses consideration at a junction of several parts of international law. In response, a proposal for the establishment of a new ILA Committee on International Law and Sea Level Rise was submitted to ILA and endorsed by the Executive Council. The second was the desirability of further exploration of the international law of the sea addressing "straight baselines" under an extended mandate of the Committee on Baselines under the International Law of the Sea. It was therefore proposed that the ILA Committee on Baselines under the International Law of the Sea have its mandate expanded for a further 4 years during which time it would consider the following matters:

> 1. The interpretation and relevant state practice of Article 7 of the 1982 United Nations Convention on the Law of the Sea regarding the method adopted by States of drawing straight baselines.
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> 2. The interpretation and relevant state practice of Article 8(2) of the 1982 United Nations Convention on the Law of the Sea regarding the effect arising from the establishment of straight baselines within waters previously not considered internal waters and the consequences thereof for innocent passage.
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> 3. The interpretation and relevant state practice of Article 10 of the 1982 United Nations Convention on the Law of the Sea relating to the method adopted by States of drawing straight baselines within a bay.
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> 4. The interpretation and relevant state practice of Article 13 of the 1982 United Nations Convention on the Law of the Sea as it relates to the method adopted by States in relying upon low-tide elevations in the drawing of straight baselines, and the consistency of that practice with Article 7(4) of the Convention.
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> 5. The interpretation and relevant state practice of Article 14 of the 1982 United Nations Convention on the Law of the Sea as it relates to the matters noted above with respect to how States rely upon a combination of methods in determining baselines, including the normal baseline as provided for in Article 5 of the Convention and as considered in the Committee's 2012 Sofia Conference Report.
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> 6. The interpretation and relevant state practice of Article 47 of the 1982 United Nations Convention on the Law of the Sea regarding the method adopted by States in the drawing of archipelagic baselines.

3. The then Director of Studies asked the Executive Council to agree to an extended mandate until 2016 and that extension was duly granted.[1] At the March 2016 Inter-sessional meeting of the Committee it was decided to seek an extension of the Committee's mandate for a further two years. The Director of Studies approved the work plan for 2016-2018, during which time the Committee also considered the following issues:

1. The interpretation of Article 7(2) with respect to deltas and unstable coastlines;
2. The meaning of "main islands" in Article 47(1);

[1] International Law Association, Executive Council Meeting Minutes, 10 November 2012.

3. The legal consequences arising when the status of an archipelagic State and that State's capacity to proclaim archipelagic baselines is disputed; and

4. The significance and relevant state practice with respect to Article 50 and the drawing of closing lines for the delimitation of internal waters within an archipelagic State.

In March 2018 an Inter-sessional meeting of the Committee was held in Singapore hosted by the National University of Singapore where a draft of this report was subject to review.

4. This Final Report is organised around a common methodology in assessing the key articles under consideration by the Committee: Articles 7, 8, 10, 13, 14 and 47 of the 1982 United Nations Convention on the Law of the Sea (LOSC).[2] Each analysis seeks to provide some background to the drafting of the Article, analysis of the text, assessment of state practice, relevant case law, and a summary of the commentary by publicists. The Report then moves to address certain cross-cutting or global issues that are relevant to a contemporary analysis of straight and archipelagic baselines, before reaching conclusions. This Final Report consolidates much of the historical background to and commentary by publicists found in the First Report (2014) and Second Report (2016). Those Reports can be found on the ILA website which archives the work of this Committee.[3] The Committee has been able in this Final Report to take into account recent developments arising from the decisions of international courts and tribunals. The 2016 *South China Sea* case[4] before an Annex VII LOSC Arbitral Tribunal was an important decision with respect to a number of the questions the Committee had under review. This Final Report makes reference to relevant aspects of the unanimous decision of the Annex VII LOSC Arbitral Tribunal in the *South China Sea* case. The Committee notes that China did not participate in the proceedings before the Tribunal and makes no observations regarding the jurisdiction of the Tribunal to determine the matters before it.[5]

5. While the Committee has sought to be comprehensive in its analysis, by reason of the limitations imposed by its mandate and the length of this Final Report, it has not been possible to consider all possible issues. A detailed analysis of Article 8(2) can be found in the Second Report (2016). Likewise, a more detailed analysis of commentary by publicists can be found in the First Report (2014) and Second Report (2016). Aspects of the report need to be read along with Appendix 1, 2, and 3 which are attached. The leading publication on the history of the negotiation of individual articles in the LOSC remains the *Virginia Commentaries*,[6] and the recent *United Nations Convention on the Law of the Sea: A Commentary*[7] provides a more contemporary analysis of individual articles. Finally, in this Report the terms "miles" and "nautical miles" have been used interchangeably.[8]

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[2] United Nations Convention on the Law of the Sea (LOSC), 1833 UNTS 397.

[3] See also International Law Association, *Report of the Seventy-Sixth Conference, Washington 2014* (International Law Association, London: 2014) 202-240.

[4] *In the Matter of an Arbitration before An Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea between The Republic of the Philippines and the People's Republic of China*, PCA Case no 2013-19, Award of 12 July 2016 (2016 South China Sea Arbitration).

[5] Committee member Yee objects to the Final Report's references to the award without noting the critical study of the award published as Chinese Society of International Law "The South China Sea Arbitration Awards: A Critical Study" (2018) 17 *Chinese Journal of International Law* 210-748; a copy of this study was received after the Draft Final Report was circulated to the Committee members.

[6] Satya N. Nandan and Shabtai Rosenne (eds), *United Nations Convention on the Law of the Sea 1982: A Commentary* Vol II (Martinus Nijhoff, Dordrecht/Boston/London: 1993).

[7] Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (C.H. Beck/Hart/Nomos, München/Oxford/Baden-Baden: 2017).

[8] George Walker (ed), *Definitions for the Law of the Sea: Terms Not Defined by the 1982 Convention* (Martinus Nijhoff, Leiden/Boston: 2012) 247 comments: "Mile" or "nautical mile", wherever appearing in UNCLOS, means the international nautical mile, i.e. 1852 meters or 6076.115 feet, corresponding to 60 nautical miles per degree of latitude.

II. Straight Baselines

A. Relevant Historical Background to Article 7, LOSC

6. The origin of Article 7 can be found first in the decision of the International Court of Justice (ICJ) in the *Fisheries* case,[9] second in the work of the International Law Commission (ILC) including the Draft Articles on the Law of the Sea, and third in the deliberations of the First United Nations Conference on the Law of the Sea (UNCLOS I) that resulted in adoption of the 1958 Convention on the Territorial Sea and the Contiguous Zone.[10] This detailed historical background can be found in the First Report (2014).

B. LOSC Text

7. During negotiations at the Third United Nations Conference on the Law of the Sea (UNCLOS III) on the matter of straight baselines, emphasis was given to seeking to repeat the essential elements of Article 4 of the Convention on the Territorial Sea and the Contiguous Zone, albeit with appropriate modifications to reflect changes in the structure of the draft Convention negotiating text. The most significant adjustment to the text of the original article was a proposal to take into account the circumstances of highly unstable coastlines. Bangladesh was a strong supporter of such a change, and made a number of proposals at various stages of the conference negotiations.[11] The Bangladesh proposal was ultimately adopted, with variations, in what became paragraph 2 of Article 7 of the LOSC.[12] Another adjustment made to Article 4 was a separate provision contained in Article 16 of the LOSC requiring States to show certain types of baselines drawn for the purposes of measuring the breadth of the territorial sea on publicly available charts. Article 14 of the LOSC was equally an innovation, further clarifying that recourse to straight lines was just another method to draw baselines to suit certain conditions.

8. Article 7 of the LOSC is situated within Part II of the Convention titled "Territorial Sea and Contiguous Zone". Part II is divided into four sections, and Article 7 falls within Section 2 titled "Limits of the Territorial Sea". Relevant for present purposes is that it is immediately preceded by Articles 5 "Normal Baseline" and 6 "Reefs". The article provides as follows:

> *Article 7*
> *Straight baselines*
>
> 1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
> 2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.
> 3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
> 4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.
> 5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.

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[9] *Fisheries* (United Kingdom v. Norway) [1951] ICJ Rep 116.
[10] *Convention on the Territorial Sea and the Contiguous Zone*, 516 UNTS 206.
[11] Nandan and Rosenne (eds), *United Nations Convention on the Law of the Sea: A Commentary* Vol II, 97-98.
[12] See discussion of the UNCLOS III negotiations in Nandan and Rosenne (eds), *United Nations Convention on the Law of the Sea: A Commentary* Vol II, 97-100; W. Michael Reisman and Gayle S. Westerman, *Straight Baselines in International Maritime Boundary Delimitation* (Macmillan, London: 1992) 57-62; J. Ashley Roach and Robert W. Smith, *Excessive Maritime Claims* 3rd (Martinus Nijhoff, Leiden/Boston: 2012) 124, n145.

6. The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.

9. The terms "straight baseline/s", or "straight line" are not limited to Article 7 and can also be found in Article 8 "Internal waters", Article 9 "Mouths of rivers", and Article 10 "Bays".

C. Analysis of Article 7, LOSC

1. Text

10. A number of preliminary observations can be made with respect to Article 7. The first is that it retains many of the core elements found in Article 4 of the Convention on the Territorial Sea and the Contiguous Zone, which in turn were primarily based upon the ICJ's decision in the *Fisheries* case. This is particularly the case with paragraphs 1, 3, 4, 5, and 6 of Article 7 which are identical or nearly identical to equivalent paragraphs found in Article 4, even though the treaty background is distinct in either case.

11. The second observation is that Article 7 permits the coastal State to rely upon the method of straight baselines in three instances:

1. Where a coastline is deeply indented and cut into (Article 7(1) LOSC);
2. Where there is a fringe of islands along the coast in its immediate vicinity (Article 7(1) LOSC); or
3. Where because of the presence of a delta or other natural conditions the coastline is highly unstable (Article 7(2) LOSC).

12. These criteria are not cumulative and any one of these three geographic circumstances will be sufficient for the coastal State to become entitled to use the straight baseline method. In this respect the Committee recalls that Article 7(2) was added to the convention text during the LOSC negotiations and provides an additional basis upon which a coastal State can seek to draw straight baselines. Where straight baselines have been drawn consistently with Article 7(1), Article 7(5) also provides that account may be taken when drawing the baselines of economic interests peculiar to the region "the reality and importance of which are clearly evidenced by long usage".

13. The third observation is that the coastal State's entitlements to use the straight baseline method are subject to four controls as follows:

1. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast (Article 7(3) LOSC);
2. The sea areas within the baselines must be sufficiently linked to the land domain to be subject to the regime of internal waters (Article 7(3) LOSC);
3. Straight baselines must not be drawn to and from low-tide elevations, except in the case:
    a. Where lighthouses or similar installations that are permanently above sea level have been built on the low-tide elevation, or
    b. Where the drawing of baselines to and from a particular low-tide elevation has received general international recognition (Article 7(4) LOSC);[13] and,
4. The drawing of straight baselines must not cut off the territorial sea of another State from the high seas or the exclusive economic zone (Article 7(6) LOSC).

14. In 1989 the United Nations Office for Ocean Affairs and the Law of the Sea (now the United Nations Division for Ocean Affairs and the Law of the Sea (UNDOALOS)) published a study on baselines (1989 UN Study) that explains several terms in Article 7:[14]

[13] This would extend to the recognition granted to such a feature by the ICJ or similar judicial body.

[14] United Nations Office for Ocean Affairs and the Law of the Sea, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea* (United Nations, New York: 1989) (1989 UN

> "Straight baselines" are a system of straight lines joining specified or discrete points on the low-water line, usually known as straight baseline turning points. A "straight line" is mathematically the line of shortest distance between two points.
>
> "Delta" means a tract of alluvial land enclosed and traversed by the diverging mouths of a river.[15]

15. The 1989 UN Study also makes important observations with respect to how the relevant provisions of Article 7 could be interpreted. While observing that there may be "different views" on the matter, the Study notes that the "concept of straight baselines is designed to avoid the tedious application of rules dealing with the normal baselines and the mouths of rivers and bays, where their application would produce a complex pattern of territorial seas."[16] The 1989 UN Study highlights that an application of Articles 5 and 10 could in certain circumstances create enclaves and deep-pockets of "non-territorial sea" and that this "might create considerable difficulties for both the observance of the appropriate régime and surveillance."[17] It is then observed that:

> The spirit of article 7, in respect of indented coasts and fringing islands, will be preserved if straight baselines are drawn when the normal baseline and closing lines of bays and rivers would produce a complex pattern of territorial seas and when those complexities can be eliminated by the use of a system of straight baselines. It is not the purpose of straight baselines to increase the territorial sea unduly.[18]

16. The 1989 UN Study proceeds to provide some guidance on the interpretation of some of the critical terms found within Article 7. It is suggested that the term "deeply indented" found in Article 7 (1) can be used in "either an absolute or a relative sense".[19] As to the characterisation of a fringe of islands, the UN Study observes that "[t]here is no uniformly identifiable objective test which will identify for everyone islands which constitute a fringe in the immediate vicinity. States should, however, be guided by the general spirit of article 7."[20] Two examples are given to illustrate where a fringe of islands is likely to exist. The first is one which relates to the circumstances of the *Fisheries* case and where the islands appear to form a unity with the mainland. The other is where the islands may be a distance from the coast and "form a screen which masks a large proportion of the coast from the sea."[21] As to the distance of the islands from the coast and being within the "immediate vicinity", the view was that a distance of 24 miles would be satisfactory.[22] It was also observed that the concept applies to the inner edge of the islands because the fringe may be of considerable width.[23]

17. The Committee considers the 1989 UN Study as a useful starting point for an analysis of the interpretation and application of Article 7. However, the Committee notes that since its publication there have been important developments in state practice and the decisions of international courts and tribunals. The 1989 UN Study will not therefore be strictly applied.

Study); the UN study was subject to review by a Group of Technical Experts on Baselines who commented on a preliminary draft of the publication as prepared by the United Nations Office for Ocean Affairs and the Law of the Sea. This UN study is mentioned at this juncture for reasons of practicality.

[15] 1989 UN Study, Appendix I, 47; see also the definitions provided for these terms in Walker (ed), *Definitions for the Law of the Sea: Terms Not Defined by the 1982 Convention*, 164, 306.

[16] 1989 UN Study, 18.

[17] Ibid.

[18] Ibid 17-20.

[19] Ibid 20, at which there is an accompanying illustrative example.

[20] Ibid.

[21] Ibid; an example of such islands is given as the Recherche Archipelago off the coast of Western Australia, Australia.

[22] Ibid 21; on a different but related point cf. *Maritime Delimitation in the Black Sea* (Romania v. Ukraine) Judgment [2009] ICJ Reports 61 [149] where Serpents' Island, 20 nautical miles from the Ukrainian coast, was not considered to be a part of Ukraine's coastal configuration.

[23] 1989 UN Study 21.

2. State Practice

18. A study undertaken by the Committee on state practice regarding straight baselines indicates that of the 150 coastal States,[24] 90 (including their nine dependencies) had drawn straight baselines along portions of their coasts. The full results are summarized in Appendix 1. Some coastal States which would otherwise be eligible to declare straight baselines under Article 7 (or the corresponding customary international law rule) have hitherto chosen not to do so.[25] In this respect it needs to be recalled that under Article 7 coastal States "may" employ the method of straight baselines and that there is no requirement that they do so even when their coastal configurations meet the criteria identified in Article 7. This Report does not seek to provide an exhaustive analysis of all relevant state practice, or the legal grounds on which States may have predicated their recourse to straight (or closing) baselines, as typically that is not made publicly known. Rather, mention will be made of some particular examples of state practice in areas that have been the subject of debate.

19. The practice of the United States of America (US) in interpreting Article 7 is noted, including its diplomatic and other protests against the practice of other States which the US does not consider to have been consistent with Article 7 and customary international law. The Committee notes that the US is not a party to the LOSC, and is a party to the 1958 Territorial Sea Convention, but does take the view that the convention reflects customary international law. US diplomatic practice regarding baselines, and straight baselines in particular, provides insights into state practice which the Committee has found helpful. However, US state practice does not represent the international community and the US position on the interpretation of the LOSC and state practice is only one amongst those of many other States.

a. A deeply indented and cut into coastline (Article 7(1))

20. Some coastal States accept that multiple indentations along the section of coast in question are necessary to satisfy Article 7(1). The US position, for example, is that three conditions must be met as follows:

1. In a locality where the coastline is deeply indented and cut into, there exist at least three deep indentations;
2. The deep indentations are in close proximity to each other; and
3. The depth of penetration of each deep indentation from the proposed straight baseline enclosing the indentation at its entrance to the sea is, as a rule, greater than half the length of that baseline segment.[26]

However, the US is distinctive in having identified such precise criteria on this issue. Canada and Denmark have each proclaimed straight baselines along their Arctic coasts with respect to Baffin Island and Ellesmere Island (Canada) and Greenland (Denmark) on the basis that the coasts are deeply indented and cut into.[27] The practice of a significant number of other States reflects a different approach. For example, there is state practice of straight baselines being drawn around a coastline that is generally smooth and without deep indentations, including those straight baselines drawn by Madagascar, by Norway around Jan Mayen, by Spain on its mainland,[28] and by Albania, Colombia, Costa Rica, Egypt, Guinea, Iran, Oman, Pakistan and Senegal.[29]

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[24] The Committee accepts that there are differing views as to the number of coastal States; the Committee takes no view on the status of the Palestinian Territories and Taiwan/Republic of China. Committee member Yee observed that "under the Constitution of the Republic of China, the Republic of China and the People's Republic of China claim the same territories."

[25] Greece and the USA are prominent States in this category: Victor Prescott and Clive H. Schofield, *The Maritime Political Boundaries of the World* 2nd (Martinus Nijhoff, Leiden/Boston: 2005), 163; Sophia Kopela, *Dependent Archipelagos in the Law of the Sea* (Martinus Nijhoff, Leiden/Boston: 2013) 73.

[26] Roach and Smith, *Excessive Maritime Claims* 3rd, 61-2.

[27] Jonathan I. Charney and Lewis M. Alexander (eds), *International Maritime Boundaries* vol 1 (Martinus Nijhoff, Dordrecht/Boston: 1993) 375.

[28] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 150.

[29] Roach and Smith, *Excessive Maritime Claims* 3rd, 83-95 which have all been subject to protest by the US.

b. Fringe of islands along the coast (Article 7(1))

21. The US position with respect to this criterion is that providing the islands in question meet the criteria under Article 121(1), then three further conditions must be met:

> 1. The most landward point of each island lies no more than 24 miles from the mainland coastline;
>
> 2. Each island to which a straight baseline is drawn is not more than 24 miles apart from the island from which the straight baseline is drawn; and
>
> 3. The islands, as a whole, mask at least 50% of the mainland coastline in any given locality.[30]

Again, the US is distinctive in having a precise position on this issue. Some States have drawn straight baselines to and from islands off their coasts without meeting these criteria. Relying upon the above criteria, the US has protested the straight baseline claims of China, Cuba, Djibouti, Ecuador, Honduras, Italy, Japan, Mexico, Oman, Portugal, South Korea and Thailand.[31] The US is also of the view that the straight baselines drawn by Mauritius to and from islands and rocks off its mainland are not consistent with these requirements.[32] In the same vein, the straight baselines system of Vietnam relies on islands which are small, scattered and largely distant from the mainland coast and from each other.[33]

c. Highly Unstable Coastlines (Article 7(2))

22. There is not a great deal of state practice giving precise effect to Article 7 (2) which was intended for the Ganges-Brahmaputra River delta (Bangladesh).[34] In addition, Roach and Smith observe that other applicable deltas include the Mississippi River (USA), and the Nile River (Egypt).[35] Other relevant examples are those of the deltas of the Rhone (France)[36] and of the Ebro (Spain).[37] In 1990, Egypt established straight baselines along its Mediterranean coast which included the Nile River delta that empties into the Mediterranean Sea. In 1991 the US protested that claim, generally observing that the coastline was neither deeply indented nor cut into.[38] There is also some evidence of state practice amongst polar States regarding the drawing of straight baselines along and adjacent to ice-covered coasts in Antarctica and the Arctic but it is unclear whether that practice is based upon Article 7(2).[39]

23. Prior to the adoption of the LOSC, Bangladesh proclaimed a system of straight baselines in the Bay of Bengal on 13 April 1974 that followed the 10 fathom (approximately 18 metre) isobath. All the baselines were between 16 and 30 miles from the coastline to cater for the unstable nature of the Ganges-Brahmaputra River delta.[40] This is a combination subaerial and subaqueous delta; the coastline is unstable as it both advances and retreats.[41] In 2015 Bangladesh undertook a revision of its baselines

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[30] Ibid 62-63.
[31] Ibid 98-107.
[32] Department of State (USA), *Mauritius: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Sea No 140) (Department of State, Washington: 2014) 5.
[33] Roach and Smith, *Excessive Maritime Claims* 3rd, 99-100; Department of State (USA), *Straight Baselines: Vietnam* (Limits in the Sea No 99) (Department of State, Washington: 1983) 6-10; eg. Hon Hai is a small island situated 80.7 nm from the coast connected to other basepoints by straight baselines of 161 nm.
[34] Kai Trümpler, "Article 7 Straight Baselines" in Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary*, 65, 77.
[35] Roach and Smith, *Excessive Maritime Claims* 3rd, 67.
[36] Decree of 19 October 1967 as replaced by M.Z.N.117.2015.LOS of 12 November 2015 (UN Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs) (2008) Bulletin No. 66 *Law of the Sea* 28.
[37] Royal Decree No. 2510/1977 of 5 August 1977.
[38] Roach and Smith, *Excessive Maritime Claims* 3rd, 85, 89.
[39] See discussion in Donald R. Rothwell, "Antarctic Baselines: Flexing the Law for Ice-Covered Coastlines" in Alex G. Oude Elferink and Donald R. Rothwell (eds) *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction* (Martinus Nijhoff, The Hague: 2001) 49-68; Tullio Scovazzi, "The Baseline of the Territorial Sea: The Practice of Arctic States" in Alex G. Oude Elferink and Donald R. Rothwell (eds) *The Law of the Sea and Polar Maritime Delimitation and Jurisdiction* (Martinus Nijhoff, The Hague: 2001) 69-84.
[40] Muhammad Nazmul Hoque, *The Legal and Scientific Assessment of Bangladesh's Baseline in the Context of Article 76 of the United Nations Convention on the Law of the Sea* (United Nations, New York: 2006) 74.
[41] Ibid 74-75.

consisting of three segments respectively 12, 79 and 67 nm in length.[42] It can generally be observed that the first two of these segments follow the general direction of the coast while the third encloses the Meghna Estuary.

d. Length of straight baselines

24. In the absence of definite criteria for the length of straight baselines in Article 7, there is considerable variance in state practice regarding the length of straight baseline segments. Finland and the US assert that baseline segments should not exceed 24 nautical miles (nm).[43] This is not consistent with the position that is found in state practice, which appears to reflect views expressed during UNCLOS I and UNCLOS III where strict limitations on the length of straight baselines were resisted. There are numerous instances of baseline segments which exceed 24nm, particularly in Asia. In terms of historical trends, while the 1951 *Fisheries* case was influential with respect to the development of state practice concerning straight baselines, prior to 1958 only a few States had drawn straight baselines, including Iran (1934), Norway (1935), Ecuador (1948), Yugoslavia (1948), Saudi Arabia (1949) and Egypt (1951). However, in the 1960s and 1970s a number of ambitious claims were made, especially in South America and Asia, many of which continue to be asserted today. While recent practice amongst States drawing straight baselines suggests a more moderate approach, a number of longstanding and contemporary straight baseline claims have been considered by both publicists and other States to be excessive.[44]

25. Research undertaken by the Committee identified the following with respect to contemporary state practice regarding straight baselines, with complete details to be found in Appendix 1:

- 32 States have drawn in total 83 straight baselines between 40-50 nm in length;
- 29 States have drawn in total 52 straight baselines between 51-60 nm in length;
- 24 States have drawn in total 46 straight baselines between 61-70 nm in length;
- 15 States have drawn in total 25 straight baselines between 71-80 nm in length;
- 16 States have drawn in total 24 straight baselines between 81-90 nm in length;
- 8 States have drawn in total 9 straight baselines between 91-100 nm in length; and,
- 13 States have drawn in total 24 straight baselines in excess of 100 nm in length.[45]

e. Straight baselines drawn to and from low-tide elevations (Article 7(4))

26. Notwithstanding the potential for controversy over state practice in this area, other than in the case of Norway,[46] there is little apparent state practice giving effect to Article 7(4). The US has taken the position that "similar installations" are those that are permanent, substantial and actually used for safety of navigation and that "general international recognition" includes recognition by the major maritime users over a period of time.[47] Likewise, in 1989 the US protested straight baselines drawn by Sudan along shoals not more than 12 nautical miles from the mainland arguing these features were not low-tide elevations.[48]

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[42] S.R.O. No. 328-Law/2015/MOFA/UNCLOS/113/2/15 (4 November 2015), reproduced in M.Z.N. 118.2016 (LOS) Maritime Zone Notification (7 April 2016) at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn118.pdf.

[43] Roach and Smith, *Excessive Maritime Claims* 3rd, 64, n26 giving the explanation for the US interpretation.

[44] See Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, Table 7.1, 654-655; Jonathan I. Charney and Lewis M. Alexander, *International Maritime Boundaries* vol II (Martinus Nijhoff, Dordrecht/Boston: 1993) 1333.

[45] The data in Appendix 1 also includes the historic bay claims by Argentina, Libya, and Russia/USSR, the closing lines of which exceed 100 nm.

[46] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 160.

[47] Roach and Smith, *Excessive Maritime Claims* 3rd, 66.

[48] Ibid, 120, referring to the *Territorial Waters and Continental Shelf Act of 1970* (Sudan) [6(1)].

f. Significance of state practice

27. Many publicists have commented upon the variations in state practice with respect to Article 7, which in turn have raised for consideration the significance of state practice as it relates to Article 7 and whether those variations have resulted in the development of a new rule of customary international law. In a detailed assessment of this issue in 2005, Churchill observed that:

> Although the amount of non-conforming state practice is substantial, it still represents no more than about a quarter of coastal States parties to the Convention. It is also quite diverse, in the sense that it does not point to any particular way in which straight baselines should be drawn: in reality, it seems to suggest no more than that a coastal State may draw straight baselines however it likes. All this, coupled with the fact that at least eight different States and the EU have protested to one or more baseline claims, leads to the conclusion that practice relating to the drawing of straight baselines does not amount (yet) either to an agreed interpretation of the Convention or a new rule of customary international law.[49]

Even if not leading to a customary rule, the aforesaid practice – of States which are parties to the LOSC and the 1958 Convention on the Territorial Sea and the Contiguous Zone – must be further reviewed. As a number of directly interested States have adopted a practice in respect of straight baselines that relies on a "flexible" interpretation of Article 7, it should be assessed as an element of interpretation of the treaty provisions. The criteria incorporated in Article 7 of the LOSC were drafted with such a degree of "fluidity" precisely because no agreement on "tighter" criteria was reached. Various States expressed the view that these criteria had to provide some room for adaptation to a broad range of circumstances. Not entirely surprisingly, the number of States which have protested relevant state practice in this regard, in proportion to the number of potentially interested States, is very small. The existence of a body of state practice that relies on the margin of appreciation of the indeterminate concepts embodied in Article 7 was acknowledged by O'Connell towards the end of UNCLOS III, when stating that:

> the attempt to restrict the straight baseline technique to coasts which are at least as complicated as that of Norway has failed. The concept of the "general direction of the coast" is a matter of appreciation, not of scientific discovery, and this necessarily requires that a considerable margin of appreciation be applied in favour of the coastal State.[50]

3. Case Law

28. Since adoption and eventual entry into force of the LOSC there have been a number of disputes determined by courts or arbitral tribunals in which the status of Article 7 straight baselines has been considered. These cases have principally concerned maritime boundary disputes where the baselines from which maritime zones have been proclaimed have been relevant to the claims asserted by coastal States. However in those instances the principal issue for determination was what influence, if any, the straight baseline would have upon the delimitation of the maritime boundary and not the consistency of the straight baseline with the LOSC. In recent cases, international courts and tribunals have ignored straight baselines for the purpose of bilateral delimitation, instead selecting basepoints from the

[49] Robin R. Churchill, "The Impact of State Practice on the Jurisdictional Framework Contained in the LOS Convention" in Alex G. Oude Elferink (ed), *Stability and Change in the Law of the Sea: The Role of the LOS Convention* (Martinus Nijhoff, Leiden: 2005) 91, 108; see also the more recent view of Yoshifumi Tanaka, *The International Law of the Sea* 2nd (Cambridge University Press, Cambridge: 2015) 51-52.
[50] D.P. O'Connell, *The International Law of the Sea* Vol I (Clarendon Press, Oxford: 1982) 214-215.

"physical geography"[51] or "natural coast".[52] An analysis of some of the principal cases highlights the following observations by courts and tribunals.

29. In the *Eritrea/Yemen Arbitration*,[53] the status of the Dahlaks, a "tightly knit group of islands and islets", and the capacity of the islands making up that group to be subject to straight baselines consistent with Article 7 of the LOSC was a matter of particular consideration.[54] While the Tribunal and both of the parties were in agreement that the Dahlaks were an appropriate island group for the establishment of a straight baseline system, ultimately the validity of the actual baselines proposed by the parties was not a matter the Tribunal was called upon to decide.[55] Brief reference was made to a feature known as "Negileh Rock" which lay beyond the Dahlaks and which on certain charts was shown as a reef and not above water at any tidal state.[56] The Tribunal directly referred to Article 7(4) and observed that "since Eritrea claims the existence of a straight baseline system, that claim seems to foreclose any right to employ a reef that is not proud of the water at low-tide as a baseline of the territorial sea."[57]

30. In the *Qatar v Bahrain* case[58] a number of matters arose before the ICJ with respect to maritime delimitation and related territorial questions. Qatar made an application instituting proceedings against Bahrain in respect of disputes between the two States relating to sovereignty over certain islands and shoals, and the delimitation of the maritime areas between the two States.[59] As to the method of straight baselines, Bahrain contended that it was a multi-island State characterised by a cluster of islands off the coast of its main islands and that as such it was a *de facto* archipelagic State.[60] Bahrain applied the method of straight baselines, maintaining that the external fringe should serve as the baseline for the territorial sea.[61] However, the ICJ observed that:

> … the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in the immediate vicinity.[62]

Directly referring to Bahrain's claim that it was a "multi-island State", the Court went on to observe that such an assertion does not allow the State "to deviate from the normal rules for the determination of baselines unless the relevant conditions are met."[63] The Court rejected Bahrain's contention that the maritime features off the coast of its main islands could be assimilated to a fringe of islands, noting that

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[51] *Maritime Delimitation in the Black Sea* (Romania v. Ukraine) [2009] ICJ Reports 61, 108 [137] where the ICJ distinguished base points determined by a coastal State under LOSC Articles 7, 9, 10, 12, and 15 from the delimitation of maritime areas between States, where it was observed that the court "must, when delimiting the continental shelf and exclusive economic zone, select base points by reference to the physical geography of the relevant coasts". In this respect it needs to be recalled that Article 15 refers to the "nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured."

[52] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* (Costa Rica v. Nicaragua) [2018] ICJ Reports [100, 138, 143]; see also *Maritime Delimitation in the Black Sea* (Romania v. Ukraine) [2009] ICJ Reports 61, 108 [137] where the court observed that "the issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying base points for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the exclusive economic zone between adjacent/ opposite States are two different issues."

[53] *Eritrea v Yemen* (Maritime Delimitation) Award of the Arbitral Tribunal in the Second Stage of the Proceedings (17 December 1999) (1999) XXII RIAA 335 (*Eritrea v Yemen).*

[54] *Eritrea v Yemen* (1999) XXII RIAA 335 [139].

[55] *Eritrea v Yemen* (1999) XXII RIAA 335 [140-142].

[56] *Eritrea v Yemen* (1999) XXII RIAA 335 [143].

[57] *Eritrea v Yemen* (1999) XXII RIAA 335 [145].

[58] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain) (Judgment)* [2001] ICJ Rep 40 *(Qatar v. Bahrain*).

[59] *Qatar v. Bahrain (Judgment)* [2001] ICJ Rep 40 [31].

[60] *Qatar v. Bahrain (Judgment)* [2001] ICJ Rep 40 [181].

[61] *Qatar v. Bahrain (Judgment)* [2001] ICJ Rep 40 [210-211].

[62] *Qatar v. Bahrain (Judgment)* [2001] ICJ Rep 40 [212].

[63] *Qatar v. Bahrain (Judgment)* [2001] ICJ Rep 40 [213].

the islands were relatively small and that they would only be a part of a "cluster of islands" or "island system" if Bahrain's main islands were included.[64]

31. On the basis of the Court's decision in the *Fisheries* case, and the subsequent reliance upon that judgment by the ILC in its Draft Articles and the accompanying commentaries, the principles that are now embodied in Article 7(1), 7(3) and 7(4) are reflective of customary international law.[65] In its more recent judgment in *Qatar v Bahrain* the Court directly referred to Article 7(4) as reflecting customary international law.[66] While the customary nature of these provisions is doubtless, case law has yet to provide hard and fast rules as to the interpretation of the "indeterminate concepts" in Article 7. This has been acknowledged by the Court since the *Fisheries* case where, in referring to the "general direction of the coast", it stated that "however justified the rule in question may be, it is devoid of any mathematical precision."[67]

4. Commentary by Publicists

32. Article 7 of the LOSC and its predecessor, Article 4 of the Convention on the Territorial Sea and the Contiguous Zone, have been the subject of analysis by a great many law of the sea publicists.[68] Modern commentators, reflecting upon Article 7 of the LOSC, predominantly consider the following elements:

- Deeply indented and cut into coastline;
- Fringe of islands;
- General direction of the coast;
- Length of straight baselines.

A summary of some of the key observations follows.

a. A deeply indented and cut into coastline (Article 7(1))

33. Reisman and Westerman assert that there must be more than one deep indentation along the coast, and observe that in the case where there is a single indentation along the coast then the closing line for a juridical bay would apply.[69] Recently, Tanaka has asserted that "There is no objective test that may identify deeply indented coasts."[70] Prescott and Schofield have noted that "there can be no doubt that the term "deeply indented" must have both an absolute and a relative meaning … it is possible that "deeply indented" refers to horizontal penetration of the land and "cut into" refers to vertical incision."[71]

b. Fringe of islands along the coast (Article 7(1))

34. Prescott and Schofield comment that "The reference to the fringe of islands being in the immediate vicinity of the coast must be construed to mean the landward edge of the fringe… While the intent of the phrase ['immediate vicinity'] is clear enough, Article 7 fails to deliver a clear-cut, objective test by which to judge whether certain islands are close enough to a mainland in order to be considered in its immediate vicinity."[72] Reisman and Westerman are of the view that this requirement in Article 7(1) of

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[64] *Qatar v. Bahrain (Judgment)* [2001] ICJ Rep 40 [213-214].
[65] *Fisheries* (United Kingdom v. Norway) [1951] ICJ Rep 116, 127, 139.
[66] *Qatar v. Bahrain (Judgment)* [2001] ICJ Rep 40 [201].
[67] *Fisheries* (United Kingdom v. Norway) [1951] ICJ Rep 116, 141-142.
[68] O'Connell, *The International Law of the Sea* Vol I, 214-215; Hersch Lauterpacht, *The Development of International Law by the International Court* (Stevens, London: 1958) 192; Vaughan Lowe and Antonios Tzanakopoulos, "The Development of the Law of the Sea by the International Court of Justice" in Christian J Tams and James Sloan (eds), *The Development of International Law by the International Court of Justice* (Oxford University Press, Oxford: 2013) 177; Kopela, *Dependent Archipelagos in the Law of the Sea*, 74; Trümpler, "Article 7 Straight Baselines" 65, 82; Tullio Scovazzi, "Baselines" in *Max Planck Encyclopedia of Public International Law* (June 2007) opil.ouplaw.com [8].
[69] Reisman and Westerman, *Straight Baselines in International Maritime Boundary Delimitation*, 81.
[70] Tanaka, *The International Law of the Sea 2nd*, 50.
[71] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 145.
[72] Ibid, 147.

the LOSC introduces three cumulative tests as follows. The first is a quantitative and spatially distributional test in that there must be a number of islands that are spatially related to each other so as to create a "fringe". The second is a spatial test with regard to the relation of the islands and coast in that they must be distributed "along" the coast. The third is a relational element as between the islands and coast in terms of their proximity. Tanaka, on the other hand, has doubted whether it is possible to "objectively identify the existence of a "fringe of islands"."[73]

c. General direction of the coast (Article 7(3))

35. The need for straight baselines to not depart from the general direction of the coast has been considered by Tanaka, who after reflecting on the *Fisheries* case[74] noted that the Court "seems to imply that "the general direction of the coast" provides the principle governing the baseline; and that the straight baseline method is a result of the application of this principle."[75] Prescott and Schofield are of the view that in light of the *Fisheries* decision, this requirement is one in which: "There is no reason why other countries should not treat the outer edge of a fringe of islands as the coastline from which departures of the straight baselines are measured, even if the fringe is not dovetailed into the mainland."[76]

d. Length of straight baselines

36. The length of straight baselines has been the subject of extensive comment by some publicists, often in the context of particular controversies. Fitzmaurice observed, with respect to the views of the ICJ in *Fisheries* that "The Court did not say that the baseline must be moderate and reasonable in *length*, but rather that it must be so in its general character, and must be drawn in a reasonable *manner*. But length is nevertheless an element in assessing what is reasonable and moderate."[77] Churchill and Lowe assert that baseline length needs to be read against the overall provisions of Article 7 and that: "[i]t would seem, therefore, that there is in principle no restriction on the length of individual baselines, although obviously in practice the necessity for compliance with the general conditions set out above will be a restraining factor."[78] Tanaka, on the other hand, is of the view that "arguably length is an important element in assessing the validity of a straight baseline."[79] Kopela emphasises that the general conditions of Article 7 are "a "restraining factor" regarding the use of exorbitantly long lines",[80] Rothwell and Stephens give implicit support for straight baselines no longer than 24 nm in length,[81] while Trümpler proposes a limit of between 25 and 48 nm.[82]

III. Straight Baselines and Bays

A. Relevant Historical Background

37. The ILC considered the status of bays with respect to baselines and made provision for those circumstances in Article 7 of the Draft Articles. That provision sought to define a bay, including its relevant dimensions, and allowed for the drawing of a line across the mouth of the bay not exceeding 15 miles. Larger bays could have a closing line, including a combination of closing lines, drawn within the bay. These provisions did not apply in the case of "historic bays", a matter on which the ILA had

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[73] Tanaka, *The International Law of the Sea 2nd*, 50.
[74] *Fisheries* (United Kingdom v. Norway) [1951] ICJ Rep 116, 129-130.
[75] Tanaka, *The International Law of the Sea 2nd*, 49.
[76] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 157; see also Scovazzi, "Baselines" [12]; Roach and Smith, *Excessive Maritime Claims* 3rd (2012) 64; and W. Michael Reisman, "Straight Baselines in International Law: a call for reconsideration" (1988) 82 *Proceedings of the American Society of International Law* 266.
[77] Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice*, vol 1 (Cambridge, Grotius: 1986) 239; on the significance of the *Fisheries* case to this point see Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 146; on this point see also Lewis M Alexander, "Baseline Delimitations and Maritime Boundaries" (1982-1983) 23 *Virginia Journal of International Law* 503, 518.
[78] Churchill and Lowe, *The law of the sea* 3rd, 37.
[79] Tanaka, *The International Law of the Sea 2nd*, 50.
[80] Kopela, *Dependent Archipelagos in the Law of the Sea*, 66.
[81] Rothwell and Stephens, *The International Law of the Sea* 2nd, 46.
[82] Trümpler, "Article 7 Straight Baselines", 75.

commented in 1926 and 1928.[83] The ILC's recommendations formed the basis for what became Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. Article 7 contained six sub-paragraphs and retained the principal provisions of the ILC draft, though the entrance points of the bay were extended to 24 miles. Article 7, and its provisions for the drawing of closing lines within or across a bay, did not apply in the case of historic bays or where Article 4 straight baselines were drawn.

B. Article 10: LOSC Text

38. Article 10 of the LOSC repeats the text of Article 7 with minor variations. All of the key components of the regime for baselines within a bay are retained.

Article 10
Bays

1. This article relates only to bays the coasts of which belong to a single State.
2. For the purposes of this Convention, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of a semi-circle whose diameter is a line drawn across the mouth of that indentation.
3. For the purposes of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.
4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.
5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.
6. The foregoing provisions do not apply to so-called "historic bays", or in any case where the system of straight baselines provided for in article 7 is applied.

C. Analysis of Article 10

1. Text

39. Article 10 provides a mechanism for the drawing of baselines within a juridical bay and uses two different terms to describe those lines. A "closing line" is drawn across a bay less than 24 nm, while a straight baseline is drawn in the case of a bay where the entrance exceeds 24 nm. Two types of bays are excluded from Article 10: a) bays shared by two or more States;[84] and b) historic bays.[85] Neither of these two exceptions are therefore assessed other than in instances where state practice relating to these bays is of more general application. Article 10(2) defines a juridical bay providing some general guidance as to size and indentation from the coast. A semi-circle test is applied on the basis of a semi-circle whose diameter is a line drawn across the mouth of the bay. The line is determined from the low-water mark of the natural entrance points of the bay. With respect to determining the entrance points of the bay, the *Virginia Commentaries* observes that: "Such points, however, are not always easy to

[83] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 115 referencing M.P. Stohl, *The international law of bays* (Martinus Nijhoff, The Hague: 1963) 306-307.
[84] Westerman asserts this provision was "necessary in order to prevent large bodies of water such as the Mediterranean or Baltic seas from technically becoming juridical bays under Article 7": Gayl Shaw Westerman, *The Juridical Bay* (Oxford University Press, Oxford: 1987) 79.
[85] See generally on historic bays L.F.E. Goldie, "Historic Bays in international law: an impressionistic overview" (1984) 11 *Syracuse Journal of International Law and Commerce* 211-273; "Historic Bays: Memorandum by the Secretariat of the United Nations" (United Nations Conference on the Law of the Sea, 24 February – 27 April 1958) UN Doc. A/CONF.13/1.

determine because some bays have a number of such points and others possess smoothly curved entrances on which no single point is distinguishable."[86] Different outcomes arise if the distance between the natural entrance points is less than or greater than 24 nm. If less than 24 nm then a closing line may be drawn across those entrance points and the waters on the landward side of the line are considered internal waters. If greater than 24 nm then a straight baseline of 24 nm shall be drawn within the bay.

2. State Practice

40. Contemporary evidence of state practice suggests that adherence to the provisions of Article 10 remains varied in practice. While it is possible to identify examples of juridical bays that satisfy the definition in Article 10,[87] several States have sought to draw a bay closing line across the entrances to gulfs and bays that exceed the length specified in Article 10. The state practice in the area is contested however because States have sought to justify their action on the basis of making an historic bay claim. Examples include Libya's claims with respect to the Gulf of Sidra, which have been subject to protest,[88] and the former USSR declaring a closing line of approximately 107 nm across Peter the Great Bay in 1957 which was also the subject of protest.[89] In 1966 Argentina drew closing lines across the mouths of the San Jorge and San Matias gulfs which were also subject to protest by the US on the basis that neither met the test as a juridical bay under the provisions of the Convention on the Territorial Sea and the Contiguous Zone.[90] Protests have also been lodged by the US with respect to the length of the closing lines drawn across bays by Mauritania,[91] Sudan[92] and Costa Rica.[93] The US has also objected to the use of straight baselines to delimit waters off the mainland coast of Portugal and the Azores on the grounds that the baselines relied upon "do not enclose juridical bays."[94] Closing lines drawn by Gabon in excess of 24 nm between Pointe Ngombe and Cap Lopes have also been questioned.[95]

41. Churchill and Lowe have identified New Zealand, Papua New Guinea, Samoa and Vanuatu as States whose domestic legislation conforms to the Article 10 definition of bays and the specifics of the semi-circle test.[96] It is observed that references to bays in the domestic legislation of other LOSC State parties "either fail … to define a bay and/or fail … to prescribe the maximum limit of the closing line."[97] In spite of this inconsistency, Churchill and Lowe maintain that it is not possible to "conclude from this … that the practice of these States is necessarily contrary to the Conventions."[98] Churchill and Lowe

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[86] Nandan and Rosenne (eds), *United Nations Convention on the Law of the Sea 1982: A Commentary* Vol II, 117.
[87] See, eg, Department of State (USA), *Mauritius: Archipelagic and Other Maritime Claims and Boundaries*, 1, 6 - with the exception of Mathurn Bay, the six bay closing lines put forward by Mauritius in the 2005 Regulations to the *Maritime Zones Act 2005* satisfy the "semi-circle test" and do not rely upon closing lines in excess of 24nm. Grenada's 28 bays equally satisfy both requirements: Department of State (USA), *Grenada: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Sea No 135) (Department of State, Washington: 2014) 1, 3.
[88] Roach and Smith, *Excessive Maritime Claims* 3rd, 46-47, 129.
[89] Charney and Alexander, *International Maritime Boundaries* Vol 1, 1137; Department of State (USA), *Straight Baselines: U.S.S.R.* (Limits in the Seas No 107) (Department of State, Washington: 1987) 4-5.
[90] Roach and Smith, *Excessive Maritime Claims* 3rd, 46-47, 129.
[91] Ibid, 130.
[92] Ibid.
[93] Department of State (USA), *Straight Baselines Claim: Costa Rica* (Limits in the Seas No 111) (Department of State, Washington: 1990) 1, 7 citing the Text of United States Protest Note to Costa Rica, 18 December 1989.
[94] Department of State (USA), *United States Responses to Excessive National Maritime Claims* (Limits in the Seas No 112) (Department of State, Washington: 1992) 1, 32 quoting a diplomatic note transmitted by the American Embassy at Lisbon, based on instructions found in 1986 State telegram 266998.
[95] David A. Colston and Robert W. Smith, *International Maritime Boundaries* Vol V (Martinus Nijhoff, Dordrecht/Boston: 2005) 3687.
[96] Churchill and Lowe, *The Law of the Sea* 3rd, 54 citing *Territorial Sea and Exclusive Economic Zone Act 1977* (New Zealand) ss 2 and 6; *National Seas Act 1977* (Papua New Guinea) Schedule 1; *Territorial Sea Act 1971* (Samoa) No 3, ss 2 and 6, *Maritime Zones Act No 23 of 1981* (Vanuatu) ss 1 and 4 which has since been repealed by the *Maritime Zones Act No 6 of 2010* (Vanuatu) ss 1 and 4 (the substantive provisions remains unchanged from the 1981 Act).
[97] Churchill and Lowe, *The Law of the Sea* 3rd, 54-55.
[98] Ibid, 55.

argue that such a conclusion could only be based upon clear evidence of how these domestic provisions are applied in practice.[99] Writing in 1999, Churchill and Lowe noted that due to the limited evidence of relevant state practice it was impossible to reach a conclusion as to the degree of fidelity between State practice and Article 10.[100]

42. A more recent assessment of state practice by Prescott and Schofield (2005) reached the conclusion that "Article 10(2) presents most governments with few difficulties because they alone are responsible for interpreting this Article. They consider potential bays, apply the precise semi-circle test in the second sentence and if it is passed the bay is closed."[101] The practice of Australia and Mauritius is assessed by Prescott and Schofield as being consistent with the Article 10(2) test.[102] In the case of the UK, the Territorial Sea (Baselines) Order 2014 proclaims certain baselines adjacent to the UK, Channel Islands and Isle of Man in which the provisions of Article 10 are specifically endorsed.[103]

43. In some instances where Article 10 has been applied to bays that do not meet the definition of an Article 10 juridical bay, the normal baseline (as defined by the low-water line) has been identified by protesting States as an appropriate substitute.[104]

3. Case Law

44. The International Court of Justice in the *Land, Island and Maritime Frontier* case considered certain aspects of Article 10 and the regime of bays with respect to the Gulf of Fonseca, which the court accepted as an historic bay.[105] While the provisions of Article 10 do not apply to historic bays, the case's discussion of the effect of closing lines on the delimitation of surrounding maritime zones is equally applicable to juridical bays. The Court concluded that bay closing lines were effectively the Gulf's "ocean limit" and accordingly acted as the "baseline for whatever régime lies beyond it".[106] While the Court accepted El Salvador's submission that bay closing lines were acceptable as a line "depicting the ocean limit of the Gulf of Fonseca," it found that this limit must logically share the character of a baseline under international law.[107] Following on from this conclusion, the territorial seas of Honduras and El Salvador were to be calculated from the Gulf of Fonseca's closing lines, and not include waters enclosed by the bay closing lines.[108] Honduras accepted the court's findings by Executive Decree in 2000.[109]

45. In the 2017 *Croatia/Slovenia Arbitration* the tribunal determined the status of the Bay of Piran/Savudrija.[110] The bay was previously, until 25 June 1991, within the limits of Yugoslavia. Slovenia argued that "prior to the dissolution of the former Yugoslavia, the Bay enjoyed the status of a juridical bay consisting of internal waters"[111] under Article 7 of the Convention on the Territorial Sea

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[99] Ibid.
[100] Ibid.
[101] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 117.
[102] Ibid; more recently in 2014, the US Department of State also endorsed the six bay closing lines adopted by Mauritius: Department of State (USA), *Mauritius: Archipelagic and Other Maritime Claims and Boundaries*, 6.
[103] *The Territorial Sea (Baselines) Order 2014* (2014 No. 1353) (UK) 'Explanatory Note'.
[104] See, eg, Department of State (USA), *Taiwan's Maritime Claims* (Limits in the Seas No 127) (Department of State, Washington: 2005) 1, 12 referring to "a shallow indentation of the northwest coast that includes the mouth of the Tan-shui River leading to Taipei."
[105] *Land, Maritime and Island Frontier Dispute* (El Salvador v Honduras: Nicaragua intervening) (Judgment) [1992] ICJ Rep 351, 588.
[106] *Land, Maritime and Island Frontier Dispute* (El Salvador v Honduras: Nicaragua intervening) (Judgment) [1992] ICJ Rep 351, 604.
[107] Ibid.
[108] *Land, Maritime and Island Frontier Dispute* (El Salvador v Honduras: Nicaragua intervening) (Judgment) [1992] ICJ Rep 351, 607.
[109] *Executive Decree No. PCM 007-2000* (Honduras) 21 March 2000, art 1, B.
[110] *In the Matter of an Arbitration under the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009*, Final Award – 29 June 2017 (Croatia/Slovenia) (PCA Case No. 2012-04) (Croatia/Slovenia Award). Committee members Cleverly, Drenik, Miron and Vidas were participants in these proceedings as agents, counsel or advisors.
[111] *Croatia/Slovenia Award*, 244 [775].

and Contiguous Zone and Article 10 of the LOSC which "applied at the time Yugoslavia confirmed its straight baselines in the Adriatic."[112] It was also argued that the bay met the geographic and mathematical criteria required to "give rise to the entitlement of Yugoslavia to draw a closing line".[113] Croatia did not dispute that Yugoslavia may have been entitled to draw the closing line and thereby determine the bay as its internal waters, but argued that Yugoslavia never actually drew a closing line between the low-water marks of the natural entrance points of the bay and that the requirements of Article 7(4) of the Geneva Convention and Article 10(4) of the LOSC were never met,[114] since the provision requires that a closing line "may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters". Croatia, therefore, referred to the requirement for the coastal State to determine the low-water marks of the natural entrance points of the bay in order for it to be able to actually draw the closing line between these, and thereby constitute the waters of the bay as its internal waters, rather than only being "entitled to do so" which in its view did not suffice to produce the effect under the relevant provision(s). However, the tribunal nonetheless concluded that the bay was Yugoslav internal waters and – rather than (the former) Yugoslavia –itself proceeded with determining the precise coordinates of low-water mark points needed for the closing line to be drawn.[115] The tribunal also considered that the bay's status as a juridical bay was not in doubt under the Convention on the Territorial Sea and Contiguous Zone and that there was no obligation at that time upon Yugoslavia to give publicity to closing lines of juridical bays.[116] It observed that "[t]he applicable Conventions do not subordinate the existence or the legality of juridical bays to such reproduction and it is not rare for States to incorporate bays or estuaries within their internal waters without publishing official maps with closing lines."[117]

46. The most prominent domestic courts that have considered and assessed the status of bays are those in the US in cases involving Louisiana, Mississippi, Alaska, Florida, Texas, Maine, and Rhode Island.[118]

4. Commentary by Publicists

47. Prescott and Schofield assess the application of Article 10 to single State bays. They observe, based on their analysis at the time (2005), that there are 25 "coastal indentations", other than estuaries, that coincide with the coastal termini of international boundaries,[119] and conclude that "[i]t does seem discriminatory that states with sovereignty over a bay can take advantage of Article 10 whereas two states with sovereignty over a bay of exactly the same proportions are prevented from agreeing to close it."[120] Westerman highlights the relationship between the delimitation of bays and expansionist policies, arguing that "many states have declared sovereignty over bays of increasing size as one strategy for maximising national control over waters previously considered high seas."[121]

48. A significant body of literature addresses the Article 10 conditions that define a juridical bay. The discussion which follows considers issues that publicists have considered in a more general context.[122]

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[112] *Croatia/Slovenia Award*, 244 [778].
[113] *Croatia/Slovenia Award*, 245 [779].
[114] *Croatia/Slovenia Award*, 246 [785].
[115] *Croatia/Slovenia Award*, 272 [880], where the Tribunal itself determined the coordinates of these points to be 45°31′49.3″N, 13°33′46.0″E and 45°30′19.2″N, 13°30′39.0″E, thereby enabling it to determine the exact position of the closing line and hence consider the waters landwards to be the internal waters rather than the territorial sea – thus precluding the application of Article 15 of the LOSC.
[116] *Croatia/Slovenia Award*, 271 [877].
[117] *Croatia/Slovenia Award*, 271 [878].
[118] See eg *United States v Louisiana* 394 US 11; *United States* v *Alaska v United States* 422 US 184; *United States v Maine* 469 US 504; *United States v California* 381 US 139; see the discussion in particular in M.W. Reed, *Shore and Sea Boundaries: the Development of International Maritime Boundary Principles through United States Practice* Vol 3 (US Government Printing Office, Washington: 2000); and analysis in Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 118-121.
[119] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 113, Table 6.1.
[120] Ibid.
[121] Westerman, *The Juridical Bay*, 5.
[122] A detailed analysis of issues associated with bays appears in O'Connell, *The International Law of the Sea* Vol 1, 389-416.

a. "Natural entrance points" of an indentation

49. Churchill and Lowe have identified Article 10's ambiguous reference to a bay's "natural entrance points" as a likely source of difficulty in the "practical application" of the provision,[123] and assert that the identification of a bay's natural entrance points is a matter of degree.[124] On the other hand, Prescott and Schofield are of the view that in the case of a "classical bay shape with a narrow mouth between two headlands, the natural entrance points will be obvious".[125] In these instances, the points will possess a name such as cape, point, head or bluff leading to the selection of a "mathematical point" along the coast.[126] Prescott and Schofield are also of the view that "the selection of natural entrance points is the sole responsibility of the country concerned…."[127]

b. The semi-circle test

50. Writing in the context of Article 10's antecedent provision in the Convention on the Territorial Sea and the Contiguous Zone, O'Connell argued that the semi-circle test is an arbitrary means of defining a juridical bay.[128] O'Connell intimated that the provision fails to give effect to geographical variations that do not detract from an indentation's essential characteristic as a "bay".[129] Prescott and Schofield refer to the "simple principle of the semicircle test" found in the second sentence of Article 10(2),[130] and give emphasis to the linkage between Article 10(2) and Article 10(3) as giving effect to the principle outlined in Article 10(2). In their view, "[t]he three sentences in Paragraph 3 present no difficulties for most countries when the central authority has no aversion to creating internal waters and extending its territorial seas."[131]

IV. Straight Baselines and Low-Tide Elevations

A. Relevant Historical Background

51. The status of drying rocks and shoals was considered by the ILC and was reflected in Article 11 in the Draft Articles. At UNCLOS I the ILC draft text of Article 11 was not endorsed and in its place Article 11 of the Convention on the Territorial Sea and the Contiguous Zone addressed low-tide elevations.

B. Article 13: LOSC Text

52. Article 13 of the LOSC repeats verbatim Article 11 of the Convention on the Territorial Sea and the Contiguous Zone. While there was some early debate at UNCLOS III with respect to the text of the article, consensus was reached for retention of the Geneva text as follows:

> *Article 13*
> *Low-tide elevations*
>
> 1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.
> 2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

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[123] Churchill and Lowe, *The Law of the Sea* 3rd, 42.
[124] Ibid.
[125] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 129.
[126] Ibid.
[127] Ibid.
[128] O'Connell, *The International Law of the Sea* Vol 1, 393.
[129] Ibid.
[130] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 121.
[131] Ibid, 122.

C. Analysis of Article 13

1. Text

53. There are three dimensions to Article 13. The first is the definition of a low-tide elevation which has the following elements:

- it is naturally formed;
- it is an area of land;
- it is surrounded by water;
- it is above water at low-tide; and
- it is submerged at high tide.

No reference is made to the composition of the feature other than that it is "naturally formed". The generic term "low-tide elevation" may therefore encompass a rock, a shoal or some other similar feature.[132] No connection is drawn between Article 13 and the Article 121 "Regime of Islands", though a feature which geologically is properly characterised as a rock may for the purposes of the law of the sea be properly characterised as either a "low-tide elevation" if it is submerged at high tide, or an Article 121(3) rock if it is above water at all times. The determining juridical characteristic is therefore whether the rock is or is not submerged at high tide. Importantly, no reference is made to the size or composition of the feature other than it being "an area of land".

54. The second dimension is the significance of a low-tide elevation for the purposes of the baseline. In this respect the location of the low-tide elevation is determinative as to its capacity for being used as a basepoint for measuring the breadth of the territorial sea. To that end, the low-tide elevation must wholly or partly fall within the breadth of the territorial sea as measured from the mainland or an island. If that requirement is met then the low-water line on the elevation may be used as a basepoint. An exception to this rule applies in the case of those low-tide elevations beyond the breadth of the territorial sea which have had a lighthouse or similar installation built upon them so that they are now permanently above sea level. In those instances straight baselines may be drawn to and from the low-tide elevation consistently with Articles 7(4) and 47. The other Article 7(4) exception is where the drawing of such baselines has received general international recognition.[133]

55. The third dimension relates to the maritime zone generated by a low-tide elevation. A low-tide elevation is not considered to be part of the coast and does not generate a distinctive territorial sea, but the low-water line may be used for measuring the breadth of the territorial sea if it falls within the territorial sea generated from the mainland or an island. Whether the low-tide elevation is utilised as a basepoint may depend on whether it is the most outer lying low-tide elevation within the territorial sea of the mainland or an island. If the low-tide elevation is relied upon as a basepoint for the territorial sea, it can also be the basepoint from which other maritime zones are measured. Article 13(2) makes clear that if the low-tide elevation is situated at a distance which exceeds the breadth of the territorial sea from the mainland or an island, then it has no territorial sea of its own.

2. State Practice

56. It is possible to identify a number of coastal States whose relevant legislation and practice deviates from the LOSC principles regarding baselines associated with low-tide elevations, though it is difficult clearly to differentiate whether the state practice relates to Article 13 low-water line baselines or Article 7(4) straight baselines, partly arising from inaccurate charting. China has relied upon "eight low-tide elevations … that cannot be used to determine the territorial sea because no part of any of these low-tide elevations are within 12 miles of the mainland or an island."[134] Furthermore, none of these elevations possess lighthouses or similar structures that would justify the drawing of straight baselines,

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[132] These various features are assessed in *Territorial and Maritime Dispute* (Nicaragua v. Colombia) (Judgment) [2012] ICJ Rep 624.
[133] Note also that Article 47(4), LOSC addresses the drawing of archipelagic baselines to low-tide elevations.
[134] Department of State (USA), *Straight Baselines Claim: China*, 1, 6.

nor have these baselines received general international recognition.[135] Saudi Arabian legislation relevant to basepoints is similarly inconsistent with Article 13, as it "appears to allow low-tide elevations wherever situated to generate a territorial sea."[136] States such as New Zealand and Trinidad and Tobago have created ambiguity with respect to how they characterise low-tide elevations for the purposes of measuring the breadth of the territorial sea by having enacted legislation equating low-tide elevations with an island.[137]

57. States including Japan and Mexico have implemented legislation that closely observes the provisions of Article 13.[138] Churchill and Lowe have noted that "some States appear to accept the use of low-tide elevations as basepoints, regardless of whether lighthouses or similar installations have been built on them."[139]

3. Case law

58. The International Court of Justice considered the issue of low-tide elevations in its 2001 judgment in the *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)*,[140] where the ICJ determined that Article 13 reflected customary international law.[141] The dispute between Qatar and Bahrain rested on the issue of whether Fasht al Dibal (a low-tide elevation) could "be appropriated in accordance with the criteria which pertain to the acquisition of territory."[142] Qatar maintained that a territorial claim could not be made in relation to a low-tide elevation; Bahrain claimed the converse.[143] The Court confirmed that "[w]hen a low-tide elevation is situated in the overlapping area of the territorial sea of two States, …, both States in principle are entitled to use its low-water line for the measuring of the breadth of their territorial sea."[144] As both States would benefit from reliance upon the low-tide elevations for delimitation purposes, "the competing rights derived by both coastal States … would by necessity seem to neutralize each other."[145] Bahrain claimed that it held a superior title to the low-tide elevations "in the sea between Bahrain's main islands and the coast of the Qatar peninsula" and was thus able to exercise sovereign rights over these areas.[146] In support of this contention Bahrain claimed that the legal status of low-tide elevations is analogous to that of islands under the law of the sea.[147] The Court noted that "[i]nternational treaty law is silent on the question whether low-tide elevations can be considered … "territory" " and that "[t]he few existing rules [in the law of the sea] do not justify a general assumption that low-tide elevations are territory in the same sense as islands".[148] The Court rejected Bahrain's submission that a low-tide elevation is susceptible of a claim to territorial sovereignty, supporting this finding with a reference to the rule in

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[135] Ibid; it is acknowledged that the circumstances as they existed in 1996 may have now altered.
[136] Churchill and Lowe, *The Law of the Sea* 3rd, 55 citing Royal Decree concerning the *Territorial Waters of the Kingdom of Saudi Arabia* (Royal Decree No. 33 of 16 February 1958), arts 1 and 5.
[137] *Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1997 as amended by Act No 146 of 1980* (New Zealand) s 5(2); *Territorial Sea Act 1969, No 38 of 6 December 1969* (Trinidad and Tobago) art 5(2).
[138] UN Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs (2008) Bulletin No. 66 *Law of the Sea* 71ff extracting the *Enforcement Order of the Law on the Territorial Sea and the Contiguous Zone* (Japan) (Cabinet Order No. 210 of 1977, as amended by Cabinet Order No. 383 of 1993, Cabinet Order No. 206 of 1996 and Cabinet Order No. 434 of 2001), arts 2(3) and 2(5) (which defines low-water elevations according to art 13(1) of LOSC); *General Act of 31 December 1941 on National Property* (Mexico) (as amended in January 1982), art 29(II).
[139] Churchill and Lowe, *The Law of the Sea* 3rd, 39-40 citing Department of State (USA), *Straight Baselines: Saudi Arabia* (Limits in the Seas No 20) (Department of State, Washington: 1970) 1; Department of State (USA), *Straight Baselines: Syria* (Limits in the Seas No 53) (Department of State, Washington: 1973) 1.
[140] *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain) (Merits)* [2001] ICJ Rep 40 (Qatar v Bahrain).
[141] *Qatar v Bahrain* [2001] ICJ Rep 40, 100 [201].
[142] *Qatar v Bahrain* [2001] ICJ Rep 40, 100 [200].
[143] Ibid.
[144] *Qatar v Bahrain* [2001] ICJ Rep 40, 101 [202].
[145] Ibid.
[146] *Qatar v Bahrain* [2001] ICJ Rep 40, 101 [203].
[147] Ibid.
[148] *Qatar v Bahrain* [2001] ICJ Rep 40, 101-2 [205-206].

Article 13(2) that low-tide elevations situated beyond the limits of a State's territorial sea do not themselves generate a territorial sea.[149] On this basis the Court concluded that neither Bahrain nor Qatar was able to rely upon the low-water line of the low-tide elevations "in the zone of overlapping claims" for the purposes of drawing the equidistance line between the two States.[150]

59. The ICJ also assessed Article 13 in its 2012 judgment in *Territorial and Maritime Dispute* (Nicaragua v. Colombia)[151] and confirmed that low-tide elevations within 12 nautical miles of an Article 121(3) rock could be used for the purpose of delimiting the territorial sea.[152] In that context Article 13(1) makes no distinction regarding the territorial sea generated from the mainland, an island, or a low-tide elevation.

60. In the *South China Sea* case before an Annex VII LOSC Tribunal, there was extensive discussion regarding the characterisation and entitlements of low-tide elevations, and the important distinctions between these features and islands. In that respect, the Tribunal observed that Article 13 "operates in parallel" with the definition of an island in Article 121.[153] As to the characterisation of a low-tide elevation, the Tribunal noted that "the status of a feature is to be determined on the basis of its natural condition",[154] and that notwithstanding human modification of the feature "[a] low-tide elevation will remain a low-tide elevation under the Convention, regardless of the scale of the island or installation built atop it."[155] Commenting on the fact that a number of such features in the South China Sea had been subject to significant human modification, the Tribunal indicated that in characterising a feature its status would "be ascertained on the basis of its earlier, natural condition, prior to the onset of significant human modification."[156] The Tribunal also commented on the use of the term "high tide" in Article 13 which becomes a determining factor in distinguishing between a low-tide elevation submerged at high tide, and an Article 121 island or rock. It was concluded that "high tide" was not a technical term and could be subject to varying interpretations and accordingly there was nothing in the LOSC or in customary international law requiring that any particular high tide datum be applied.[157] The Tribunal also reaffirmed the position of the ICJ that a low-tide elevation cannot be appropriated, distinguishing between a low-tide elevation located within the territorial sea and as a result falling within the territorial sea legal regime, and a low-tide elevation beyond the territorial sea which subject to its location may fall within the continental shelf regime.[158] As to the entitlements of a low-tide elevation the Tribunal observed that while Article 13(2) only made direct reference to low-tide elevations falling beyond the territorial sea not generating a territorial sea of their own, it followed that low-tide elevations not entitled to a territorial sea were likewise not entitled to a continental shelf or exclusive economic zone.[159]

4. Commentary by Publicists

[149] *Qatar v Bahrain [*2001] ICJ Rep 40, 102 [207].
[150] *Qatar v Bahrain* [2001] ICJ Rep 40, 102-3 [209].
[151] *Territorial and Maritime Dispute* (Nicaragua v. Colombia) (Judgment) [2012] ICJ Rep 624.
[152] Ibid, 693 [182-183].
[153] 2016 *South China Sea Arbitration* [304].
[154] 2016 *South China Sea Arbitration* [305].
[155] Ibid.
[156] 2016 *South China Sea Arbitration* [306]; see also [511].
[157] 2016 *South China Sea Arbitration* [311].
[158] 2016 *South China Sea Arbitration* [309].
[159] 2016 *South China Sea Arbitration* [308] where it was commented: "Article 13(2) does not expressly state that a low-tide elevation is not entitled to an exclusive economic zone or continental shelf. Nevertheless the Tribunal considers that this restriction is necessarily implied in the Convention. It follows automatically from the operation of Articles 57 and 76, which measure the breadth of the exclusive economic zone and continental shelf from the baseline for the territorial sea. Ipso facto, if a low-tide elevation is not entitled to a territorial sea, it is not entitled to an exclusive economic zone or continental shelf." However, a low-tide elevation may be located within the continental shelf of a coastal State and as a result fall within the continental shelf regime; this was the finding of the Tribunal with respect to Mischief Reef and Second Thomas Shoal which were found to be low-tide elevations located with the continental shelf of the Philippines: 2016 *South China Sea Arbitration* [647].

61. Prescott and Schofield have commented on the location of the low-tide elevation within the confines of the territorial sea. They have observed that "[a] strict interpretation of the phrase means that to be used as a baseline, a low-tide elevation must lie within, or at least partially within, the territorial sea generated from the normal baseline of the mainland or an island."[160] Accordingly, in their view "[l]ow-tide elevations that lie outside the territorial sea generated from the mainland or an island cannot be used to generate a further area of territorial sea."[161] Churchill and Lowe provide further support for the principle that "it is not possible to "leapfrog" from one low-tide elevation to another."[162] Sir Gerald Fitzmaurice reached a similar conclusion on this issue.[163]

V. Combination of Methods in Drawing Baselines

A. Relevant Historical Background

62. Article 14 of the LOSC has no predecessor in either the work of the ILC or the deliberations at UNCLOS I. At UNCLOS III a proposal was made in 1973 by China for a provision recognising the capacity of a coastal State to "reasonably define the breadth and limits of its territorial sea" with respect to a variety of relevant factors. This eventually formed the basis for deliberation around the capacity of a coastal State to rely upon a series of methods for the determination of baselines.

B. Article 14: LOSC Text

63. Originally this provision was subsumed within what became Article 7 of the LOSC, but UNCLOS III elected to create an independent article that follows all of the relevant articles dealing with baselines. It provides as follows:

> *Article 14*
> *Combination of methods for determining baselines*
> The coastal State may determine baselines in turn by any of the methods provided for in the foregoing articles to suit different conditions.

C. Analysis of Article 14

1. Text

64. While Article 14 is short, it provides to a coastal State reassurance as to how it can go about determining its baselines. To that end the following points can be made. First, the coastal State "may" determine baselines in this manner. This removes doubt as to whether a coastal State must rely upon a combination of baseline techniques and confirms that depending on particular circumstances a coastal State may determine its baselines solely in reliance upon the Article 5 normal baseline method, or on the Article 7 straight baseline method. Second, the baselines can be determined by any of the methods provided for in the "foregoing articles". Here the use of the words "in turn" is of significance. The *Virginia Commentaries* observes in this respect that:

> The expression "in turn" is rendered *en fonction des différentes situations* and in similar terms in other languages. The English expression must therefore be assumed to mean something along the lines of "according to the circumstances" or "to suit different conditions".[164]

This view is reinforced by the chapeau and its title "Combination of Methods for determining baselines". It is also confirmed by the text of the article where it refers to the coastal State adopting these approaches to "suit different conditions" thereby explicitly acknowledging that States will encounter multiple coastal and maritime variables as they assess how to determine their baselines.

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[160] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 107.
[161] Ibid, 108.
[162] Churchill and Lowe, *The Law of the Sea* 3rd, 48, with reference to art 13(2).
[163] Gerald Fitzmaurice, "Some Results of the Geneva Conference on the Law of the Sea: Part 1 – The Territorial Sea and Contiguous Zone and Related Topics" (1959) 8 *International and Comparative Law Quarterly* 73, 87.
[164] Nandan and Rosenne (eds), *United Nations Convention on the Law of the Sea 1982: A Commentary* Vol II, 130-131.

2. State Practice

65. General acceptance of the principle that States may exercise discretion when selecting a "baseline methodology" is possibly best evidenced by the variety of methods employed by coastal States. States that have adopted legislation and decrees allowing for a combination of methods include Argentina,[165] Brazil,[166] Japan,[167] and Uruguay.[168] In the case of Mauritius, Article 4(2) of the Mauritian *Maritime Zone Act 2005 (No 2)* specifies that the State may rely upon "straight archipelagic baselines …, normal baselines …, the seaward low-water line of reefs …, straight baselines [or] a combination of [these] methods" to delimit its maritime zones.[169] In the case of Mexico, Article 26 of its Federal Act Relating to the Sea provides that "[t]he limits of the territorial sea [of Mexico] shall be measured from baselines, either normal or straight, or a combination of the two."[170]

66. It is also possible to point to examples in state practice where States have sought to validate the methods employed in drawing baselines which have then formed the basis for the delimitation of maritime boundaries between those States. The 1993 Treaty between Cape Verde and Senegal is an example of this approach which expressly validates the baselines drawn by each State and upon which their respective maritime boundaries have been delimited as being "drawn in conformity" with the LOSC.[171] The 1982 Agreement on Historic Waters between Vietnam and Kampuchea (Cambodia) is also illustrative of this approach where the straight baselines of both States are relied upon to form an integrated single straight baseline system notwithstanding significant international criticism that has been levelled against the legitimacy of those baselines.[172] Similar language is used in the 2003 Treaty on the Delimitation of the Maritime Frontier between Mauritania and Cape Verde.[173]

3. Case Law

67. No international court or tribunal has had occasion to consider the application of Article 14.

4. Commentary by Publicists

68. Symmons has claimed that the purpose of Article 14 is "self-evident and straightforward", [174] while Churchill and Lowe note that while it is not possible to prescribe a single method for the calculation of baselines, it is necessary that the rules are applied consistently.[175]

VI. Archipelagic Baselines

A. Relevant Historical Background

69. The first formal consideration of whether a distinctive status should be assigned the waters that comprise an archipelago took place in the 1920s when the ILA (1924 and 1926), the American Institute of International Law (1925), and the *Institut de droit international* (1927 and 1928) gave some preliminary consideration to the matter.[176] In preparation for the 1930 Hague Codification Conference,

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[165] Article 1, Act No. 23.968 of 14 August 1991 (Argentina).
[166] Article 2, Decree No 8.400 of 4 February 2015 (Brazil).
[167] Article 2, Law on the Territorial Sea and the Contiguous Zone (Law No. 30 of 1977, as amended by Law No. 73 of 1996) (Japan)
[168] Article 14, Act 17.033 of 20 November 1998 establishing the boundaries of the territorial sea, the adjacent zone, the exclusive economic zone, and the continental shelf (Uruguay).
[169] UN Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs (2006) Bulletin No. 62 *Law of the Sea* 52ff extracting the *Maritime Zone Act 2005 (No 2)* (Mauritius) 28 February 2005, art 4.
[170] Article 26, *Federal Act relating to the Sea* (Mexico) 8 January 1986.
[171] Article 2, *Treaty on the Delimitation of the Maritime Frontier between the Republic of Cape Verde and the Republic of Senegal* (1994) 26 *Law of the Sea Bulletin* 45; see also Charney and Alexander, *International Maritime Boundaries* vol III (1998) 2287.
[172] Charney and Alexander, *International Maritime Boundaries* vol III, 2360.
[173] Colson and Smith, *International Maritime Boundaries* vol V, 3703, art 2.
[174] Clive R. Symmons, "Article 14 Combination of methods for determining baselines" in Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* , 147, 149.
[175] Churchill and Lowe, *The Law of the Sea* 3rd, 32-33.
[176] D.P. O'Connell, "Mid-Ocean Archipelagos in International Law" (1971) 45 *British Year Book of International Law* 1, 5-7.

active consideration was given to the status of the territorial sea of an archipelago, however no agreement was possible during the Hague Conference on this issue.[177] Academic debate continued during the 1930s; however it was the emergence of Indonesia and the Philippines as independent States that introduced for the first time significant state practice in the area which is detailed in the First Report (2014).

B. United Nations Conferences on the Law of the Sea: I, II, III

70. UNCLOS I did not directly address what was at that time referred to as a "mid-ocean archipelago". This in part reflected the inability of the ILC to agree upon any precise recommendation on the matter.[178] At the 1960 Second United Nations Conference on the Law of the Sea (UNCLOS II), notwithstanding efforts by the Philippines to generate some debate as to the breadth of the territorial sea as it related to certain historic waters, there was no active consideration of archipelagic waters.[179] With a decision having been made to include the topic of "Archipelagos" on the agenda of UNCLOS III, in 1973 during sessions of the Seabed Committee, Fiji, Indonesia, Mauritius, and the Philippines sought to advance debate by introducing proposals which outlined the principles for an archipelagic regime.[180] By 1976 agreement had been reached that the archipelagic regime would focus on mid-ocean archipelagos, and not those archipelagos associated with a continental State. UNCLOS III ultimately decided to deal with the question of archipelagos in Part IV of the final convention text.

C. LOSC Text: Article 47

71. Part IV of the LOSC titled "Archipelagic States" encompasses nine articles and brings together the principal articles of the convention dedicated to the specific law of the sea issues that arise with respect to archipelagos. Part IV, however, both directly and indirectly cross-refers to other provisions in the LOSC and as such no effort is made to create a special regime for archipelagic States outside of the general law of the sea. Nevertheless, Part IV does create a distinctive regime applicable to the island States that make up certain archipelagos, especially with respect to archipelagic baselines and archipelagic navigation.

72. An "archipelagic State" is entitled to draw straight archipelagic baselines consistent with Article 47(1). An "archipelagic State" is defined in Article 46(a) as "a State that is constituted wholly by one or more archipelagos and may include other islands". Such a State must therefore not only meet the criteria of a State under international law, but it needs to also meet the geographic criteria of being a State principally comprised of one or more archipelagos. Article 46(b) provides further definition for the meaning of an archipelago, including reference to the term meaning "a group of islands, including parts of islands".

73. An archipelagic State may draw archipelagic baselines which join the outermost points of the outermost islands and drying reefs of the archipelago in the manner provided for under Article 47, which provides as follows:

Article 47
Archipelagic baselines

> 1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.
> 2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

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[177] Ibid 8-10.

[178] ILC "Articles concerning the Law of the Sea with commentaries" 270 where in discussing draft Article 10 'Islands' the ILC noted that: "The Commission had intended to follow up this article with a provision concerning groups of islands. Like The Hague Conference… the Commission was unable to overcome the difficulties involved."

[179] O'Connell, "Mid-Ocean Archipelagos in International Law", 22.

[180] R.P. Anand, *Origin and Development of the Law of the Sea* (Martinus Nijhoff, The Hague/Boston: 1983) 203.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.
6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.
7. For the purpose of computing the ratio of water to land under paragraph l, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.
8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.
9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

D. Analysis of Article 47

1. Text

74. The core elements of the straight archipelagic baseline provisions in Article 47 set out five tests which the baselines must satisfy.[181] In 1989 the UN Study identified those five tests as being:[182]

1. That the baselines include the main islands;[183]
2. That the baselines must enclose an area of sea at least as large as the area of enclosed land but must not be more than nine times that land area;[184]
3. No segment of baseline may exceed 125 nautical miles in length;[185]
4. Not more than 3 per cent of baseline segments may exceed 100 nautical miles;[186] and
5. That the baselines must not depart to any appreciable extent from the general configuration of the archipelago.[187]

75. These requirements make clear that the archipelagic baselines are to enclose the main islands of the archipelago and may extend to the outermost points and drying reefs of the archipelago, thereby thwarting any attempt to enclose small separate clusters of islands that do not include one of the main islands of the archipelago. In addition, the water-to-land ratio requirement ensures that the archipelagic State is one in which there is a focus upon the ocean spaces which connect the islands, rather than a State which is dominated by large island land masses. For example, Cuba does not qualify as an archipelagic State entitled to draw archipelagic baselines because of the size of its main islands compared to the size of its accompanying islands and the consequence this has for the water to land

[181] J.R.V. Prescott, "Straight and Archipelagic Baselines" in Gerald Blake (ed), *Maritime Boundaries and Ocean Resources* (Croom Helm, Beckenham: 1987) 38, 46 observed that "Three of the five tests are incapable of consistent objective interpretation".
[182] 1989 UN Study, 35.
[183] Article 47 (1), LOSC.
[184] Article 47 (1), LOSC; that is, the water to land ratio is between 1:1 and 9:1.
[185] Article 47 (2), LOSC.
[186] Article 47 (2), LOSC.
[187] 1989 UN Study, 35.

ratio. The Bahamas does qualify because of the presence of several main islands and adjoining smaller islands including atolls resulting in an estimated water to land ratio of 6.8 to 1.[188]

76. In its 1989 commentary to Article 47, the UN Office for Ocean Affairs and the Law of the Sea made reference to the 3 per cent rule embedded in Article 47(2) and how the capacity of an archipelagic State to draw baselines in excess of 100 nautical miles will be contingent upon the total number of baselines enclosing the archipelago. In this respect it was noted that: "Since there is no restriction on the number of segments a country can draw, and since the more segments used the closer the system is likely to be to the general configuration of the archipelago, it will usually be possible to adjust the number of segments to secure the necessary number of very long baselines."[189] Reference was also made to Article 47(7) and the means by which an archipelagic State can calculate the area of water to land and be able to include in the calculations certain waters. With respect to those waters which are "enclosed or nearly enclosed by a chain of limestone islands and drying reefs" on the perimeter of a steep-sided oceanic plateau, there "might be difficulties in deciding whether particular formations could be properly judged to nearly enclose a specific plateau."[190]

2. State Practice

77. Since the conclusion of UNCLOS III and adoption of the LOSC, 22 States have sought to claim archipelagic State status.[191] Those States claiming such status under the LOSC and which have declared archipelagic baselines in reliance upon Article 47 of the LOSC, are identified in Appendix 3. On the basis of available information with respect to archipelagic State claims, the following observations can be made. The water to land ratio of between 9:1 to 1:1 is met by the vast majority of archipelagic States. In 1977 Cape Verde proclaimed archipelagic baselines which resulted in a water to land ratio that exceeded the limits set down in Article 47(1).[192] The US protested this claim in 1980, and in 1992 Cape Verde modified its straight archipelagic baselines in a manner that is consistent with the LOSC.[193] The Seychelles has enclosed four separate groups of islands within straight archipelagic baselines, three of which exceed the 9:1 ratio. However, if reliance was placed upon Article 47(7) and the relevant calculations were done on the basis of land areas including waters lying within fringing reefs of islands and atolls, then only one of the four separate groups is non-compliant.[194] When applying the land to water ratio test, the Bahamas counts oceanic plateaus in apparent reliance upon Article 47(7).[195] The US has also identified a deficiency in the straight archipelagic baselines drawn by Papua New Guinea which do not terminate on the island of New Guinea but rather at sea, and as such are not in accordance with Article 47(1), which requires that baselines join "the outermost points of the outermost islands."[196] The Seychelles has also drawn baselines to and from open water points in a manner inconsistent with Article 47(4).[197] Mauritius has proclaimed two straight archipelagic baseline systems around outlying

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[188] Department of State (United States), *Bahamas: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Sea No 128) (Department of State, Washington: 2014) 2.
[189] 1989 UN Study, 35.
[190] Ibid, 36. This is an issue that has been relevant for the Bahamas and Mauritius.
[191] An extensive review of state practice amongst archipelagic States can be found in Kevin Baumert and Brian Melchior, "The Practice of Archipelagic States: A Study of Studies" (2015) 46 *Ocean Development and International Law* 60-80; an earlier study detailing state practice up to 1991 can be found in Barbara Kwiatkowska and Etty R. Argoes, *Archipelagic State Regime in Light of the 1982 UNCLOS and State Practice* (ICLOS/UNPAD, Bandung: 1991).
[192] The Cape Verde claim enclosed an area of water of 50,546 km^2, while the land area was 4,031 km^2 resulting in an approximate ratio of 12.5:1.
[193] See Roach and Smith, *Excessive Maritime Claims* 3rd, 209.
[194] Department of State (United States), *Seychelles: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Seas No 132) (Department of State, Washington: 2014) 3.
[195] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 177.
[196] Department of State (United States), *Papua New Guinea: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Sea No 138) (Department of State, Washington: 2014) 3-4.
[197] Department of State (United States), *Seychelles: Archipelagic and Other Maritime Claims and Boundaries*, 4.

archipelagos (Saint Brandon and Chagos), and in the case of the main island of Mauritius used a combination of the normal baseline, straight baselines, and river and bay closing lines.[198]

78. Some States have had their claims of being an Article 46 archipelagic State recognised under Part IV of the LOSC challenged. The claim of the Dominican Republic has been challenged on the grounds that archipelagic straight baselines have been drawn to and from certain low-tide elevations that do not meet the Article 47(4) exemption. In 2007 following its declaration as an archipelagic State,[199] the United Kingdom (UK) and the US issued a joint demarche indicating that they did not accept the Dominican Republic's claim and in particular contesting the reliance upon certain low-tide elevations as basepoints.[200] The US is of the view that the water-to-land ratio under the proclaimed straight archipelagic baselines is 1.03:1 which if modified to take into account the baselines drawn to non-eligible low-tide elevations would not fall within the Article 47(1) water-to-land ratio range.[201] The archipelagic claim by Comoros has been subject to criticism because of the drawing of Article 47(1) straight archipelagic baselines to and from Banc Vailheu, a submerged feature that the US asserts is neither an island, a drying reef, or a feature that qualifies under the Article 47(4) low-tide elevation exception.[202]

79. It would appear on the basis of existing state practice that the 125nm baseline length constraint is not a significant issue for the great majority of archipelagic States.[203] The US has questioned the claim of the Maldives, where three of its 37 straight archipelagic baselines are in the 100-125nm range, thereby exceeding the three per cent limit found in Article 47(2).[204] Papua New Guinea has a straight archipelagic baseline segment that is 174.78nm in length and is inconsistent with the Article 47(2) limit of 125nm.[205] There is also evidence of States having adjusted their claims in response to protest.[206]

80. Some archipelagic States have adjusted their archipelagic baselines from time to time, partly as a result of the changing circumstances of the territory that makes up their State. Indonesia, one of the largest archipelagic States, modified its original 1960 baselines with Act no. 6/1996 on Indonesian Waters. The changes that were made in regard to the baselines/basepoints around the Celebes Sea included Pulau Sipadan and Pulau Ligitan within the Indonesian archipelagic baselines system.[207] A further baseline designation occurred in 2008 under PP no. 37/2008 (19 May 2008), which revised the

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[198] Department of State (USA), *Mauritius: Archipelagic and Other Maritime Claims and Boundaries*, 4-5.

[199] Law No 66-07 of 22 May 2007 (Dominican Republic); see Sophia Kopela, "2007 Archipelagic Legislation of the Dominican Republic: An Assessment" (2009) 24 *International Journal of Marine and Coastal Law* 501.

[200] "Text of a Joint Declaration Undertaken by the United Kingdom of Great Britain and Northern Ireland and the United States of America in relation to the Law of the Dominican Republic Number 66-07 of 22 May 2007, Done on 18 October 2007" (2008) 66 *Law of the Sea Bulletin* 98-99.

[201] Department of State (United States), *Dominican Republic: Archipelagic and Other Maritime Claims* (Limits in the Seas No 130) (Department of State, Washington: 2014) 2-3.

[202] Department of State (United States), *Comoros: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Seas No 134) (Department of State, Washington: 2014) 2; the drawing of archipelagic straight baselines to and from the islands of Mayotte is also contentious as those islands are claimed and administered by France; ibid p. 3.

[203] This is reflected in a survey of the studies undertaken by the US Department of State as part of the Limits in the Seas series; see Department of State (United States), *The Bahamas: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Seas No 128) (Department of State, Washington: 2014) 2-3.

[204] Cape Verde adjusted the length of two of its straight archipelagic baselines in 1992 in response to a United States protest to achieve compliance with this provision: Roach and Smith, *Excessive Maritime Claims* 3rd, 216; the Philippines in 2009 adjusted its archipelagic baseline in the Gulf of Moro from 140nm to 122nm; see M.N.Z. 69.2009 LOS of 21 April 2009, Deposit of the list of geographical coordinates of points as contained in Republic Act No. 9522: An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn69.pdf.

[205] Department of State (United States), *Papua New Guinea: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Seas No 138) (Department of State, Washington: 2014) 3-4.

[206] See Roach and Smith, *Excessive Maritime Claims* 3rd, 209.

[207] This adjustment was required following the decision of the ICJ in the case of *Sovereignty Over Pulau Ligitan and Pulau Sipadan* (Indonesia/Malaysia) [2002] ICJ Rep 625 which determined that sovereignty over the islands rested with Malaysia.

baseline system in the Sulawesi Sea, in the vicinity of Timor, and off the south coast of Java. Changes to Indonesia's archipelagic baseline on the south coast of Java were made in order to accommodate the three per cent requirement of Article 47(2), with the effect that one long baseline has now been divided into three shorter ones. In this instance the new baseline configuration has been shifted slightly landwards, only minimally impacting upon Indonesia's archipelagic waters and territorial sea claims.[208]

3. Case Law

81. There has to date been little case law interpreting Article 47, or even Part IV of the LOSC.[209] However in *Qatar v Bahrain* the ICJ did make some observations with respect to the interpretation of Article 47. In that case Bahrain had contended that it was a *de facto* archipelago and that it was entitled to declare itself an archipelagic State under Part IV of the LOSC and accordingly to draw baselines consistent with Article 47.[210] While the ICJ took the view that it was not required to take a position on the issue of Bahrain's status as an archipelagic State as it had not formally made such a claim,[211] the Court did observe that "in such a situation the method of straight baselines is applicable only if the State has declared itself to be an archipelagic State under Part IV of the 1982 Convention on the Law of the Sea, which is not true of Bahrain in this case".[212] The Court had also declared that the fact that a State may consider itself to be a *de facto* archipelagic State does not allow it to deviate from the normal rules with respect to baselines.[213] In his dissenting opinion though not on this point, Judge *ad hoc* Torres Bernárdez observed that there is "no such thing in conventional or general international law as a "secret archipelagic State" appearing in or disappearing from general international judicial proceedings or international relations in general."[214]

82. In the *South China Sea* case before an Annex VII LOSC Tribunal, discussion arose regarding Article 47 in the context of the use of archipelagic baselines with respect to offshore archipelagos. This issue arose because the Tribunal took the view that statements made by China could have been interpreted to suggest that the Spratly Islands in the South China Sea may be enclosed by a system of archipelagic baselines. The Tribunal observed that the use of archipelagic baselines is "strictly controlled by the Convention" and that their use is limited to archipelagic States,[215] and that as China was principally a mainland Asian State it did not meet the definition of an archipelagic State. Notwithstanding that the Philippines is an archipelagic State, the Tribunal was also of the view that the Philippines could not declare archipelagic baselines around the Spratly Islands as the ratio of water to land would "greatly exceed 9:1 under any conceivable system of baselines."[216]

4. Commentary by Publicists

83. Churchill and Lowe have identified seven conditions for the drawing of archipelagic baselines. They classify two as "precise and mathematical" and the remainder as "more general and less precise".[217] Rothwell and Stephens identify five core elements associated with the Article 47 archipelagic baseline provisions, observing that "These requirements, whilst technical in nature, sit comfortably alongside

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[208] Clive Schofield and I. Made Andi Arsana, "Closing the loop: Indonesia's revised archipelagic baselines system" (2009) 1 (2) *Australian Journal of Maritime and Ocean Affairs* 57, 61-2.

[209] *In the Matter of the Duzgit Interity Arbitration* (Award of 5 September 2016) (Malta/São Tomé and Príncipe) PCA Case Nº 2014-07, 15 [51] the tribunal observed that "São Tomé is an archipelagic State within the meaning of Article 46" and proceeded to assess the matter on that basis. A similar position was taken in *In the Matter of an Arbitration between Barbados and Trinidad and Tobago* (11 April 2006) 9 [44] where Trinidad and Tobago's status as an archipelagic State was not challenged.

[210] *Qatar v. Bahrain* [2001] ICJ Rep 40 [180-183].

[211] *Qatar v. Bahrain* [2001] ICJ Rep 40 [183].

[212] *Qatar v. Bahrain* [2001] ICJ Rep 40 [214]; given the context the Court may have mistakenly referred to 'straight' rather than 'archipelagic' baselines.

[213] *Qatar v. Bahrain* [2001] ICJ Rep 40, 103 [213].

[214] *Qatar v. Bahrain* [2001] ICJ Rep 40, 280 [56] Dissenting Opinion of Judge Torres Bernárdez.

[215] 2016 *South China Sea Arbitration* [573].

[216] 2016 *South China Sea Arbitration* [574]. The Tribunal also made observations regarding the relationship between Articles 7 and 47 which is considered more fully in para 91 below.

[217] Churchill and Lowe, *The Law of the Sea* 3rd, 123. They also observe that "many of" the general and less precise conditions "parallel the conditions governing the drawing of straight baselines". Ibid.

the definitions of an archipelagic state and archipelago found in Article 46 and provide objective criteria that conform with the geography of the major archipelagic states engaged in UNCLOS III negotiations."[218] Prescott and Schofield argue that "[i]n contrast to the provisions for straight baselines, those relating to archipelagic baselines are technically robust, leave little room for interpretation and represent a clear attempt to provide rational tests by which to determine the validity or otherwise of a particular archipelagic baseline system."[219] Roach and Smith observe that "[u]ntil an archipelagic State claims archipelagic status, the normal baseline is the low-water line around each island."[220] They subsequently observe that notwithstanding the provisions of Part IV, several continental States with offshore groups of islands that may be described as archipelagos but which do not meet the juridical definition in Article 46 of the LOSC, have sought to enclose "islands with straight baselines in a manner simulating an archipelago."[221]

VII. Distinctions among Islands, Rocks, and Low-Tide Elevations

84. The distinction among islands, rocks and low-tide elevations has gained increased significance in the law of the sea as a result of the conclusion of the LOSC and the prominence given in Part VIII to the "Regime of Islands". The important distinction between an Article 121(2) island, an Article 121(3) rock, and low-tide elevations was highlighted by the *South China Sea* case before an Annex VII LOSC Tribunal.[222] The Committee notes the distinction made among these features by the Tribunal, but takes no view on how the Tribunal interpreted and applied Article 121.

85. The LOSC makes clear that both islands and Article 121 (3) rocks have a minimum entitlement to a territorial sea, and as such the baseline provisions of the LOSC apply and accordingly straight baselines may, subject to the provisions of the LOSC, be drawn from an island or a rock. As an Article 121(3) rock is also an island, being a naturally formed area of land that is permanently above water at high tide, a low-tide elevation that falls within the territorial sea generated by an Article 121(3) rock could be utilised for the purposes of a baseline. A low-tide elevation, as properly classified under Article 13(1) of the LOSC, may only be used as a basepoint for delimiting the territorial sea if located within the territorial sea of the mainland or an island. No distinction should be made, therefore, as to whether a low-tide elevation falls within the territorial sea of an island or an Article 121(3) rock. The case of an Article 121(3) rock with an adjoining low-tide elevation has parallels with the case of an island having a fringing reef, where under Article 6 the baseline is drawn from the seaward low-water line of the reef.

86. With respect to Article 47 straight archipelagic baselines, baselines are to be drawn from islands and drying reefs of the archipelago.[223] Baselines are not to be drawn by an archipelagic State to or from low-tide elevations unless the feature falls within the territorial sea, or a lighthouse or similar installation that is permanently above sea level has been built on the feature.[224] Consistent with the drawing of straight baselines the Committee is also of the view that an Article 121(3) rock would be considered to be an "island" for the purposes of Article 47 and accordingly could be relied upon for the drawing of straight archipelagic baselines, subject to the other controlling elements of Article 47 being applied. This approach is also reflected in state practice, such as the case of Jamaica. Symmons has observed:

> It seems clear that mere 'rocks' within the definition of Art. 121(3) may qualify as basepoints in the capacity of being 'islands', as they are above water at high tide (just as they may also be appropriate linking points under Art. 7(1)). Thus, for example, in the Jamaican archipelagic

[218] Rothwell and Stephens, *The International Law of the Sea* 2nd, 194.
[219] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd (2005) 171-172; cf. an earlier comment by Prescott who observed that: "Three of the five tests are incapable of consistent objective interpretation": Prescott, "Straight and Archipelagic Baselines" 46.
[220] Roach and Smith, *Excessive Maritime Claims* 3rd, 23.
[221] Ibid, 208, where reference is made to the practice of Canada, Denmark, Ecuador, Portugal, Sudan and the UK.
[222] 2016 *South China Sea Arbitration* [473-553].
[223] Article 47 (1), LOSC.
[224] Article 47 (4), LOSC.

claim, several of its southern critically-placed archipelagic basepoints consists of small rocks, such as Blower Rock.[225]

Rocks have also been relied upon in the drawing of archipelagic baselines by the Bahamas,[226] Grenada,[227] Mauritius,[228] Papua New Guinea,[229] and Trinidad and Tobago.[230]

VIII. Distinct Island Issues

87. The LOSC in Article 121 makes a distinction between islands and rocks, with rocks being a sub-set of islands. This distinction is also relevant with respect to the islands that comprise an archipelago and make up an Article 46 archipelagic State. However, it is also possible to classify islands in other ways based upon geographic concepts. While other classifications of islands are not found in the LOSC or customary international law, applying additional classifications to certain islands assists in understanding straight and archipelagic baselines in other contexts. For these purposes, the Committee will use the terms "Oceanic Islands" and "Offshore Archipelago" to consider some additional distinct baseline issues as they apply to islands.

A. Oceanic Islands

88. The situation of oceanic islands raises some distinctive issues. For these purposes an "oceanic island" is a single island which meets the criteria for an island under Article 121 of the LOSC and is not part of an archipelago. These islands generate the full suite of maritime zones as recognised in Article 121(2). There are two types of such islands:

- An oceanic island State – an example is Nauru; and
- An oceanic island that is separate from the mainland State of which it forms a part, and may be located adjacent to the coastal State and fall within the EEZ of the State or in another ocean or sea — examples include Ascension Island (UK), Bouvet Island (Norway), Campbell Island (New Zealand), Guam (USA), Macquarie Island (Australia), Marion Island (South Africa), and Wrangel Island (Russia).

Provided straight baselines can be drawn around oceanic islands consistently with Article 7, then such baselines would be permissible.[231]

B. Offshore archipelagos

89. Offshore archipelagos and the capacity of coastal States to draw straight baselines around such islands pursuant to Article 7 or Article 47 have proven contentious in state practice. Offshore archipelagos can take two forms:[232]

- An offshore coastal archipelago located geographically adjacent to the continental state within the territorial sea or the EEZ – an example is the Åland Islands (Finland));[233] or

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[225] Clive R. Symmons, "Article 47 Archipelagic Baselines" in Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary*, 352, 362-363; see Department of State (USA), *Jamaica's Maritime Claims and Boundaries* (Limits in the Seas No 125) (Department of State, Washington: 2004) 3-4.
[226] Department of State (USA), *The Bahamas Archipelagic and Other Maritime Claims and Boundaries*.
[227] Department of State (USA), *Grenada: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Seas No 135) (Department of State, Washington: 2014).
[228] Department of State (USA), *Mauritius: Archipelagic and Other Maritime Claims and Boundaries*.
[229] Department of State (USA), *Papua New Guinea: Archipelagic and Other Maritime Claims and Boundaries*.
[230] Department of State (USA), *Trinidad and Tobago: Archipelagic and Other Maritime Claims and Boundaries* (Limits in the Seas No 131) (Department of State, Washington: 2014).
[231] Australia has drawn straight baselines around the west coast of Macquarie Island; see "Australian Maritime Projection around Macquarie Island – Lambert Project" (Geoscience Australia) available at https://ecat.ga.gov.au/geonetwork/srv/eng/search#!a05f7892-eeed-7506-e044-00144fdd4fa6.
[232] Kopela, *Dependent Archipelagos in the Law of the Sea* uses the term 'Dependent Archipelago', however, the Committee has not endorsed that characterization.
[233] The islands that comprise an offshore coastal archipelago would in most instances fall within the ambit of an Article 7(1) "fringe of islands" subject to their geographic proximity from the mainland.

- An offshore outlying archipelago located at a considerable distance from the continental state – an example is the Hawaiian Islands (USA).

States that are comprised of islands, and that are not Article 46 archipelagic States may also have offshore archipelagos.[234] Straight baselines around and between islands that comprise offshore coastal archipelagos are permissible provided that, mutatis mutandis, the geographical circumstances of those islands allow for the application of Article 7 and other related provisions. This stems from the principle of entitlement of islands to maritime zones in the same terms as other land territory as reflected in Article 121.

90. A recent study by Roach has identified the following offshore archipelagos enclosed by straight baselines: Azores (Portugal), Canary Islands (Spain), Co Co and Preparis (Myanmar), Diaoyu Dao/Senkakus (China), Falklands/Malvinas (UK/Argentina), Faroes (Denmark), Galapagos (Ecuador), Guadeloupe (France), Hainan, Paracels (China), Kerguelen Islands (France), Loyalty Islands (France), Svalbard (Norway), and Turks and Caicos (UK).[235] A number of States have protested some of these claims, including Bangladesh, Belgium, Germany, Philippines, Senegal, Spain, Sweden, UK, US, Vietnam and the EC.[236]

91. In the *South China Sea* case before an Annex VII LOSC Tribunal, discussion arose regarding whether it would be permissible for China to enclose the Spratly Islands by a system of straight or archipelagic baselines "surrounding the high tide features of the group, and accorded an entitlement to maritime zones as a single unit".[237] China had not formally drawn a system of archipelagic baselines, nor made a claim that it was an archipelagic State. Nevertheless, the Tribunal made several observations that are relevant to this analysis including:

> The use of archipelagic baselines (a baseline surrounding an archipelago as a whole) is strictly controlled by the Convention, where Article 47(1) limits their use to "archipelagic states". Archipelagic States are defined in Article 46 as States "constituted wholly by one or more archipelagos and may include other islands." The Philippines is an archipelagic State (being constituted wholly by an archipelago), is entitled to employ archipelagic baselines, and does so in promulgating the baselines for its territorial sea.[238]

The Tribunal then considered the application of Article 7 straight baselines, and observed that "the Tribunal is aware of the practice of some States in employing straight baselines with respect to offshore archipelagos to approximate the effect of archipelagic baselines."[239] Two views were expressed on this matter: one technical and the other relating to the overall application of the LOSC. The Tribunal made clear that Article 7 straight baselines could not be drawn in the case of an offshore archipelago where the relevant conditions did not exist.[240] The Tribunal then went on to observe:

> Although the Convention does not expressly preclude the use of straight baselines in other circumstances, the Tribunal considers that the grant of permission in Article 7 concerning straight baselines generally, together with the conditional permission in Articles 46 and 47 for certain States to draw archipelagic baselines, excludes the possibility of employing straight baselines in other circumstances, in particular with respect to offshore archipelagos not meeting

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[234] Small clusters of offshore islands, some of which are called archipelagos, lie offshore the main islands of Japan and New Zealand

[235] J. Ashley Roach, "Offshore Archipelagos Enclosed by Straight Baselines: an Excessive Claim?" (2018) 49 *Ocean Development and International Law* 176, 180-181; all of these are offshore outlying archipelagos excepting the Co Co and Preparis (Myanmar), and Hainan (China).

[236] Ibid.

[237] 2016 *South China Sea Arbitration* [573]; this question was discussed in the context of statements made by China indicating that it claimed a territorial sea, EEZ and continental shelf "based on the Nansha Islands as a whole." ibid [571].

[238] 2016 *South China Sea Arbitration* [573].

[239] 2016 *South China Sea Arbitration* [575].

[240] Ibid.

the criteria for archipelagic baselines. Any other interpretation would effectively render the conditions in Articles 7 and 47 meaningless.

92. Through this assessment and review of the specific and general provisions of the LOSC with respect to the drawing of straight and archipelagic baselines the Tribunal made clear that a restrictive approach should be taken towards the drawing of such baselines in the case of offshore archipelagos.

IX. Settlement of Disputes with respect to Straight and Archipelagic Baselines

93. The LOSC contains both general and compulsory procedures for the settlement of disputes in Part XV. Disputes arising with respect to straight and archipelagic baselines fall within the subject matter jurisdiction of these LOSC mechanisms as they relate to the interpretation or application of the convention. An exception would arise with respect to matters relating to the customary international law of the sea that fell outside of the scope of the convention. However, given the extent of the provisions in the LOSC relating to straight and archipelagic baselines it would be difficult for a State to assert that any new customary international law regarding baselines did not relate to the interpretation or application of the convention. The general provisions for the settlement of disputes in the LOSC mirror those found in Article 33 of the Charter of the United Nations and emphasise peaceful means and reference to other general, regional or bilateral agreements.[241] Where a dispute arises the parties are to proceed expeditiously to an exchange of views regarding the settlement of the dispute by negotiation or other peaceful means.[242] The compulsory procedures for dispute settlement under Part XV provide for recourse to the International Tribunal for the Law of the Sea, the International Court of Justice, an Annex VII Arbitral Tribunal, or an Annex VIII Special Arbitral Tribunal.[243] Subject to declarations made by the parties, default jurisdiction rests with an Annex VII Arbitral Tribunal.[244]

94. When straight or archipelagic baselines have been contested in dispute resolution proceedings under Part XV, Section 2, or separately before international courts or tribunals via other routes, those baselines have – with the exception of the landmark *Fisheries* case (UK v Norway) – not been the principal subject matter of the dispute. 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. The Committee can therefore observe that 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. In addition, as occurred in *Qatar v. Bahrain* and *South China Sea*, the legality of baselines is the subject of analysis in the context of a larger dispute between the parties.

95. 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. The US is the most active individual State in this regard and relies upon diplomatic protest, and the actual physical exercise of its asserted freedoms of navigation by government vessels, to challenge straight and archipelagic baselines claims that it does not consider to be in conformity with the law of the sea. The US has also joined with States that are parties to the LOSC to protest against straight or archipelagic baseline claims not considered to be in conformity with the convention, as occurred with the joint UK/US demarche of October 18, 2007 with respect to the archipelagic baseline claim of the Dominican Republic.[245] The Committee also observes that not all diplomatic protests are publicly available and some States may resolve these matters by bilateral exchanges at a diplomatic or Ministerial level.

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[241] Articles 280, 282, LOSC.
[242] Article 283, LOSC.
[243] Article 287, LOSC.
[244] Article 287(5), LOSC.
[245] Department of State (United States), *Dominican Republic: Archipelagic and Other Maritime Claims*, Annex 4.

X. Final Observations and Conclusions

96. In light of the analysis and review of the relevant provisions of the LOSC, state practice, relevant jurisprudence, and the views of commentators and publicists, the Committee will now make some final observations and conclusions.[246]

A. Straight Baselines and Diplomatic Protests

97. The legality and validity of straight and archipelagic baselines are subject to their conformity with the LOSC and customary international law. However, as long as the legality and validity of the baselines has not been assessed by an international court or tribunal, the opposability of those baselines largely depends upon an absence of protest from other States. Thus, a survey of protests is very important for the purposes of assessing state practice concerning straight baselines. In this respect, the First Report (2014) indicated as follows:

> 30. For the purposes of this Report it is not possible to provide an exhaustive analysis of all relevant state practice. Nor is it possible to discuss the legal grounds on which States may have predicated their recourse to straight (or closing) baselines, as typically that is not made publicly known. Rather mention will be made of some particular examples of state practice in areas that have been the subject to debate.

The report goes on to indicate:

> 41. Not entirely surprisingly, the number of States which have protested relevant state practice in this regard, in proportion to the number of potentially interested States, is very small.

In this regard, the First Report placed reliance upon Churchill who in 2005 observed: "at least eight different States and the EU have protested to one or more baseline claims….".[247]

98. Since the First Report the straight baseline claims of 88 States were identified. A detailed search for protests thereof uncovered additional objections as set out in Appendix 1. It lists a total of 82 protests or other forms of objection. It shows that the straight baseline claims of 39 States (almost 50% of the total SBL claims) — all but Iran being parties to the LOSC — have been objected to by 21 States and the EU/EC (only two of which – Iran and the US – are not party to the LOSC). Appendix 2 consolidates the data in Appendix 1, distinguishing between States whose straight baseline claims are less than 40 miles, those States whose straight baseline claims are not greater than 50 miles, and those States whose straight baselines claims are greater than 50 miles.

99. The Committee has been cautious not to place too much weight on diplomatic protests for a number of reasons. First, while details of US diplomatic protests are publicly available, as noted above that may not be the case with the diplomatic protests of other States. Second, diplomatic protests raise issues of characterisation requiring detailed assessment of the actual language in a note verbale or equivalent in order to be able to make a precise assessment as to the subject matter of the dispute and whether it relates to an interpretation or application of the LOSC. Nevertheless, the Committee has sought to take into account, where appropriate, diplomatic protests that are publicly available as evidence of state practice and the views of certain states regarding either the development of customary international law or the interpretation of the LOSC.

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[246] Committee member Yee made the following comments on this Report: "First, I take issue with the very much raw data approach to the assessment of protests and other State practice data that the draft final report more or less takes. Second, I take issue with the position that continental States cannot claim archipelagic waters under customary international law. I believe there is sufficient material to support the view that they can. The continental States' argument seems to be take the view that the whole Part IV does not apply to their outlying archipelagos. Thirdly, I object to citing the South China Sea arbitration uncritically, taking it as sacred, although the awards did not provide any analysis on many of the relevant issues, simply making conclusory statements. We are an academic entity; simply citing to unsupported conclusory statements as proven is inappropriate."

[247] Robin R. Churchill, "The Impact of State Practice on the Jurisdictional Framework Contained in the LOS Convention", 108.

B. Straight Baselines

100. The Committee observes that a majority of coastal States – 90 of 150 – have sought to proclaim straight baselines in reliance upon Article 7 of the LOSC. However, the data in Appendix 1 highlights that state practice is variable, which also reflects the variables in coastal geography that impact upon the interpretation of Article 7. The Committee's analysis of Article 7 has identified a number of constraints in its application. The controls that apply to the interpretation of Article 7 are consistent with judicial interpretation. However, the evolution of Article 7 via the judgment in *Fisheries*, work of the ILC, debates at the 1958 Geneva Conference, the resulting text of Article 4 of the Convention on the Territorial Sea and the Contiguous Zone, and the debates in and outcome of UNCLOS III, make clear that notwithstanding a number of proposals for specific limitations to be placed upon the straight baseline regime, they were rejected in favour of the current text, which incorporates certain indeterminate concepts to be concretised in light of specific circumstances. In this respect the Committee recalls the comments of J.P.A. François in his capacity as Expert to the Secretariat of the 1958 Geneva Conference when he observed with respect to the work of the ILC and straight baselines:

> The Commission was criticized for not having drafted some of the articles as precisely as might be desired. Such expressions as "where circumstances necessitate", "to any appreciable extent", "sufficiently closely linked", "adequate grounds", "reasonable measures", "unjustifiable interference" and others are, it is said, out of place. The Commission cannot regard these objections as fully justified. It is true that the articles ought to be drafted in the clearest possible language. Perhaps the Commission's texts can still be improved in this respect. Nevertheless, it should be remembered that these expressions all occur in national legislation. In the opinion of the International Law Commission, a codification of international law can no more do without these expressions than can national law. Any attempt to codify international law without using such expressions will prove vain. In contentious cases, the meaning will have to be decided by an impartial authority, to which disputes regarding the interpretation of these expressions in specific cases are to be submitted.[248]

In the absence of objective criteria, a succession of indeterminate concepts have been used throughout the history of the straight baselines regime and this needs to be borne in mind when interpreting Article 7. Such an approach is also consistent with acknowledging that there is also a margin by which coastal States can seek legitimately to interpret the drawing of straight baselines so as to reflect their distinctive circumstances.

101. The Committee also acknowledges that interpretations of Article 7 that are arguably not seen as consistent with the LOSC have been the subject of protest, principally by the US but also by the European Union and other States. As noted above, the Committee also accepts that there may be other instances of diplomatic protests having been lodged with respect to state practice and Article 7 that have not been publicly released. The Committee also notes that a small number of significant maritime States have lodged Declarations under Article 310 expressing their views with respect to the drawing of straight baselines not in accordance with the LOSC. Diplomatic protest will have an impact on the development of treaty interpretation at variance with the LOSC. In this respect the Committee acknowledges that the general rules of treaty interpretation as provided for in Article 31 of the Vienna Convention on the Law of Treaties[249] are applicable and that it is legitimate to take into account state practice of parties to the LOSC with respect to the interpretation of Article 7, which incorporates "indeterminate concepts" that stem from the negotiations in UNCLOS I and UNCLOS III. The weight accorded to that state practice must be assessed against whether it reflects the "agreement of the parties regarding its interpretation."[250]

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[248] *United Nations Conference on the Law of the Sea, Volume III: First Committee (Territorial Sea and Contiguous Zone)*, 21st mtg, 69 [15], UN Doc A/CONFC.13/C.1/L.10 (1958); François was an ILC member from 1949-1961 and Special Rapporteur for the "Law of the sea – regime of the high seas" (1950-1954, 1956) and "Law of the sea – regime of the Territorial Sea" (1952-1956).
[249] 1155 UNTS 331 (VCLT).
[250] Article 31 (3)(b), VCLT.

102. The Committee notes that a number of publicists have been critical of the Article 7 straight baseline regime. Reisman and Westerman, writing in 1992, were firmly of the view that the regime of straight baselines requires a form of reconceptualization.[251] In 2005, Prescott and Schofield, for example commented that "[a] survey of the approximately 70 straight baselines drawn around the world demonstrates that the rules established in 1958 and 1982 to govern their delimitation have been bent out of shape. That should surprise no analyst. The terms of Article 7 are so imprecise that it would be possible for most countries to draw straight baselines along some or all of their coastlines. Nor would such countries need to invent new interpretations of terms in Article 7, because existing baselines provide all the justifications in terms of state practice and precedents that any could need."[252] More recently, Tanaka wrote in 2015 that "the rules governing straight baselines are so abstract that the application of the rules to particular coasts is to a large extent subject to the discretion of coastal States."[253] In 2013, Kopela claimed that "expanding tendencies need to be assessed by taking into consideration the purpose of straight baselines", which is not an easy task since such purpose and objective was not spelt out in Article 7.[254]

103. As to the general status of Article 7 and its interpretation, the Committee notes its observations in paragraphs 10-36. It endorses the observations of Churchill[255] that there is no agreed single interpretation of Article 7 or a new rule of customary international law, and also notes the 2016 comments by the Annex VII LOSC Tribunal in *South China Sea* rejecting the formation of a new rule of customary international law regarding baselines especially with respect to the relationship between Articles 7 and 47.[256] Notwithstanding significant evidence of variations in state practice, the Committee's analysis demonstrates that 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. There is also evidence that following protests over practice not considered to be in conformity with Article 7, some States have modified their straight baselines so as to be in conformity with the LOSC.

104. With respect to some of the specific provisions of Article 7, the Committee observes that the terms "deeply indented and cut into" are criteria that are not subject to absolute precision in their interpretation. While they have traditionally been understood in the context of the geographical circumstances of the Norwegian coastline considered in the *Fisheries* case, the Committee notes that the Court referred to a consideration of "all the geographical factors involved."[257] This supports the view that 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.[258]

105. The Committee is of the view that 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 LOSC, 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. As emphasised by the Annex VII LOSC Tribunal in *South China Sea* 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

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[251] Reisman and Westerman, *Straight Baselines in International Maritime Boundary Delimitation,* 73-74.
[252] Prescott and Schofield, *The Maritime Political Boundaries of the World* 2nd, 160.
[253] Tanaka, *The International Law of the Sea* 2nd, 51.
[254] Kopela, *Dependent Archipelagos in the Law of the Sea*, 73-74.
[255] Churchill, "The Impact of State Practice on the Jurisdictional Framework Contained in the LOS Convention" 108.
[256] 2016 *South China Sea Arbitration* [576].
[257] *Fisheries* (United Kingdom v. Norway) [1951] ICJ Rep 116, 141.
[258] *Fisheries* (United Kingdom v. Norway) [1951] ICJ Rep 116, 141 which was applied in the case of the Lakesfjord and Porsangerfjord.

utilised for the purpose of drawing Article 7 straight baselines to and from the mainland, or between the islands that comprise the "fringe".

106. The Committee is of the view that Article 7(2) is to be read independently, and not cumulatively, with Article 7(1) and notes the historic basis for this provision is separate and distinct from the criteria outlined in Article 7(1). However, while Articles 7(1) and 7(2) are separate and distinct, each needs to be read cumulatively with Articles 7(3)-(6). The Committee also notes the potential difficulties that may arise from a strict application of Article 7(3) to the circumstances outlined in Article 7(2) in that a highly unstable coastline may be one in which determining the general direction of the coast may present significant challenges. In that respect, the Committee notes that the "general direction" criterion in Article 7(3), recognised by the Court in *Fisheries* as devoid of any mathematical precision,[259] 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.

107. The Committee has carefully assessed whether it is possible to specify limits on the length of straight baselines. The only judicially approved straight baselines were those of Norway which in 1951 in *Fisheries* the ICJ approved in toto. The Court did not in its opinion identify the longest segments that it was approving. A later analysis stated that the longest Norwegian straight baseline considered in that decision was segment 45-46 at 40.0 nm long (the longer segment, 20-21, 43.6 nm, enclosed a body of water that the Court found to be historic waters). The Committee has noted that the court in *Fisheries* endorsed a Norwegian straight baseline 40 nm in length. Given that remains the longest judicially endorsed straight baseline it is appropriate to consider that a straight baseline of 40 nm, subject to other relevant criteria, is consistent with Article 7.

108. Publicists have proposed various length limits, however, there is no consensus on this point. Appendix 1, which reflects claims made till mid-2018, includes the data currently available for all (Article 7) straight baseline segments, including those longer than 40 nm (many of the lengths have been calculated to hundredths of a nautical mile based on modern satellite imagery). The data presently available indicates that of the 90 States (including their dependencies) that have drawn straight baseline segments, 41 have no segments longer than 40 nm, while 49 have one or more segments longer than 40 nm. This analysis is located in Appendix 2. The Committee observes that the state practice is variable and concludes that it is not possible to assert that state practice has crystallized around the permissible length of a straight baseline.

109. Having carefully assessed the history and background to the development of Article 7, state practice, the decisions of international courts and tribunals, and the views of commentators and publicists, 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, prevail. In reaching this conclusion the Committee notes the emphasis placed upon proportionality in the *Fisheries* case, and that according to the Court in *Qatar v Bahrain* the regime should be "applied restrictively". Noting those observations, 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. The Committee also notes that the LOSC sets the presumptive outer limit for a straight archipelagic baseline as 100nm and permits only a small percentage of straight archipelagic baselines up to a limit of 125nm.

C. Internal Waters and Straight Baselines

110. With respect to Article 8(2), the Committee assessed this provision in its Second Report (2016) where the absence of extensive state practice was noted. As such it can be observed that 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. Notwithstanding the characterisation by publicists such as Smith that Article 8(2) seeks to "preserve" a right of innocent passage within waters newly enclosed by Article 7 straight baselines, 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

[259] *Fisheries* (United Kingdom v. Norway) [1951] ICJ Rep 116, 142.

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 to 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.

D. Bays and Straight Baselines

111. The Committee observes that the status of a juridical bay in the modern law of the sea within which a straight/closing line may be drawn has a long history as reflected in both the Convention on the Territorial Sea and the Contiguous Zone and the LOSC. The ICJ in the *Land, Island and Maritime Frontier* case considered the provisions of Article 10 to reflect "general customary law". The Committee acknowledges that 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 there exist some variations in state practice and that the drawing of straight/closing lines has been the subject of protest, especially by the US. While the Committee acknowledges that Article 10 could be redrafted with greater precision there would not appear to be much incentive for doing so given the general customary international law status of the provision. In that respect, the Committee accepts that Article 10(4) closing lines bear similarities to Article 7 straight baselines in that account must be taken of coastal irregularities such that coastal States enjoy some margin of appreciation in its interpretation. The Committee does note, however, that Article 10(4) makes clear that a bay closing line is to be no greater than 24 nm in length and that no variation from this is permissible. The Committee also notes that Article 10 does not apply to multi-state bays or to historic bays, both of which are addressed under general international law. Decisions of international courts and tribunals have considered multi-state bays in the *Land, Island and Maritime Frontier* case and in *Croatia/Slovenia*.

E. Low-Tide Elevations and Straight Baselines

112. The Committee notes that Article 13 permits a coastal State to rely on the low-water line on a low-tide elevation as the baseline from which the territorial sea is measured if the low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island. There is also a direct linkage between Article 13 and Articles 7(4) and 47(4), which some coastal States have relied upon to engage in ambiguous conduct as to which of these provisions they have utilized when they rely upon certain low-tide elevations to measure the breadth of their territorial sea or to draw straight baselines. While Article 13 identifies the essential characteristics of a low-tide elevation there remains the potential for coastal State discretion in characterising a feature as a low-tide elevation. Nevertheless, the Committee notes the approach of the Annex VII LOSC Arbitral Tribunal in *South China Sea* that a low-tide elevation is to be determined on the basis of its natural condition and a strict approach must be taken to distinguish between a low-tide elevation in its natural condition, and a feature that as a result of state intervention has acquired the characteristics of an artificial island. The Committee notes its previous views on determining the relevant vertical datum and its application to Article 5 and low-tide elevations,[260] and the flexible approach taken by the Annex VII LOSC Arbitral Tribunal in *South China Sea* on that matter.

F. Combination of Methods in Drawing Baselines

113. In view of the different methods that Part II, Section 2 of the LOSC permits coastal States to rely upon when determining their baselines, the Committee observes that 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. However, while Article 14 reaffirms coastal State discretion, the Committee emphasises that the

[260] International Law Association, *Baselines under the International Law of the Sea* (Sofia Conference 2012) p 25.

baselines methodology selected by a coastal State must be appropriate and adapted to the particular coastline under consideration.

G. Archipelagic Baselines

114. The Committee notes that Part IV of the LOSC was carefully drafted during UNCLOS III to reflect the aspirations of those States that were pressing for recognition under the law of the sea of archipelagic State status. That the technical provisions of Article 47 were only finalised following extensive consultations with the principal aspiring archipelagic States has resulted in substantive compliance by the great majority of those States claiming archipelagic State status since the entry into force of the LOSC. The Committee observes that 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.

115. Part IV of the LOSC has given greater status to the "archipelagic State" and has raised issues as to whether a State must declare itself as such to be able to draw straight archipelagic baselines consistent with Article 47. The ICJ in *Qatar v Bahrain* has suggested that for a State to enjoy entitlements under Part IV of the LOSC, including the drawing of Article 47 archipelagic baselines, then the making of such a declaration is necessary. The Committee notes in particular the significance of the relationship between Articles 46 and 47 which has been reinforced by the decision in *Qatar v Bahrain* with the emphasis upon the connection in Articles 46 and 47 between an "archipelagic State" and a State able to draw straight archipelagic baselines consistent with Article 47. This distinction was also alluded to by the Annex VII LOSC Arbitral Tribunal in *South China Sea*. The Committee also notes the requirement under Article 47(9) that an archipelagic State is to give due publicity to charts or geographical coordinates referring to straight archipelagic baselines. While observing that there are some variations in state practice, albeit amongst a small group of only 22 States claiming archipelagic State status, consistent with the distinctive rights and entitlements enjoyed under Part IV and emerging state practice it is desirable that States relying upon Part IV should proclaim themselves as archipelagic States. Such action would resolve any ambiguity as to the status of the state for the purposes of the LOSC, and also provide greater certainty for other States, including adjoining coastal States and flag States whose vessels navigate through the waters of the archipelagic State. Where the status of a declared archipelagic State is disputed, the rights and entitlements of that State consistent with Part IV, and its maritime claims proclaimed from straight archipelagic baselines, may not be recognised by the protesting State A State party to the LOSC that contests the status of an archipelagic State may avail itself of Part XV mechanisms for the peaceful settlement of international disputes.

116. The Committee notes that compared to Article 7 of the LOSC, there is little room for widely varying interpretation of the more technical provisions of Article 47. With respect to the 3 per cent straight archipelagic baseline requirement in Article 47(2), the Committee notes that this provision should be applied to each set of archipelagic baselines drawn by an archipelagic State around each archipelago that comprises the archipelagic State. On the other hand, terms such as "appreciable extent", and "general configuration" found within Article 47 are more indeterminate and provide the archipelagic State with some capacity to apply those provisions consistently with its particular geographic circumstances. In this respect the Committee observes that some archipelagic States have sought to draw more than one set of complete archipelagic baselines so as to enclose distinct archipelagos that may be geographically separate. These states include Kiribati, Marshall Islands, Mauritius, Seychelles, and the Solomon Islands.[261] Such practice is consistent with Articles 46 and 47 providing other controls on straight archipelagic baselines are met.

117. The Committee notes that straight archipelagic baselines are to enclose the "main islands". This term is not defined in Article 47(1), though the island must meet the Article 121 criteria. The Committee notes that, consistent with the widely varying geographic circumstances of archipelagic States, the term "main islands" should be interpreted flexibly to encompass the larger geographic islands, the more heavily populated islands, and the more economically significant islands. The main islands of an archipelagic State may therefore be of varying geographic size.

[261] See Appendix 3.

118. The archipelagic State within its archipelagic waters may also under Article 50 draw closing lines so as to delimit internal waters in accordance with Articles 9, 10 and 11. This allowance for archipelagic States is limited in scope and applies only in the case of mouths of rivers, bays, and ports. Some archipelagic States have sought to draw Article 50 closing lines.[262] With the exception of a claim made by the Dominican Republic,[263] the Committee is not aware that state practice in this area, albeit very limited, is contentious.

119. In the case of oceanic islands (as the Committee has used that term in paragraph 88) either comprising a single State, or being part of the territory of a coastal State, the Committee observes that straight baselines may be drawn around the coast of those islands provided such baselines are in accordance with Article 7. In the case of offshore archipelagos (as the Committee has used that term in paragraph 89) the Committee distinguishes between two types: the offshore coastal archipelago, and the offshore outlying archipelago. 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. The Committee is of the view that subject to the size and the maritime features of the islands comprising an offshore archipelago, 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".

120. The Committee notes that in the case of offshore outlying archipelagos, consistent with *Qatar v Bahrain* and *South China Sea*, a State is unable to proclaim archipelagic baselines unless it meets the criteria of being an archipelagic State. This may include a State made up of groups of islands that comprise an archipelago such that each group can be enclosed by separate straight archipelagic baselines as is the case with Kiribati, the Marshall Islands, the Seychelles, and the Solomon Islands. The Committee confirms that a continental State – that is a State that has territory located on a continent – is unable to proclaim Article 47 straight archipelagic baselines as the State would be constituted other than by archipelagos and islands.[264]

H. Final Observations

121. The Committee has sought to review and assess baselines under the international law of the sea consistent with its mandate. While the LOSC provided a firm basis for the study much of the Committee's work focussed on assessing state practice and decisions of international courts and tribunals. Given the significant impact both have upon this area of the law of the sea it can be anticipated that the interpretation and application of the law will continue to evolve.

122. The Committee acknowledges the research assistance provided to the Rapporteur by students at the ANU College of Law, Australian National University. The Committee also acknowledges the ILA (American Branch), ILA (Singapore Branch), American Society of International Law, and the Centre for International Law at the National University of Singapore for hosting inter-sessional meetings. This brings the Committee's work to a conclusion.

Dissenting Report by Sienho Yee

I respectfully dissent. First, the Committee's raw data approach to assessing State practice is wrong. General international law requires a careful examination of State conduct and the underlying reasons, with due regard to specially affected States' positions. The Report (para.98) found 21 States objecting

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[262] Kevin Baumert and Brian Melchior, "The Practice of Archipelagic States: A Study of Studies" 60, 71 who refer to the practice of Antigua and Barbuda, Fiji, Grenada, Mauritius, Saint Vincent and the Grenadines, and Tuvalu.

[263] See "Text of a Joint Declaration Undertaken by the United Kingdom of Great Britain and Northern Ireland and the United States of America in relation to the Law of the Dominican Republic Number 66-07 of 22 May 2007, Done on 18 October 2007" (2008) 66 *Law of the Sea Bulletin* 98-99.

[264] Committee member Yee notes there is sufficient material to support the view that continental States can claim archipelagic waters under customary international law, citing Chinese Society of International Law "The South China Sea Arbitration Awards: A Critical Study" (2018) 17 *Chinese Journal of International Law* 207, 475-552.

to some straight baselines, without considering that those 21 (already minor among over 192 existing States) apparently include at least 18 neighbors protesting against each other apparently for overlapping territorial and/or maritime claims. Thus, Lowe and Tzanakopoulos (Report, n.68, 190) found that "state practice has tended […] to consider straight baselines almost as an open alternative to "normal" baselines, in the face of rather limited objection". Second, the regime of continental States' outlying archipelagos as units is already established under customary international law. The UNCLOS text and *travaux préparatoires* show that Part IV does not apply to such archipelagos. State practice and the accompanying *opinio juris* support that regime. An overwhelming majority of geographically eligible continental States (at least 17 out of some 20) have claimed such a regime with special baselines, to sporadic, limited objections (Chinese Society of IL, *The South China Sea Arbitration Awards: A Critical Study* (https://doi.org/10.1093/chinesejil/jmy012, paras.585-587). Third, I object to citing to the South China Sea Arbitration awards uncritically, because of the many serious errors including those regarding jurisdiction and the tribunal's making conclusory statements without examining State practice, as demonstrated in the *Critical Study* as well as in earlier papers by others (2016-17). The Committee's closing its eyes to this side of the story is regrettable.

Appendix 1

Straight Baseline Segments[265]

State	Law and Date of Claim[266]	Source of Analysis[267]	Segment >40 nm[268]	Length (nm) >40 nm[9]
Albania[a] *US Protested*[269]	Decree No. 4650, April 15, 1970, as amended Decree No. 7366, March 24, 1990	LIS 7 LIS 116	-- --	-- --
Algeria[a]	Decree No. 84-181, Aug. 4, 1984	van de Poll/ Schofield	--	--
Angola[a]	Portuguese Decree No. 47,771, June 27, 1969	LIS 28	--	--
Argentina[a] *US Protested*	Law No. 17,094, Jan. 19, 1967	LIS 44 Bay closing lines	Golfo San Matias Golfo San Jorge	65 123
	Law No. 23,968, Aug. 14, 1991, Annex I, http://www.un.org/Depts/los/ LEGISLATIONANDTREATIES/PDFFILES/ARG_1991_23968.pdf;	van de Poll	1-2 (Golfo Rio da Prata) 23-24 (Golfo San Matias) 48-49 (Golfo San Jorge)	59.51 63.17 130.84
Malvinas So. Georgia Isl.	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/arg_mzn10_1996.pdf	Kopela 277 van de Poll	-- --	-- --
Australia[a]	Proclamation, Feb 4, 1983	Kopela 121, 127	--	--
Bangladesh[a]	Declaration, April 13, 1974	Lathrop	6-7	47

[265] Updated to 1 June 2018.

[266] UN, Law of the Sea Bulletin ("LOSB"), http://www.un.org/Depts/los/doalos_publications/los_bult.htm; UN, Law of the Sea Information Circular ("LOSIC"), http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/losics.htm; Maritime Zone Notifications ("M.Z.N."), http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm.

[267] U.S. Department of State, Limits in the Seas ("LIS"), http://www.state.gov/e/oes/ocns/opa/c16065.htm; Sophia Kopela, *Dependent Archipelagos in the Law of the Sea* (Leiden/Boston: Martinus Nijhoff 2013); Donat Pharand, *Canada's Arctic Waters in International Law* (Cambridge: Cambridge 2008); J. Ashley Roach, "China's Straight Baseline Claim: Senkaku (Diaoyu) Islands" *ASIL Insight* (2013) vol. 17, issue 7 (Feb. 13 2013) http://www.asil.org/insights/volume/17/issue/7/china%E2%80%99s-straight-baseline-claim-senkaku-diaoyu-islands;
Coalter Lathrop, Robert van de Poll, Clive Schofield, Brian Melchior, Niels Andersen unpublished calculations; G. Francalanci & T. Scovazzi (eds), *Lines in the Sea* (Martinus Nijhoff, Dordrecht/Boston/London: 1994). G. H. Blake and D. Topalović, *The Maritime Boundaries of the Adriatic Sea* (IBRU, Maritime Briefing, Volume 1 Number 8, 1996); M. Grbec, *The Extention of Coastal State Jurisdiction in Enclosed or Semi-Enclosed Seas, A Mediterranean and Adriatic Perspective* (Routledge, Oxford/New York: 2014). Van de Poll calculations to hundredths of nm are all geodetics.

[268] "--" indicates no segment longer than 40 nm. "n/a" indicates not applicable with just enabling legislation or low water line (LWL) only.

[269] See J. Ashley Roach and Robert W. Smith, Excessive Maritime Claims 3rd (Martinus Nijhoff, Leiden/Boston: 2012) 74-82 for a table listing these protests.

			7-8	52
	Notification, 4 November 2015; repeals 1974 declaration. bgd_mzn118.pdf	van de Poll	1-2 2-3 3-4 4-5	-- 79.85 66.81 LWL
Barbados[a]	Act No. 26, 1976 [enabling legislation] Territorial Waters Act, No. 1977-26(1) [enabling legislation]	--	n/a	n/a
Belize[a]	Marine Areas Act, 1992 Section 4(3)(a) & schedule	van de Poll	--	--
Brazil[a]	Decree Law No. 1098, March 27, 1970; Law 8617, Jan. 4, 1993, LOSB No. 23, at 17 [enabling legislation] LOSB No. 55, at 25-28 (cords. & map) (2004), repealed by Decree No. 8,400 of 4 February 2015, LOSB 87, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/BRA.htm	-- van de Poll	1 to 2 2 to 3 3 to 4 6 to 7 7 to 8 8 to 9 10 to 11 71 to 72 79 to 80 80 to 81 81 to 82 85 to 86 86 to 87	52.92 41.72 188.66 68.22 82.23 111.03 56.43 66.61 66.98 53.26 74.26 90.38 54.84
Bulgaria[a]	Decree No. 514, Oct. 10, 1951 [Varna and Bourgas Bays] Act of July 8, 1987, LOSB No. 13, at 9 (repealed) Maritime Space, Inland Waterways and Ports Act, Jan. 28, 2000, LOSB No. 49, at 20-22	van de Poll/ Schofield	--	--
Burma (Myanmar)[a] *US & UK Protested* *Bangladesh Protested*	Decree, Nov. 15, 1968 Map at Kopela 268 Law No. 3, April 9, 1977 LOSIC No. 9, at 42 Law No. 8/2008, Dec. 5, 2008, LOSB No. 69, at 69-73 (Preparis and CoCo Islands)	LIS 14 Kopela 136	Araran: d-e e-f Martaban: a-b Tenasserim: b-c f-g --	 42.5 57.0 222.3 80.8 71.1 --
Cambodia	Council of State Decree, July 31, 1982	Lathrop	2-3	53
Cameroon[a] *US Protested*	Decree 62-DF-216, June 1962 Decree 71-DF-416, Aug. 1971	van de Poll/ Schofield	--	--
Canada[a] *US Protested* *US Protested*	Order-in-Council P.C. 1967-2025, Oct. 26, 1967 (Labrador, Newfoundland & Nova Scotia) Order-in-Council P.C. 1969-1109, May 29, 1969 (Vancouver & Queen Charlotte Island) Order-in-Council P.C. 1972-966,	Pharand 155	Newfoundland Notre Dame Placentia Bays	 49 45

	May 9, 1972 (Labrador, Newfoundland, Nova Scotia, Vancouver Isl., Queen Charlotte Isl.)			
EC & US Protested	Order-in-Council P.C. 1985-2739, Sept. 10, 1985 (Arctic)	Pharand 156-157	Arctic 46 51.3 77.2 69.2 99.5 92.2	
Chile[a]	Decree No. 416, July 14, 1977 LOSIC No. 13, at 33	LIS 80 LIS 80 Add.	3-4 6-7 10-11 11-12 18-19 20-21 57-58 60-61 65-66 --	67.071 55.879 43.389 64.958 44.025 59.671 54.805 47.086 45.978 --
China[a] *US & Vietnam Protested*	Declaration, Sept. 4, 1958 Law, Feb. 25, 1992, LOSB No. 21, at 24-27 Declaration, May 15, 1996 (coordinates) LOSIC No. 9, at 18; LOSB No. 32, at 37-40	LIS 43 LIS 117	hypothetical Mainland 6-7 7-8 8-9 10-11 11-12 14-15 17-18 18-19 20-21 22-23 23-24 26-27 27-28 28-29 29-30 31-32 33-34	-- 84.1 71.8 121.7 100.2 62.5 84.2 69.3 73.2 50.3 83.6 48.3 43.8 84.6 71.3 66.8 107.8 83.7
Xisha/Paracels			7-8 14-15 22-23	75.8 78.8 41.5
Diaoyu/ Senkaku *Japan & US Protested*	Statement of Sept. 10, 2012, LOSB No. 80, at 30-31	ASIL Insight 17-1, Feb. 13, 2013	--	--
Colombia *US Protested*	Decree No. 1436, June 13, 1984	LIS 103	Caribbean 5-6 13-14 14-15 Pacific 3-4 4-5 5-6 --	 75.4 51.8 81.6 42.4 76.8 81.6 --

	Decree No. 1946, Sept. 9, 2013, Annex 8 to Nicaragua ICJ application [enabling legislation for Western Caribbean islands]. No coordinates available. Inferred from map of contiguous zone.	van de Poll		
Congo, Dem. Rep.[a]	Law No. 09/002, May 7, 2009 LOSB No. 70, at 44	Lathrop	--	--
Costa Rica[a] *US Protested*	Law No. 18581-RE, Nov. 21, 1988 (Pacific Ocean)	LIS 111	9-10 11-12	88.0 47.0
Cote d'Ivoire[a]	Law No. 77-926, Nov. 17, 1977 [enabling legislation]	--	n/a	n/a
Croatia[a]	The Maritime Code, March, 1994, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/HRV_1994_Code.pdf, Art. 7, 19.	Blake, Topalović 10-12	--	--
Yugoslavia[a] [former; Croatia successor State]	Law No. 876, Dec. 8, 1948 Law, May 22, 1965	LIS 6	--	--
Cyprus[a]	Note Ref 2001/254, May 3, 1993 LOSIC No. 9, at 22 LOSB No. 24, at 6-9	Lathrop	--	--
Denmark[a]	Royal Ordinance No. 437, Dec. 21, 1966, modified by Royal Ordinance No. 189, April 19, 1978 Executive Order No. 242, Apr. 21, 1999, LOSB No. 40, at 18-28 Executive Order No. 680, July 18, 2003, LOSB No. 53, at 44-53 (coords. & map)	LIS 19 rev. van de Poll	-- --	-- --

Denmark Faroe Isl. *US Protested*	Decree No. 156, April 24, 1963 Decree No. 128, April 1, 1976 Decree No. 598, Jan. 1, 1977 Executive Order No. 306, May 16, 2002; LOSB No. 53, at 53 (map showing 12 pts); LOSB No. 68, at 15-16 (map not showing turning pts)	LIS 13 van de Poll	2-3 10-11 4-5 (w. side) 9-10 (e. side)	44.0 60.8 44.0 61.29
Denmark Greenland	Executive Order No. 629, Jan. 1, 1977 Executive Order No. 176, May 14, 1980 Royal Decree No. 1004, Oct. 15, 2004, LOSB No. 56, at 126-132 (## 1-190 (mainland))	 Andersen van de Poll	 3-4 19-20 23-24 30-31 33-34 40-41 46-47 49-50 50-51 59-60 71-72 88-89 109-110 125-126 147-148 149-150 158-159 161-162 164-165 165-166 170-171 173-174 174-175 180-181 182-183 183-184	 75.39 42.08 69.57 47.90 66.40 62.68 61.62 60.98 76.59 43.95 61.76 43.08 44.63 54.41 44.43 40.05 48.18 42.38 53.50 48.58 48.71 73.59 41.55 65.09 40.78 45.41
Djibouti[a] *US Protested*	Law No. 52/AN/78, Jan. 9, 1979 Decree No. 85-048 PR/PM, May 5, 1985, LOSB No. 39, at 21-22	LIS 113	--	--
Dominica[a]	Act No. 26, Aug. 25, 1981 [enabling legislation]	--	n/a	n/a
Dominican Republic[a] *US & UK Protested*	Law No. 186, Sept. 6, 1967 Act No. 573, April 1, 1977 In 2007 claimed archipelagic status	LIS 5 LIS 130	Escocesa bay	45.0
Ecuador[a] *UK Protested* *US Protested* *Spain, Sweden & Belgium protested* Galapagos *US & Germany Protested*	Legislative Decree Feb. 21, 1951 (Galapagos) (inferred) Decree Law No. 1542, Nov. 10, 1966 Decree No. 959-A, July 13, 1971, reaffirmed in Declaration VI accompanying its instrument of accession to the LOS Convention on Sept. 12, 2012	 LIS 42 Kopela 279	 Mainland 1-2 2-3 3-4 4-5 Galapagos 6-7 7-8 8-9 9-10 10-11	 81 136 56 72 95 54 77 48 51

			11-12 13-6	66 124
Egypt[a] *US Protested*	Decree January 15, 1951 Decree No. 27, Jan. 9, 1990, LOSB No. 16, at 3-11	LIS 22 LIS 116	-- --	-- --
Estonia[a]	Decision No. 62, March 10, 1993, LOSB No. 25, at 55-59 (replaces 1985 USSR SBL in LIS 109)	van de Poll/ Schofield	--	--
Fiji[a] Rotuma Ceva-i-ra Rotuma archipelago	 Legal Notice No. 118, Nov. 1981, LOSB No. 66, at 66-67; PAS 43-44 Legal Notice 83, Oct. 31, 2012 (transforming WGS 72 to ITRS2005) Legal Notice 82, Oct. 31, 2012	 van de Poll LOSB 87 van de Poll	 -- 105-140 70-104	 -- LWL
Finland[a]	Decree No. 464, Aug. 18, 1956 Act 981/95, July 30, 1995, LOSIC No. 9, at 26, LOSB No. 29, at 56-61 (coords. & map)	LIS 48 van de Poll	-- --	-- --
France[a]	Mainland France and Corsica, Decree No. 2015-958 of 31 July 2015, LOSB 89 See generally <Limitesmaritimes.gouv.fr> for details on all French maritime spaces	LIS 37 van de Poll	-- --	-- --
French Departments and Dependencies:[a]				
Fr. Guiana	Decree No° 2015-1611, Dec 8, 2015	van de Poll	--	--
La Réunion	Decree No. 2014-1309, Oct. 30. 2014, MZN.109.2014, LOSB No. 86	van de Poll	--	--
Antilles françaises	Decree No. 2017-1511, Oct 30 2017	Kopela 124, van de Poll	--	--
Mayotte	Decree No. 2013-1177, Dec. 17, 2013, MZN.101.2013; LOSB No. 84	van de Poll	 --	 --
New Caledonia	Decree No. 2002-827, May 3, 2002, LOSB No. 53, at 58-66	Kopela 134, van de Poll	--	--
St. Pierre & Miquelon	Decree No. 2015-1528, Nov 24, 2015	van de Poll/ Schofield	--	--
Fr. Southern & Antarctic Lands	Decree No. 2013-1175, Dec. 17, 2013, MZN.101.2013 (Saint-Paul Isl.), LOSB No. 84 Crozet Archipelago, Decree 2015-551 of 18 May 2015 (SBL & LWL) Kerguelen Isl., Decree No. 78-112, Jan. 11, 1978, replaced by Decree No. 2015-635 of 5 June 2015, LOSB 89 (SBL & LWL)	 van de Poll Kopela 117 van de Poll	 -- -- -- --	 -- -- -- --
Fr. Polynesia	Decree No. 2012-1068, Sept. 18, 2012, LOSB 82, at 20-50	van de Poll	--	--
Wallis & Futuna	Decree No. 2013-1176, Dec. 17, 2013, MZN.101.2013, LOSB No. 84	van de Poll	--	--

Gabon[a]	Decree No. 02066/PR/MHCUCDM, Dec. 4, 1992, LOSIC No. 11, at 41, LOSB No. 42, at 168-169, LOSB No. 50, at 65-67	van de Poll	D-E	66.83
Germany[a]	Notice to Mariners No. 2, Jan. 1969 [former GDR]	LIS 52	--	--
Germany, Fed. Rep.	1970 Charts (replaced by:) Proclamation November 11, 1994, LOSB 27, at 55, 60-61	LIS 38 van de Poll	--	--
Guinea[a] *US Protested*	Decree No. 224/PRG/64, June 6, 1964 Decree No. 336/PRG/80, July 30, 1980 (low water line) Decree D/2014/092/PRG/SGG of 11 April 2014, amended by Decree D/2015/122/PRG/SGG of 19 June 2015 (36 points; # 25-36 missing; DOALOS requested – SBL segments + LWL)	LIS 40 van de Poll	one	ca. 120
Guinea-Bissau[a] *Senegal Protested*	Decree Law No. 47,771, June 27, 1967 Decision No. 14/74, Dec. 31, 1974 Law No. 3/78, May 19, 1978 Act No. 2/85, May 17, 1985, LOSB No. 7, at 23	LIS 30 Kopela 79, 279	-- 1-2	-- 42.6
Haiti[a]	Decree, April 6, 1972	LIS 51 van de Poll	E-F I-J	93.89 111.64
Honduras[a] *El Salvador, Guatemala, Nicaragua & US Protested*	Exec. Decree No. PCM 007-2000, March 21, 2000, LOSIC No. 12, at 52, LOSB No. 43, at 96-100; LOSB No. 50, at 25-26	LIS 124 van de Poll	12-13 13-14 14-15	54.91 42.85 62.71
Iceland[a]	Regulations, March 19, 1952 Regulations, March 11, 1961 Regulations, Sept. 9, 1972 Law No. 41, June 1, 1979, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ISL_1979_Law.pdf	LIS 34 rev. van de Poll	1-2 9-10 29-30 31-32 32-33 1-2 9-10 29-30 31-32	56.75 57.70 70.30 74.10 40.30 57.21 57.13 69.27 73.54
India[a] *Pakistan Protested*	Notifications of India, May 11, 2009 and Nov. 20, 2009, LOSB No. 71, at 31 (Andaman and Nicobar Isl.), LOSB No. 72, at 80 (corr.) (Lakshadweep Islands)	Kopela 137	102-103 103-104 104-105 125-126 127-128	84.7 57 83 113.7 109
Iran *US Protested* *US, EC, Qatar, Protested*	Act, April 12, 1959 Decree No. 2/250-67, July 21, 1973 Marine Areas Act, May 2, 1993	LIS 114 van de Poll	Group A 1-2 2-3 3-4 4-5 5-6 Group B 7-8 Group C 17-18	 49.68 61.26 101.53 113.36 41.21 43.07 55.37

			23-24	45.68
Iraq[a]	Note to UN March 16, 2011, LOSB No. 77, at 15-17	Lathrop	--	--
Ireland[a]	Statutory Instrument No. 173 Act Jan. 1, 1960	LIS 3	--	--
Italy[a] *US Protested*	Decree No. 816, Apr. 26, 1977, LOSIC No. 9, at 31 UN: Baselines: National Legislation with Illustrative Maps, pp. 201 - 206	*Lines in the Sea* 88; van de Poll	Gulf of Taranto	60.8
Japan[a] *US Protested*	Enforcement Order No. 210 of 1977 as amended in 1993 and 1996 LOSIC No. 9, at 40; LOSIC No. 10, at 37; LOSIC No. 11, at 45 LOSB No. 35, at 76-90 Replaced in 2001	LIS 120	H-I (20-21) D-A (28-29) B-C (30-31) F-A (34-35) D-E (38-39) I-J (43-44) A-B (77-78) J-K (86-87) Q-R (93-94) S-T (95-96) T-U (96-97) A-B (128-129) C-D (131-132) F-G (135-136) G-H (136-137) I-J (138-139) R-S (146-147) S-T (147-148) T-U (148-149) U-V (149-150) AA-BB (170-171)	51.99 41.46 54.27 41.72 55.81 46.19 57.21 62.27 60.06 60.63 57.31 52.06 62.15 43.25 50.36 58.21 48.73 48.99 41.41 53.27 40.37
	Amended by Cabinet Order No. 434 of 2001, LOSB No. 66, at 71-81	van de Poll	2i-2j 4c-4d 5c-5d 5j-5k 11a-11b 12c-12d 12h-12i	 52.00 54.25 55.81 46.19 52.05 62.15 80.84
Kenya[a] *Somalia considers SBLs do not conform to article 7 UNCLOS*	Territorial Waters Act, May 16, 1972 Presidential Proc. Feb. 29, 1979 Presidential Proc. June 9, 2005, LOSIC No. 23, at 20, LOSB No. 61, at 96-97 CLCS Map 1 at http://www.un.org/depts/los/clcs_new/submissions_files/ken35_09/ken2009_map1.pdf	Lathrop van de Poll	Mwamba Haasani-Mwamba wa Punju Leopard Reef-Jumba la Mtwana	 45.76 45.76
Korea, Rep. of[a] *US Protested*	Decree No. 9162, Sept 20, 1978, as amended by Decrees No. 13463, Sept. 7, 1991; No. 15133 July 31, 1996, LOSB No. 33, at 50-51. Decree No. 17803 Dec. 18, 2002 LOSB No. 51, at 88-92 (cords. & map)	LIS 82 LIS 121 van de Poll	7-8 13-14 17-18 7-8 13-14 17-18 7-8 13-14 17-18	46.09 60.30 46.09 46.1 60.3 Not id. 46.09 61.78 53.91

	(no significant change with 3 segments > 40 nm)			
Latvia[a]	Regulation No. 779, Aug. 17, 2010, LOSB No. 76, at 15-27	Lathrop	--	--
Libya *US Protested*	Foreign Ministry *note verbale* MQ/40/5/1/3345, Oct. 1973 Decision No. 104, June 20, 2005, LOSB No. 59, at 15-18	van de Poll/ Schofield	17-18 (Gulf of Sidra)	300.27
Lithuania[a]	Act on the State Boundary, June 25, 1992, LOSB No. 25, at 75 Resolution No. 1597, Dec. 6, 2004 LOSB No. 61, at 17-21	Lathrop	n/a LWL	n/a LWL
Madagascar[a]	Decree No. 63-131, Feb. 27, 1963 Act No. 99-028, Feb. 3, 2000, LOSIC No. 17, at 59 (map), LOSB No. 51, at 93-94 (map) (coordinates not changed)	LIS 15 van de Poll	3-4 4-5 5-6 6-7 8-9 9-10 13-14 14-15 16-17 22-23 24-25 26-27 30-31 36-37 38-1	60.70 58.60 87.50 123.57 70.66 48.81 45.63 43.22 61.13 44.63 54.02 69.46 65.40 117.47 62.62
Malaysia[a]	Ordinance No. 7, Aug. 1969 [enabling legislation] Baselines of Maritime Zones Act 2006, May 1, 2007 [enabling legislation] Inferred from joint submission to CLCS by Malaysia and Vietnam. No official map illustrating baselines for peninsular Malaysia yet available	van de Poll/ Schofield	Sarawak 1-2 2-3 4-5 5-6 Sabah 12-13 14-15	 ca.54.57 ca.79.65 ca.112.05 ca.88.39 ca.65.41 ca.100.40
Malta[a]	Act No. XXXII, Dec. 7, 1971, as amended in 1975, 1978, 1981, 2002 [enabling legislation] Sketch map No. 2 in Malta Memorial vol III, ICJ Proceedings Libya/Malta vol V (no coordinates)	van de Poll	--	--
Mauritania[a] *US Protested*	Law 67-023, Jan. 21, 1967 Law 78,043, Feb. 28, 1978 Law 88-120, Aug. 31, 1988, LOSB No. 13, at 36 (SBL unchanged)	LIS 8 van de Poll	Blanc-Timiris	87.62
Mauritius[a]	Territorial Seas Act, April 16, 1970 Maritime Zones Act 2005, No. 2, Feb. 28, 2005; Prime Minister Regulations 2005, Aug. 5, 2005	LIS 41 LIS 140	-- Archipelagic and straight	-- --
Mexico[a] *US Protested*	Decree, Aug. 28, 1968 [Gulf of California] Decree, Jan. 8, 1986 reiterates claim w/o list of coordinates [Gulf of California]	LIS 4 van de Poll	-- --	-- --

Montenegro[a]	Maritime and Inland Navigation Law, 12/98, 1998.	Blake, Topalović 10-12, Grbec	--	--
Mozambique[a]	Decree Law 47,771, June 27, 1967	LIS 29	4-5 18-19 25-26 27-28	41.0 60.4 45.5 44.6
	Law 4/96, Jan. 4. 1996, Gazette, Jan. 4, 1996, at 10-15 (in Portuguese) (coords.) same as 1967.	van de Poll	4-5 18-19 25-26 27-28	40.74 59.80 45.72 44.54
Nauru[a]	Sea Boundaries Act, Aug. 12, 1997, Proclamation, LOSIC No. 10, at 31 map), LOSB No. 41, at 21-23, 44 (coords. and map)	Melchoir	--	--
Netherlands[a]	Territorial Sea (Demarcation) Act, Jan. 9, 1985, LOSB No. 6, at 16-18	Melchoir	--	--
Netherlands Antilles	Territorial Sea Act, Jan. 9, 1985, LOSB No. 7, at 68-71	Melchoir	--	--
Nicaragua[a] *Costa Rica, Colombia & US Protested*	Decree No. 33-2013, Aug. 27, 2013, LOSB No. 83, at 35-36	Lathrop van de Poll	4-5 6-7 8-9	72.33 43.54 83.33
Norway[a]	Royal Decree, July 12, 1935 Royal Decree, July 18, 1952 Royal Decree June 14, 2002; LOSIC No. 16, at 34-35 LOSIC No. 19, at 57-58 LOSB No. 49, at 51-55	Melchior	 NM19-NM20 NM49-NM50 NM65-NM66 NM94-NM95	 44 45.5 44.5 42
Norwegian Dependencies:				
Jan Mayen[a]	Royal Decree, June 30, 1955 Royal decree Aug. 30, 2002 LOSIC No. 16, at 37; LOSIC No. 19, at 61; LOSB No. 50, at 22-24; LOSB No. 54, at 81-88, 96	Melchior	--	--
Svalbard[a]	Royal Decree, July 18, 1952 Royal Decree June 1, 2001 LOSIC No. 14, at 35; LOSIC No. 19, at 59-60; LOSIC No. 21, at 13; LOSB No. 46, at 72-80; LOSB No. 49, at 79-80; LOSB No. 54, at 41-80, 94-95	LIS 39 Kopela 134, 274	-- --	-- --
Bouvet Isl.	Royal Decree, Feb. 25, 2005 LOSB No. 60, at 49-55	Melchior	--	--
Oman[a] *Iran & US Protested*	Royal Decree 38/82, June 1, 1982, LOSB No. 1, at 35-37	LIS 113	--	--
Pakistan[a] *India & US Protested*	S.R.O. 714(I) 96, Aug. 29, 1996 LOSIC No. 10, at 39 LOSB No. 34, at 45	LIS 118 van de Poll	c-d d-e f-g g-h	81.70 40.19 85.22 70.81
Peru	Law No. 28621, Nov. 3, 2005, LOSB No. 64, at 15-33; as amended by Law No. 29687, May 19, 2011	Lathrop	0-1[270] 31-32 42-43	52 41 51

[270] Peru's 2011 law amending its 2005 law added the Peruvian "half" of the closing line across the Gulf of Guayquil, here referred to as line 0-1.

Portugal[a]	Decree-Law No. 47,771, June 27, 1967 (mainland), repealed by Decree Law No. 495/85, Nov. 29, 1985 (Table I) UN, Baselines: National Legislation with Illustrative Maps (1989), pp. 260-266 (Tables I–V and map)	LIS 27 van de Poll	-- 1-2: Ver-o-Mar - mouth of Vouga River (North jetty) 3-4: Cabo Mondego (Pedra da Nau)-Farilhoes (Pedra Grande) Farilhoes (Pedra Grande) 10-11: Cabo de Sines-Cabo de Sao Vicente (Pedra do Gigante) 12-13: Ponta de Sagres-Cabo de Santa Maria (Barreta Isl.)	-- **46.20** **51.45** 54.11 51.28
Azores *US Protested*	Decree Law No. 495/85, Nov. 29, 1985, LOSIC No. 9, at 47 (Madeira Table II) & Azores (Tables III-V))	Kopela 131, 284 van de Poll	Azores: Ilhéu da Vila-Ponta da Candelaria	62.08
Romania[a]	Act, Aug. 7, 1990, LOSB No. 19, at 9, 20	Lathrop	--	--
Russian Federation [former Soviet Union/USSR[a]] *US Protested*	Decree, Feb. 7, 1984, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS_1984_Declaration.pdf, pp 1-10 (continental coastline and islands of the Pacific Ocean, the Sea of Japan, the Sea of Okhotsk and the Bering Sea), 12 (Sakhalin Island), 12-16 (Kurils), 16 (Komandorski Islands). Peter the Great Bay #1-2	LIS 107 van de Poll	1-2 36-37 38-39 68-69 105-106 106-107 108-109 112-113 113-114 114-115 115-116	106.74 41.09 60.67 45.41 71.66 103.84 81.49 62.37 43.90 44.09 75.4
US Protested	Decree, Jan. 15, 1985, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/RUS_1985_Declaration.pdf, pp 1-35 (Arctic)	LIS 109 van de Poll	Black Sea Arctic 25-26 32-33 162-163 169-170 173-174 174-175 185-186 188-189 194-195 349-350 383-384	None 84.40 43.59 62.50 43.70 65.70 44.11 40.56 40.56 60.08 41.87 42.29
Samoa	Maritime Zones Order 21 April 2014, LOSB 88	van de Poll	--	--

	http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/WSM_2015_MaritimeZ.pdf			
Saudi Arabia[a] *Iran, Egypt, UAE Protested*	Royal Decree No. 33, Feb. 16, 1958 Council of Ministers Resolution No. 15, Jan. 11, 2010 and Royal Decree No. M/4 Jan. 26, 2010, LOSB No. 72, at 81-86 (coords. & map)	LIS 20 van de Poll	-- RS96-RS97	-- 47.75
Senegal[a] *US Protested*	Decree 72-765, July 5, 1972 Decree 90-670, June 18, 1990, LOSB No. 20, at 23-25	LIS 54 van de Poll	-- --	-- --
Slovenia[a]	Maritime Code, March 23, 2001, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/SVN_2001_maritimecode.pdf , Art. 13/2 (bays). See also http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/NV016_SVN.pdf (coords. & maps)	Blake, Topalović 10-12	--	--
South Africa[a]	Maritime Zones Act No. 15 of 1994 LOSB No. 32, at 81 (segment #s added)	van de Poll	39-40 48-49 50-51 53-54	44.03 41.16 71.45 40.56
Spain[a] (mainland)	Act 20/1967, Apr. 1967 [enabling legislation] Decree No. 627/1976, Mar. 5, 1977	--	n/a	n/a
	Decree No. 2510/1977, Aug. 5, 1977; UN, Baselines: National Legislation with Illustrative Maps, pp. 281-293	van de Poll	Puerto de Sangunto – Pensiccola Punta de la Ensenada – Punta Grieta (Algranza)	51.09 43.35
Balearic Isl.			--	--
Canary Islands	Law 44/2010, Dec. 30, 2010 See Kopela 127, 128, 282 (sketch maps)	van de Poll (based on Kopela sketch map)	Gran Canaria - Tenerife Tenerife - Hierro Hierro - Palma Palma - Tenerife Tenerife - Gran Canaria Gran Canaria - Lanzarotte) Lanzarotte - Fuerteventura Fuerteventura - Gran Canaria	55.60 72.94 61.73 88.49 44.82 98.93 51.44 68.63
Sudan[a] *US Protested*	Act No. 106, Dec. 31, 1970 [enabling legislation]	--	n/a	n/a

	Decree No. 148 (2017), March 2, 2017, LOSB No. 94, pp. 15-16, 20-23 (2017)	van de Poll	6-7	52.14
Egypt Protested			7-8	67.97
			9-10	70.01
			10-11	69.22
Sweden[a]	Royal Notice No. 375, July 1, 1966 (amended in 1978, 1979—no change in SBL)	LIS 47	--	--
Syria	Legislative Decree No. 304, Dec. 28, 1963	LIS 53	--	--
	Law No. 28, Nov. 8, 2003 [enabling legislation], LOSB No. 55, at 14-20	--	n/a	n/a
Taiwan[271]	Notice to Mariners No. 19, Mar. 22, 1999	LIS 127, van de Poll	T8-T9	109.06
			T13-T14	74.20
			T14-T15	42.44
			T15-T16	45.32
			T17-T18	44.21
			T18-T19	48.04
			T19-T20	62.23
	ROC Amended Decree of Nov. 18, 2009	Melchoir	T7-T8	110.5
			T13-T14	73.5
			T14-T15	43.0
			T15-T16	45.3
			T17-T18	44.2
			T18-T19	47.7
			T19-T20	62.5
Tanzania[a]	Notice No. 209, Aug. 24, 1973			
	Territorial Sea & Exclusive Economic Zone Act of 1989, Oct. 1989			
	Note to UN Aug. 2, 2012,	Lathrop,	VITO-ZANZ	69.58
	LOSB No. 80, at 32-33	van de	LATH-MAFI	44.25
		Poll	MFSE-NJOV	49.22
			SONM-LIND	45.95
			LIND-MSI2	45.26
Thailand[a]	Announcement June 12, 1970, replaced by Announcement pub. Aug. 18, 1993	LIS 31	A-B	59.15
US Protested				
EU & US Protested	Announcement Aug. 11, 1992, LOSB No. 23, at 29-31 Announcement Aug. 17, 1992, LOSB No. 25, at 83-84	LIS 122 Kopela 269	Area 4: 1-2	81.4
			Area 4: 2-3	98.4
			Area 4: 3-4	65.3
Tunisia[a]	Decree No. 73-527, Nov. 3, 1973	Melchoir,	6k-7 (closing	45.21
	LOSIC No. 9, at 53 [European datum 1950]	van de Poll	Gulf of Gabes)	
Ukraine[a]	List of geographic coordinates, Nov. 11, 1992,	Melchoir	--	--
	LOSB No. 36, at 49-52			
United Arab Emirates	Federal Law No. 19, Oct. 1993			
Saudi Arabia Protested	Decision 5/2009, Jan. 14, 2009	Lathrop	--	--
	LOSB No. 69, at 78-80			

[271] This table expresses no opinion on whether Taiwan is an entity referred to in the international law of the sea. Taiwan's maritime claims as at 2005 were analyzed in Department of State (USA), *Taiwan's Maritime Claims* (Limits in the Seas No 127) (Department of State, Washington: 2005) and J. Ashley Roach, "An International Law Analysis of Taiwan's Maritime Claims" (2005) 2 *Taiwan International Law Quarterly* 249-321.

United Kingdom[a]	Order in Council, Sept 25, 1964 Territorial Waters (Amendment) Order 1979 redefining points 1-27 between Cape Wrath and the Mull of Kintyre Territorial Sea (Baselines) Order 2014 (Statutory Instrument 2014 No. 1353), May 27, 2014, defining points 1-28 between Cape Wrath and Laggan	LIS 23, van de Poll van de Poll	1-2 1-2	40.25 40.06 40.039
U.K. Overseas Territories:				
Turks& Caicos	Statutory Instrument 1989 No. 1996 Turks and Caicos Islands (Territorial Sea) Amendment Order 1998, No. 1260, Statutory Instrument 1989 No. 1993	Kopela 133, 281	--	--
Falkland Isl.	Statutory Instrument 1989 No. 1995	van de Poll, Kopela 123, 276	12-13	41.23
So. Georgia Isl.	Statutory Instrument 1989 No. 1995	van de Poll	--	--
Uruguay[a]	Law No. 17.033, Nov. 20, 1998, Annexes I and II, LOSIC No. 10, at 44, LOSB No. 41, at 51-52	LIS 123 van de Poll	1-2	59.92
Venezuela *US Protested*	Decree, July 10, 1956 Decree, July 10, 1968	 LIS 21	 A-B	 98.9
Vietnam[a] *China, US, France, Germany, Singapore, Thailand Protested* *US Protested*	Statement, Nov. 12, 1982, LOSB No. 1, at 74-75 Law No. 18/2012/QH13, June 21, 2012	LIS 99 van de Poll	A1-A2 A2-A3 A5-A6 A6-A7 A8-A9 A9-A10 A10-A11 --	99.24 105.19 161.33 161.84 60.24 89.47 149.00 None new
Yemen[a]	Act No. 45 of 1977, Jan. 15, 1978 [enabling legislation] Law No. 26 (2014), LOSB 88, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/YEM.htm (SBL & LWL)	-- van de Poll	n/a --	n/a --

[a] Party to LOS Convention

Appendix 1 Data Summary

Total number of coastal States = 150 (not including Cook Islands, Niue, Palestine and Taiwan)

Total number of coastal States with dependencies (overseas territories, departments) = 6

- Denmark, with 2 dependencies
- France, with 10 dependencies
- Netherlands, with one dependency

- Norway, with 3 dependencies
- Spain, with one dependency
- UK, with 3 dependencies

Total States with all SBL segments < 40 nm = 42

Total States with one or more SBL segments > 40 nm = 49 (+ Taiwan)

Total States claiming SBL segments = 90 (including their 9 dependencies)

Total States with only enabling legislation = 3

State whose legislation remains to be analyzed: Guinea (2015)

Total number of SBL segments worldwide > 40 nm = 264 (+ Taiwan (7)):

Total number of SBL segments worldwide between 40-50 nm = 83

(Brazil, Burma, Canada (3), Chile (4), China (4), Colombia, Costa Rica, Cuba, Denmark (16), Dominican Republic, Ecuador, Guinea-Bissau, Honduras, Iceland, Iran (4), Kenya (2), Madagascar (4), Mozambique (3), Nicaragua, Norway (4), Pakistan, Peru, Portugal, ROK, Saudi Arabia, Spain (3), South Africa (2), Tanzania (4), Tunisia, UK (2), Russian Federation (11) + Taiwan (4) (32 States)

Total number of SBL segments worldwide between 51-60 nm = 52

Argentina, Brazil (4), Burma, Cambodia, Canada, Chile (3), China, Colombia, Cuba (4), Denmark (3), Ecuador (3), Honduras, Iceland (2), India, Iran, Italy, Japan (4), Madagascar (3), Malaysia, Mozambique, Peru, Portugal (3), ROK, Spain (3), Sudan, Thailand, Uruguay, Russian Federation (2), Vietnam (29 States)

Total number of SBL segments worldwide between 61-70 nm = 46

Argentina (2), Bangladesh, Brazil (3), Canada, Chile (2), China (5), Cuba, Ecuador, Denmark (8), Gabon, Honduras, Iceland, Iran, Japan, Madagascar (3), Malaysia, Pakistan, Portugal, ROK, Spain (2), Sudan (3), Tanzania, Thailand, Russian Federation (3) + Taiwan (24 States)

Total number of SBL segments worldwide between 71-80 nm = 25

Bangladesh, Brazil, Burma (2), Canada, China (5), Colombia (2), Denmark (3), Ecuador (2), Iceland, Japan, Malaysia, Nicaragua, South Africa, Spain, Russian Federation (2) + Taiwan (15 States)

Total number of SBL segments worldwide between 81-90 nm = 24

Brazil (2), China (4), Colombia (2), Costa Rica, Ecuador, India (2), Japan, Madagascar, Malaysia, Mauritania, Nicaragua, Pakistan (2), Spain, Thailand, Russian Federation (2), Vietnam (16 States)

Total number of SBL segments worldwide between 91-100 nm = 9

Canada (2), Ecuador, Haiti, Malaysia, Spain, Thailand, Venezuela,
Vietnam (8 States)

Total number of SBL segments worldwide between 101-110 nm = 8

China (2), India, Iran, Malaysia, Russian Federation (2), Vietnam + Taiwan (6 States)

Total number of SBL segments worldwide between 111-120 nm = 6

Brazil, Haiti, India, Iran, Madagascar, Malaysia (6 States)

Total number of SBL segments worldwide between 121-130 nm = 3

China, Ecuador, Madagascar (3 States)

Total number of SBL segments worldwide between 131-140 nm = 2

Argentina, Ecuador (2 States)

Total number of SBL segments worldwide between 141-150 nm = 1

Vietnam

Total number of SBL segments worldwide between 151-160 nm = 0

Total number of SBL segments worldwide between 161-170 nm = 2

Vietnam (2)

Total number of SBL segments worldwide between 171-180 nm = 0

Total number of SBL segments worldwide between 181-190 nm = 1

Brazil

Total number of SBL segments worldwide between 191-200 nm = 0

Total number of SBL segments worldwide between 201-210 nm = 0

Total number of SBL segments worldwide between 211-220 nm = 0

Total number of SBL segments worldwide between 221-230 nm = 1

Burma (222.3 nm)

Total number of SBL segments worldwide >300 nm = 1

Libya (300.27 nm)

Appendix 2
Straight Baselines State Practice

States	Dep	SB <40nm	SB 40-50nm	SB >50nm	Protests
1. Albania		X			
2. Algeria		X			
3. Angola		X			
4. Argentina		X		X - 3	USA
5. Australia		X			
6. Bangladesh		X		X - 2	
7. Barbados					
8. Belize		X			
9. Brazil			X - 1	X - 12	
10. Bulgaria		X			
11. Cambodia				X - 1	
12. Cameroon		X			
13. Canada			X - 3	X - 5	EC, USA
14. Chile			X - 4	X - 5	
15. China		X	X - 3	X – 17	Vietnam, USA
16. Colombia		X	X - 1	X - 5	USA
17. Congo, Dem Rep		X			
18. Costa Rica			X - 1	X – 1	USA
19. Cote d'Ivoire					
20. Croatia		X			
21. Cuba				X – 5	USA
22. Cyprus		X			
23. Denmark	2		X - 11	X - 13	USA (Faroe Is)
24. Djibouti		X			
25. Dominica					
26. Dominican Republic (AS)					UK, USA
27. Ecuador			X - 1	X – 10	Belgium, Germany, Spain, Sweden, UK, USA
28. Egypt		X			
29. Estonia		X			
30. Fiji (AS)		X			
31. Finland		X			
32. France	10	X			
33. Gabon				X -1	
34. Germany		X			
35. Guinea					USA
36. Guinea-Bissau			X – 1		Senegal
37. Haiti				X - 2	
38. Honduras			X - 1	X – 2	El Salvador, Guatemala, Nicaragua, USA
39. Iceland				X - 4	
40. India				X – 5	Pakistan
41. Iran			X - 4	X – 4	EC, Qatar, USA
42. Iraq		X			
43. Ireland		X			
44. Italy				X – 1	USA
45. Japan			X - 9	X – 20	USA
46. Kenya			X – 2		Somalia
47. Korea, Rep			X - 1	X – 2	USA
48. Latvia		X			
49. Libya				X -1	USA

50. Lithuania					
51. Madagascar			X - 4	X - 11	
52. Malaysia				X - 6	
53. Malta		X			
54. Mauritania				X - 1	
55. Mauritius (AS)		X			
56. Mexico		X			
57. Montenegro		X			
58. Mozambique			X - 3	X - 1	
59. Myanmar		X	X -1	X – 4	Bangladesh, UK, USA
60. Nauru		X			
61. Netherlands	1	X			
62. Nicaragua			X - 1	X – 2	Colombia, Costa Rica, USA
63. Norway	3		X - 4		
64. Oman		X			
65. Pakistan			X - 1	X - 3	India, USA
66. Peru			X - 1	X – 2	
67. Portugal			X - 1	X - 4	USA
68. Romania		X			
69. Russian Federation			X - 11	X - 11	USA
70. Samoa		X			
71. Saudi Arabia			X - 1		Egypt, Iran, UAE
72. Senegal		X			
73. Slovenia		X			
74. Somalia		X			
75. South Africa			X - 3	X - 1	
76. Spain	1		X - 2	X - 8	
77. Sudan				X - 4	Egypt, USA
78. Sweden		X			
79. Syria					
80. Taiwan*			X - 5	X - 3	
81. Tanzania			X - 4	X - 1	
82. Thailand				X – 4	EU, USA
83. Tunisia			X - 1		
84. UAE		X			
85. UK	3		X - 2		
86. Ukraine		X			
87. Uruguay				X - 1	
88. Venezuela				X – 1	USA
89. Vietnam				X – 7	China, France, Germany, Singapore, Thailand, USA
90. Yemen		X			
Totals		41	29 - 88	41 - 197	

Key: Dep – Dependencies; SB – Straight Baselines; AS – Archipelagic State

* This table expresses no opinion on whether Taiwan is an entity referred to in the international law of the sea.

Appendix 3

Archipelagic States[272]

No	State	Legislation/Proclamation	Date	No	Ratio	% ABL >100nm	ABL <125nm	Art 47 Compliant
1	Antigua and Barbuda	Maritime Areas Act 1982 (Act No. 18)	01/09/1982	1	7.91:1	0/22: 0%	Yes	Yes
2	The Bahamas	The Archipelagic Waters and Maritime Jurisdiction 1993; modified by The Archipelagic Waters and Maritime Jurisdiction (Archipelagic Baselines) Order 2008	04/01/1996; 08/12/2008	1	6.86:1	2/95: 2.11%	Yes	Yes
3	Cape Verde	Decree Law No. 60/IV 92	21/12/1982	1	8.92:1	0/25: 0%	Yes	Yes
4	Comoros	Law No. 82-005 (1982); Presidential Decree No. 10-092 (2010)	06/05/1982; 13/08/2010	1	5.99:1	0/13: 0%	Yes	Yes
5	Dominican Republic	Act 66-07 (2007)	22/05/2007	1	1.03:1(cf UK, US)	0/20: 0%	Yes	Yes (cf UK, US)
6	Fiji	Marine Spaces Act 1978; Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order, Legal Notice No. 117 of 1981	01/12/1981	1	2.98:1	1/33: 0.33%	Yes	Yes
7	Grenada	Territorial Sea and Maritime Boundaries Act 1989; Statutory Rules and Orders No. 31 of 1992	25/04/1989; 16/12/1992	1	1.61:1	0/23: 0%	Yes	Yes
8	Indonesia	List of geographical coordinates of points of archipelagic baselines, Government Regulation No. 38 of 2002 (as amended by Government Regulation No. 37 of 2008)	19/05/2008	1	1.61:1	5/197: 2.6%	Yes	Yes
9	Jamaica	The Maritime Areas Act, 1996; Exclusive Economic Zone (Baselines) Regulation (1992)	12/10/1982	1	2.00:1	0/28: 0%	Yes	Yes
10	Kiribati	Maritime Zones (Declaration) Act 2011; Baselines around the	01/07/2011; 04/11/2014	2	9.31:1 8.04:1	0/58 0/55	Yes	No

[272] Rothwell and Stephens, *The International Law of the Sea* 2nd (2016) 198-199 based on data from Roach and Smith, *Excessive Maritime Claims* 3rd (2012) 206-208, as updated by Department of State (United States), *Limits in the Sea* No. 98, 101, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142; United Nations, *Law of the Sea Bulletin* No. 86, 87, 91

		Archipelagos of Kiribati Regulations 2014						
11	Maldives	Maritime Zones Act No.6/96	27/06/1996	1	2.63:1	3/37: 8.1%	Yes	No
12	Marshall Islands	Republic of the Marshall Islands Maritime Zones Declaration Act 2016; Baselines and Maritime Zones Outer Limits Declaration 2016	18/03/2016; 18/04/2016	2	No		Yes	No
13	Mauritius	Maritime Zones Act 2005; Maritime Zones (Baselines and Delineating Lines) Regulations 2005	05/08/2005	2	2.84:1 7.5:1	0/3: 0% 0/32: 0%	Yes	Yes
14	Papua New Guinea	National Sea Act 1977; Offshore Seas Proclamation 1978; Declaration of the baselines by method of coordinates of base points for purposes of the location of archipelagic baselines 2002	25/07/2002	1	1.22:1	1/74: 1.35%	No: 1 x 174.78 nm	No
15	Philippines	Republic Act No. 3046 (1961); Republic Act No. 9522 (2009)	10/03/2009	1	1.98:1	3/101: 2.97%	Yes	Yes
16	Saint Vincent and the Grenadines	Archipelagic Closing Lines and Baselines of Saint Vincent and the Grenadines (Notice No 60/2014)	01/04/2014	1	3.81:1	0/33: 0%	Yes	Yes
17	Sao Tome and Principe	Law No. 1/98	31/03/1998	1	4.03:1	0/14: 0%	Yes	Yes
18	Seychelles	Maritime Zones Act 1999; Maritime Zones (Baselines) Order, 2008 (as amended)	06/11/2008	4	10.5:1 239:1 44.5:1 5.15:1	0/45:0% 0/48:0% 0/29:0% 0/35:0%	Yes	No
19	Solomon Islands	The Delimitation of Marine Waters Act (No. 32 of 1978); Declaration of Archipelagos of Solomon Islands, 1979	31/08/1979	5	4.06:1 4.44:1 29.9:1 7.03:1 3.57:1	1/37: 1.2% 0/10: 0% 0/13: 0% 0/15: 0% 0/8: 0%	Yes	No
20	Trinidad and Tobago	Archipelagic Waters and Exclusive Economic Zone Act (No. 24 of 1986)	11/11/1986	1	1.39:1	0/11: 0%	Yes	Yes
21	Tuvalu	Tuvalu Maritime Areas Act 2012; Declaration of	04/05/2012;	1	Yes	7.58:1	Yes	Yes

		Archipelagic Baselines 2012	22/11/2012					
22	Vanuatu	Maritime Zones Act (No. 6 of 2010); Amendments of the Schedule of the Maritime Act (29 July 2009)	18/06/2009	1	5.83:1	0/59:0%	Yes	Yes

Key

No – number of archipelagic straight baseline systems used to enclose islands and parts of islands of the archipelagic State

Ratio – whether the straight baseline systems are consistent with the area of water to land ratio of 9:1 to 1:1 in Article 47(1)

SBL <125nm – whether all of the archipelagic baselines are less than the maximum length of 125n