

IX

The Maritime Claims Reference Manual and the Law of Baselines

J. Ashley Roach

Origin of the Maritime Claims Reference Manual

ON 4 MAY 1982, Captain Jack Grunawalt was called to the cabin of Admiral Bob Long, Commander in Chief, U.S. Pacific Command, Camp Smith, Hawaii,¹ and asked why the Soviets would be ordering USS *Lockwood* (FF-1064) to leave waters of the Soviet Union when the ship was operating on the high seas more than 12 miles from land and outside Peter the Great Bay.² Jack, who had been off-island when the operation was approved, knew that in 1957 the USSR had claimed Peter the Great Bay as historic internal waters of the Soviet Union, defining the bay closing line as the line connecting the estuary of the Tyumen-Ula River and the Povrotny promontory.³ However, in examining the chart illustrating *Lockwood's* approved operating area, Jack observed that the closing line had been drawn to a point further inside the bay than claimed by the Soviets. He noted that the location of the baseline was not indicated on U.S. nautical charts of the area or otherwise illustrated in publications available to an assistant who had cleared

on the plan. Further, he observed the command had no ready authoritative source listing the coordinates of the claimed bay closing line against which to verify the location of the closing line. The United States rejected the Soviet protest of this incident, as it did not recognize the Soviet historic bay claim and the mouth of the bay far exceeded the maximum permissible length of a bay closing line.⁴

Thereafter, at Jack's urging, Admiral Long sent an urgent message to the Joint Chiefs of Staff (JCS) recommending the Department of Defense (DoD) develop a manual containing a complete description of the maritime claims made by all nations, particularly a list of the coordinates of all claimed baselines and closing lines, that would be available to all the operating forces. The JCS and the Office of the Secretary of Defense agreed with that recommendation and thus began work on what has become the DoD *Maritime Claims Reference Manual*,⁵ now in its third edition. The MCRM, as it is known world-wide, contains summaries, or in the case of baselines, full texts, of all the maritime claims made by the nations of the world. In addition, it also indicates the United States' diplomatic and operational reactions to those claims which are inconsistent with the law of the sea—hence the term “excessive maritime claims.”

Jack's other contributions to the law of the sea are too numerous to catalog here. But as baselines are the foundation for the measurement of all maritime zones, it seems appropriate that this tribute present the official views of the United States on the law of baselines, as based on the Commentary on the Law of the Sea (LOS) Convention attached to the Secretary of State's letter of 23 September 1994, submitting the Convention and the Part XI Agreement to the President for transmittal to the Senate for its advice and consent.⁶ Because of the desirability—né necessity—of achieving a uniform interpretation of those rules, annotations have been added by the author to provide the rationale for those views.⁷

Background

A State's maritime zones are measured from the baseline. The rules for drawing baselines are contained in Articles 5 through 11, 13, and 14 of the LOS Convention.⁸ These rules distinguish between *normal* baselines (following the low-water mark along the coast) and *straight* baselines (which can be employed only in specified geographical situations).⁹ The baseline rules take into account most of the wide variety of geographical conditions existing along the coastlines of the world. Baseline claims can extend maritime jurisdiction significantly seaward in a manner that prejudices navigation, overflight, and

other interests.¹⁰ Objective application of the baseline rules contained in the Convention can help prevent excessive claims in the future and encourage governments to revise existing claims to conform to the relevant criteria.¹¹

Normal Baseline

The normal baseline used for measuring the breadth of the territorial sea is the low-water line along the coast as marked on the State's official large-scale charts.¹² "Low-water line" has been defined as "the intersection of the plane of low water with the shore. The line along a coast, or beach, to which the sea recedes at low-water." The actual water level taken as low-water for charting purposes is known as the level of Chart Datum.¹³

Normal baseline claims must be consistent with this rule. Excessive normal baseline claims include a claim that low-tide elevations, wherever situated, generate a territorial sea and that artificial islands generate a territorial sea (e.g., by Egypt and Saudi Arabia).¹⁴

Reefs. In the case of islands situated on atolls or of islands having fringing reefs, the normal baseline is the seaward low-water line of the drying reef charted as being above the level of chart datum.¹⁵ While the LOS Convention does not address reef closing lines, any such line must not adversely affect rights of passage, freedom of navigation, and other rights provided for in the Convention.

Straight Baselines

Purpose. The purpose of authorizing the use of straight baselines is to allow the coastal State, at its discretion, to enclose those waters which, as a result of their close interrelationship with the land, have the character of internal waters. By using straight baselines, a State may also eliminate complex patterns, including enclaves, in its territorial sea, that would otherwise result from the use of normal baselines.¹⁶ Properly drawn straight baselines do not result in extending the limits of the territorial sea significantly seaward from those that would result from the use of normal baselines.¹⁷

With the advent of the exclusive economic zone (EEZ), the original reason for straight baselines (protection of coastal fishing interests) has all but disappeared. Their use in a manner that prejudices international navigation, overflight, and communications interests runs counter to the thrust of the Convention's strong protection of these interests. In light of the modernization

of the law of the sea in the Convention, it is reasonable to conclude that, as the Convention states, straight baselines are not normal baselines, should be used sparingly, and, where used, should be drawn conservatively to reflect the one rationale for their use that is consistent with the Convention, namely the simplification and rationalization of the measurement of the territorial sea and other maritime zones off highly irregular coasts.¹⁸

Areas of Application. Consequently, international law permits States—in limited geographical circumstances—to measure the territorial sea and other national maritime zones from straight baselines drawn between defined points of the coast. The United States accepts that the two specific geographical circumstances under which States may employ straight baselines are as described in Article 7, paragraph 1, of the LOS Convention and Article 4, paragraph 1, of the 1958 Territorial Sea Convention:

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.

If the portion of the coast being examined does not meet either criterion, then no straight baseline segment may lawfully be drawn in that locality, and the other rules (on permissible basepoints, the vector of the putative straight baseline in relation to the coast, and the requisite quality of the waters that would be enclosed) may not be invoked.¹⁹ Further, the coastal State must fulfill all the requirements of one test or the other, and may not mix the requirements. For example, a State may not claim that a locality is indented, though not deeply, and that it has some islands, though they do not constitute a fringe, and claim it may draw straight baselines in that locality. Either test selected must be met entirely on its own terms. If a coastal State cannot establish that its coastline in the locality in which the straight baseline is sought is deeply indented and cut into or fringed with islands in the immediate vicinity, it may not proceed to identify appropriate straight baselines, for none are authorized to be drawn there. Rather, it must use as a baseline in that locality its low-water mark. Failure to meet this preliminary geographical test in one locality does not preclude establishing it in another.²⁰ Even if the basic geographic criteria exist in any particular locality, the coastal State is not obliged to employ the method of straight baselines, but may (like the United States and other countries) instead continue to use the normal baseline and permissible closing lines across the mouths of rivers and bays.

Localities Where the Coastline is Deeply Indented and Cut Into. “Deeply indented and cut into” refers to a very distinctive coastal configuration. The United States has taken the position that such a configuration must fulfill all of the following characteristics:²¹

- 1) in a locality where the coastline is deeply indented and cut into, there exist at least three deep indentations;²²
- 2) the deep indentations are in close proximity to one another;²³ 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.²⁴

The “coastline” is the mean low-water line along the coast; the term “localities” refers to particular segments of the coastline.²⁵

Fringe of Islands Along the Coast in its Immediate Vicinity. “Fringe of islands along the coast in its immediate vicinity” refers to a number of islands and not to other features that do not meet the definition of an island contained in Article 121(1) of the LOS Convention.²⁶ The United States has taken the position that a such a fringe of islands must meet all of the following requirements:²⁷

- 1) the most landward point of each island lies no more than 24 miles from the mainland coastline;²⁸
- 2) each island to which a straight baseline is to be drawn is not more than 24 miles apart from the island from which the straight baseline is drawn;²⁹ and
- 3) the islands, as a whole, mask at least 50 percent of the mainland coastline in any given locality.³⁰

Criteria for Drawing Straight Baseline Segments. The United States has taken the position that, to be consistent with Article 7(3) of the LOS Convention, straight baseline segments must:

- 1) not depart to any appreciable extent from the general direction of the coastline, by reference to general direction lines which in each locality shall not exceed 60 miles in length;³¹

2) not exceed 24 miles in length;³² and

3) result in sea areas situated landward of the straight baseline segments that are sufficiently closely linked to the land domain to be subject to the regime of internal waters.³³

Minor Deviations. Straight baselines drawn with minor deviations from the foregoing criteria are not necessarily inconsistent with the Convention.³⁴

Economic Interests. Economic interests alone cannot justify the location of particular straight baselines.³⁵ In determining the alignment of particular straight baseline segments of a baseline system which satisfies the deeply indented or fringing islands criteria, only those economic interests may be taken into account which are peculiar to the region concerned, and only when the reality and importance of the economic interests are clearly evidenced by long usage.³⁶

Basepoints. Except as noted in Article 7(4) of the LOS Convention, basepoints for all straight baselines must be located on land territory and situated on or landward of the low-water line. No straight baseline segment may be drawn to a basepoint located on the land territory of another State.³⁷

Use of Low-Tide Elevations as Basepoints in a System of Straight Baselines. A low-tide elevation is a naturally formed land area surrounded by water and which remains above water at low tide but is submerged at high tide.³⁸ Low-tide elevations can be mud flats or sand bars. In accordance with Article 7(4), only those low-tide elevations which have had lighthouses or similar installations built on them may be used as basepoints for establishing straight baselines.³⁹ Other low-tide elevations may not be used as basepoints unless the drawing of baselines to and from them has received general international recognition.⁴⁰ The United States 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.⁴¹

Effect on Other States. Article 7(6) of the LOS Convention provides that a State may not apply the system of straight baselines in such a manner as to cut off the territorial sea of another State from the high seas or an EEZ.⁴² In addition, Article 8(2) of the LOS Convention provides that, where the establishment of a straight baseline has the effect of enclosing as internal

waters areas which had not previously been considered as such, a right of innocent passage as provided in the Convention shall exist in those waters.⁴³ Article 35(a) of the LOS Convention has the same effect with respect to the right of transit passage through straits.

Unstable Coastlines. Where the coastline, which is deeply indented and cut into or fringed with islands in its immediate vicinity, is also highly unstable because of the presence of a delta or other natural conditions, the appropriate basepoints may be located along the furthest seaward extent of the low-water line. The straight baseline segments drawn joining these basepoints remain effective, notwithstanding subsequent regression of the low-water line, until the baseline segments are changed by the coastal State in accordance with the international law reflected in the LOS Convention.⁴⁴

Other Baseline Rules

Low-Tide Elevations. The low-water line on a low-tide elevation may be used as the baseline for measuring the breadth of the territorial sea only where that elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea measured from the mainland or an island. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, even if it is within that distance measured from a straight baseline or bay closing line, it has no territorial sea of its own.⁴⁵

Combination of Methods. A coastal State may determine each baseline segment using any of the methods permitted by the LOS Convention that suit the specific geographic condition of that segment, i.e., the methods for drawing normal baselines, straight baselines, or closing lines.⁴⁶

Harbor Works. Only those permanent man-made harbor works which form an integral part of a harbor system, such as jetties, moles, quays, wharves, breakwaters, and sea walls, may be used as part of the baseline for delimiting the territorial sea.⁴⁷ Offshore installations and artificial islands are not considered permanent harbor works for baseline purposes.⁴⁸

River Mouths. If a river flows directly into the sea without forming an estuary, the baseline is a straight line drawn across the mouth of the river between points on the low-water line of its banks.⁴⁹ If the river forms an estuary, the baseline is determined under the provisions relating to juridical bays.⁵⁰

Bays and Other Features

Juridical Bays. A “juridical bay” is a bay meeting specific criteria. Such a bay is a well-marked indentation on the coast 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 is not a juridical bay unless its area is as large as, or larger than, that of the semicircle whose diameter is a line drawn across the mouth of that indentation.⁵¹

For the purpose of measurement, the indentation is that area 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 semicircle 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 for satisfaction of the semicircle test.⁵²

If the distance between the low-water marks of the natural entrance points of a juridical bay of a single State does not exceed 24 miles, the juridical bay may be defined by drawing a closing line between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.⁵³ Where the distance between the low-water marks exceeds 24 miles, a straight baseline of 24 miles shall be drawn within the juridical bay in such a manner as to enclose the maximum area of water that is possible within a line of that length.⁵⁴

Historic Bays. The Territorial Sea Convention and the LOS Convention both exempt so-called historic bays from the rules described above.⁵⁵ To meet the standard of customary international law for establishing a claim to a historic bay, a State must demonstrate its open, effective, long-term, and continuous exercise of authority over the bay, coupled with acquiescence by foreign States in the exercise of that authority. An actual showing of acquiescence by foreign States in such a claim is required, as opposed to a mere absence of opposition.

Charts and Publication. Baselines are to be shown on large-scale nautical charts, officially recognized by the coastal State. Alternatively, the coastal State must provide a list of geographic coordinates specifying the geodetic datum.⁵⁶ Drying reefs used for locating basepoints are to be shown by an internationally accepted symbol for depicting such reefs on nautical charts.⁵⁷ The coastal State is required to give due publicity to such charts or lists of geographical coordinates, and deposit a copy of each such chart or list with the

Secretary-General of the United Nations.⁵⁸ Closure lines for bays meeting the semicircle test must be given due publicity, either by chart indications or by listed geographic coordinates.⁵⁹

Islands. Article 121(1) of the LOS Convention defines an island as a *naturally* formed area of land, surrounded by water, which is above water at high tide. Baselines are established on islands, and maritime zones are measured from those baselines in the same way as on other land territory. In addition, as previously indicated, there are special rules for using islands in drawing straight baselines and bay closing lines, and even low tide elevations (which literally do not rise to the status of islands) may be used as basepoints in specified circumstances. These special rules are not affected by the provision in Article 121(3) that rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf.

Artificial Islands and Off-shore Installations. Artificial islands, installations, and structures (including such man-made objects as oil-drilling rigs, navigational towers, and off-shore docking and oil-pumping facilities) do not possess the status of islands and may not be used to establish baselines, enclose internal waters, or establish or measure the breadth of the territorial sea, EEZ, or continental shelf.⁶⁰ Safety zones of limited breadth may be established to protect artificial islands, installations and structures and the safety of navigation in their vicinity.⁶¹

Roadsteads. Roadsteads normally used for the loading, unloading, and anchoring of ships, and which would otherwise be situated wholly or partly beyond the outer limits of the territorial sea, are included within the territorial sea.⁶² Roadsteads included within the territorial sea must be clearly marked on charts by the coastal State. Only the roadstead itself is territorial sea; roadsteads do not generate territorial seas around themselves; the presence of a roadstead does not change the legal status of the water surrounding it.⁶³

Almost fifty years ago, the International Court of Justice stated that delimitation of straight baselines “cannot be dependent merely upon the will of the coastal State as expressed in its municipal law . . . [T]he validity of the delimitation with regard to other States depends upon international

law.”⁶⁴ However, what nations do in the face of baseline claims inconsistent with international law is crucial. As two noted British scholars have stated:

[W]here a baseline is clearly contrary to international law, it will not be valid, certainly in respect of States which have objected to it, though a State which has accepted the baseline (for example in a boundary treaty) might be estopped from later denying its validity. In border-line cases—for example, where there is doubt as to whether a State’s straight baseline system conforms to all the criteria laid down in customary and conventional law—the attitude of other States in acquiescing in or objecting to the baseline is likely to prove crucial in determining its validity.⁶⁵

The MCRM and the views of the United States have assisted, and will continue to materially assist, all States in achieving the harmonization of domestic with international law envisioned by Article 310 of the Law of the Sea Convention. Jack Grunawalt can be proud of the what he has done over the past twenty-five years in that regard. We all are in his debt and renew our commitment to that end.

Jack, fair winds and following seas forever.

Notes

1. Captain Grunawalt served as Staff Judge Advocate to the Commander in Chief, U.S. Pacific Command between 1980 and 1984.

2. The Soviet naval base of Vladivostok lay deep within Peter the Great Bay facing the Sea of Japan near the northern border with North Korea.

3. MARJORIE WHITEMAN, 4 DIGEST OF INTERNATIONAL LAW 250–51 (1965) [hereinafter WHITEMAN].

4. II DEPT OF STATE, CUMULATIVE DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 1981–1988, at 1811–12 (Marian Nash Leich ed., 1994); J. ASHLEY ROACH & ROBERT W. SMITH, UNITED STATES RESPONSES TO EXCESSIVE MARITIME CLAIMS 49–51 (2d ed. 1996) [hereinafter ROACH & SMITH, RESPONSES]; J. ASHLEY ROACH & ROBERT W. SMITH, EXCESSIVE MARITIME CLAIMS 31–33 (66 International Law Studies, 1994). For earlier protests of this claim, see WHITEMAN, *supra* note 3, 251–257.

5. DEPT OF DEFENSE, MARITIME CLAIMS REFERENCE MANUAL, DoD 2005.1-M (1st ed. 1987, 2d ed. 1990, 3d ed. 1996).

6. Commentary enclosed with the Letter of Submittal of the Secretary of State, Sept. 23, 1994, S. TREATY DOC. No. 103-39, at 8 (1994) [hereinafter U.S. Commentary], reprinted in DEPT OF STATE, 6 DISPATCH Supp. No. 1, Feb. 1995, at 7-10; 34 I.L.M. 1393, 1402-1404 (1995); 7 GEO. INT’L ENVTL. L. REV. 93-97 (1994); and ROACH & SMITH, RESPONSES, *supra* note 4, at 543-551.

7. An earlier version of this paper appears in ROACH & SMITH, RESPONSES, *supra* note 4, at 57-74.

8. United Nations Convention on the Law of the Sea, Dec. 10, 1982, U.N. Doc. A/CONF.62/122 (1982), *reprinted in* 21 I.L.M. 1261-1354 (1982) and in THE LAW OF THE SEA: OFFICIAL TEXT, U.N. Sales No. E.83.V.5, 1983 (entered into force Nov. 16, 1994) [hereinafter LOS Convention].

9. The baseline provisions of the 1982 LOS Convention are examined in OFFICE FOR OCEANS AFFAIRS AND THE LAW OF THE SEA, UNITED NATIONS, THE LAW OF THE SEA: BASELINES (U.N. Sales No. E.88.V.5*, 1989) [hereinafter U.N., BASELINES]. OFFICE FOR OCEANS AFFAIRS AND THE LAW OF THE SEA, UNITED NATIONS, BASELINES: NATIONAL LEGISLATION (1989), and ATLAS OF THE STRAIGHT BASELINES (Giampiero Francalanci *et al.* eds., 1986) also detail the baseline claims of the coastal and island States.

10. As noted in the Introduction to the recent UN study on baselines, “[h]istorically viewed as a body of law regulating movement—of vessels, products and people—the new law of the sea has become increasingly a law of appropriation—the assertion of national claims to large portions of the earth’s surface covered by the oceans.” U.N., BASELINES, *supra* note 9, at vii.

11. In depositing its instrument of ratification of the LOS Convention, the Netherlands declared “A claim that the drawing of baselines . . . is in accordance with the Convention will only be acceptable if such lines . . . have been established in accordance with the Convention.” DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, UNITED NATIONS, THE LAW OF THE SEA: DECLARATION AND STATEMENTS WITH RESPECT TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND TO THE AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982, at 36, U.N. Sales No. E.97.V.3 (1997). In depositing its instrument of accession to the LOS Convention, the United Kingdom declared that “declarations and statements not in conformity with articles 309 and 310 include . . . those which relate to baselines not drawn in conformity with the Convention.” U.N. Law of the Sea web site, Status of the Convention, Declarations (last visited Feb. 3, 1998) <http://www.un.org/Depts/los>.

12. Convention on the Territorial Sea and the Contiguous Zone, Geneva, Apr. 28, 1958, art. 3, 15 U.S.T. 1606, T.I.A.S. No. 639, 516 U.N.T.S. 205, [hereinafter Territorial Sea Convention]; LOS Convention, *supra* note 8, art. 5.

13. Definition 50, in Consolidated Glossary of Technical Terms used in the United Nations Convention on the Law of the Sea, International Hydrographic Bureau Special Pub. No. 51, A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea, 1982, Part I, *reprinted in* UN, BASELINES, *supra* note 9, at 58 [hereinafter Consolidated Glossary].

14. ROBIN R. CHURCHILL & ALAN V. LOWE, THE LAW OF THE SEA 46 (2d rev. ed. 1988).

15. LOS Convention, *supra* note 8, art. 6; U.N., BASELINES, *supra* note 9, ¶ 24. The International Hydrographic Organization Working Group on Technical Aspects of the Law of the Sea describes an “atoll” as “a ring-shaped reef with or without an island situated on it surrounded by the open sea, that encloses or nearly encloses a lagoon”; a “reef” as “a mass of rock or coral which either reaches close to the sea surface or is exposed at low tide”; and a “fringing reef” as “a reef attached directly to the shore or continental land mass, or located in their immediate vicinity.” Consolidated Glossary, *supra* note 13, app. I, definitions 9 & 66.

16. U.N., BASELINES, *supra* note 9, ¶¶ 35 & 38.

17. *Id.*, ¶¶ 38 & 39; CHURCHILL & LOWE, *supra* note 14, at 33 (while in some situations it would be impracticable to use the low-water line, “the effect of drawing straight baselines, even strictly in accordance with the rules, is often to enclose considerable bodies of sea as internal waters”). Professors Reisman and Westerman warn, “the chief practical effect of a straight baseline claim is to augment the areas of internal and territorial waters within state control. When individual baseline segments are very long, however, significant areas of continental shelf

and exclusive economic zone are also gained." W. MICHAEL REISMAN & GAYL S. WESTERMAN, STRAIGHT BASELINES IN INTERNATIONAL MARITIME BOUNDARY DELIMITATION 105 (1992).

18. U.S. Commentary, *supra* note 6, at 8; JOHN R. PRESCOTT, THE MARITIME POLITICAL BOUNDARIES OF THE WORLD 50 (1985); REISMAN & WESTERMAN, *supra* note 17, at xv.

19. REISMAN & WESTERMAN, *supra* note 17, at 77.

20. *Id.* at 90-91.

21. U.S. Commentary, *supra* note 6, at 9.

22. The LOS Convention does not specify how many deep indentations must exist in any locality on the coastline. Nevertheless, there must be noticeably more than one deep indentation in the locality, otherwise the juridical bay criteria would apply. While U.N., BASELINES, *supra* note 9, ¶ 36, suggests "several," three should be the minimum necessary to distinguish the situation from bays. There may also be one or more shallower cuts into the locality of the coastline.

23. The LOS Convention does not define "locality." This criterion, which combines the "cut into" and "deep indentation" requirements, coupled with the definition of "localities" *infra*, describe a "locality" where straight baselines may lawfully be drawn. The point at which the prescribed geographical criteria ceases to exist constitutes the limit of that particular "locality."

24. The LOS Convention does not define "deeply indented" except by comparison with Article 10 on bays. A bay is defined as a "well-marked indentation" of a specified proportion (the semi-circle test, see *infra*). Logical interpretation suggests that "deeply indented" sets a *stricter* geographical standard than that for a juridical bay. This criterion is designed to prevent shallow bays which do not meet the penetration criterion for juridical bays from being the basis for establishing a series of straight baseline segments in a particular locality (although some shallow indentations not being juridical bays in the locality of the deep indentations may in the process also be closed off as "cuts into" the coastline), while ensuring recognition that the purpose of straight baselines is not "to increase the territorial sea unduly." U.N., BASELINES, *supra* note 9, ¶ 39. It should be noted that the last sentence of paragraph 36 of U.N., BASELINES, incorrectly states that there is general agreement that *each* of the several indentations must be *juridical bays*.

25. Neither term is defined in the LOS Convention or in the IHO Glossary appended to U.N., BASELINES. The term "coastline" as used in Article 7 is clearly referring to the normal baseline defined in Article 5 as the "low-water line along the coast." U.N., BASELINES, *supra* note 9, ¶ 9, notes that "the low-water line is the intersection of the plane of low water with the shore." "Localities" is defined to make clear that each baseline segment is related to a particular geographic location.

26. Article 7 of the LOS Convention does not define a "fringe," or how close the islands must be to the mainland in the vicinity, or how close together the islands must be. The fringe must be made up of islands; low-tide elevations, artificial islands, reefs, roadsteads, or off-shore installations are not islands. The definition of island found in Article 121(1) of the LOS Convention is "a naturally formed area of land, surrounded by water, which is above water at high tide." Professors Reisman and Westerman suggest that a fringe of rocks which cannot sustain human habitation or economic life of their own [see Article 121(3)] should not qualify as a fringe of "islands," although they would permit rocks within the fringe of islands to be used as basepoints. REISMAN & WESTERMAN, *supra* note 17, at 85.

27. U.S. Commentary, *supra* note 6, at 9.

28. This first criterion addresses the maximum permissible seaward distance of the islands from the coastline in the vicinity. "In its immediate vicinity" clearly suggests that the distance will rarely exceed 24 miles since (a) open areas of high seas would lack the "close link" to the mainland necessary to justify a conversion to internal waters required by Article 7(3) of the LOS

Convention; (b) Article 8(2) preserves the right of innocent passage in waters closed off by straight baselines which had not previously been considered as such; and (c) Article 10(5) authorizes the use of a 24-mile straight baseline to enclose most of a juridical bay whose mouth is wider than 24 miles. *Accord* MUHAMMAD MUNAVVAR, OCEAN STATES: ARCHIPELAGIC REGIMES IN THE LAW OF THE SEA 121 (1995).

29. This second criterion addresses the maximum distances between islands to make up a fringe. Given the linkage to territorial waters described in the preceding endnote, it follows that, as a rule, no straight baseline segment should exceed 24 miles. Two 12-mile arcs drawn from appropriate low-water marks would be tangent at exactly 24 miles. A close spatial relationship between the various islands produces a barrier between the actual coast and the open sea and constitutes the justification for drawing a straight baseline in that locality. A scattering of islands, each far from the other, along a smooth and otherwise undistinguished coast does not qualify. Neither would a close constellation of an island cluster in a single place warrant a straight baseline. What is required is a distribution of islands close enough to each other to warrant that they fringe the coast. REISMAN & WESTERMAN, *supra* note 17, at 86-87. A fringe of islands meeting these two criteria will necessarily essentially parallel the coast. See U.N., BASELINES, *supra* note 9, ¶ 43, and REISMAN & WESTERMAN, *supra* note 17, at 86.

30. This criterion, drawn from paragraph 45 of U.N., BASELINES, provides an objective criterion for determining if the islands actually mask the coastline in the vicinity. "Masking" can be more objectively determined if the islands mask the majority of the mainland coastline in any given locality. Professors Reisman and Westerman believe the quantitative test for the number of islands should be "very high," approximating that found in the Norwegian skjaergaard. REISMAN & WESTERMAN, *supra* note 17 at 86.

31. LIMITS IN THE SEAS No. 106, DEVELOPING STANDARD GUIDELINES FOR EVALUATING STRAIGHT BASELINES 30-32 (1987).

32. The 24-mile maximum segment length is implied from a close reading of the relevant articles of the LOS Convention. Article 7(1) speaks of the "immediate vicinity" of the coast. Article 7(3) states that "the sea areas lying within the line must be sufficiently closely linked to the land domain to be subject to the regime of internal waters." In both of these descriptions, the implication is strong that the waters to be internalized would otherwise be part of the territorial sea. It is difficult to envision a situation where international waters (beyond 12 miles from the appropriate low-water line) could be somehow "sufficiently closely linked" as to be subject to conversion to internal waters.

This implication is reinforced by Article 8(2), which guarantees the right of innocent passage in areas converted to internal waters by straight baselines. Innocent passage is a regime applicable to the territorial sea (with a maximum breadth of 12 miles). Preservation of innocent passage carries over pre-existing rights in waters that were territorial in nature before the application of straight baselines.

Given this theme of linkage to territorial waters, it follows that, as a rule, no straight baseline segment should exceed 24 miles. Two 12-mile arcs from appropriate low-water marks would exactly overlap at 12 miles. Article 10(5) lends even further strength to this rule. Even in the case of a bay that meets the semicircle test, a closing line under Article 10 may not be drawn at the natural entrance points if those points are more than 24 miles apart. Article 10 permits only a 24-mile straight baseline within such a bay. This emphasizes the overriding importance of the 24-mile rule, even after satisfaction of the semicircle test.

Accord Finland Decree No. 464, Aug. 18, 1956, art. 4(2), (straight baseline segments shall be not longer than twice the width of the territorial sea), *translated in* LIMITS IN THE SEAS No. 48,

STRAIGHT BASELINES: FINLAND (1972). Cf. the *demarches* by Germany, on behalf of the European Union (EU) and endorsed by the acceding States (Austria, Finland, and Sweden):

(a) to Thailand concerning the announcement by the Prime Minister's Cabinet on August 17, 1992, of its straight baselines and internal waters in area 4 (*reprinted in U.N., LOS BULL.* No. 25, June 1994, at 8), in which the EU stated that "even if the United Nations Convention on the Law of the Sea does not set a maximum length for baseline segments, the segments determined by Thailand are excessively long. They are in fact 81 miles long between points 1 and 2, 98 miles long between points 2 and 3, and 60 miles long between points 3 and 4." *U.N., LOS BULL.* No. 28, at 31 (1995); and

(b) to Iran to the same effect. *U.N., LOS BULL.* No. 30, at 60 (1996). Iran's reply may be found in *id.*, No. 31, at 38 (1996).

33. U.S. Commentary, *supra* note 6, at 9. The Territorial Sea Convention, Article 4(2) and the LOS Convention, Article 7(3), specifically provide that straight baselines must not depart "to any appreciable extent from the general direction of the coast," and the sea areas they enclose must be "sufficiently closely linked to the land domain to be subject to the regime of internal waters." Professors Reisman and Westerman note that the coastal State must prove this linkage, and propose that it may be met through proof of geographical proximity, practice through time, and intensity of use. REISMAN & WESTERMAN, *supra* note 17, at 99–100.

34. This criterion recognizes that hard and fast rules will not always be acceptable for drawing straight baselines.

35. Territorial Sea Convention, *supra* note 12, art. 4(5); LOS Convention, *supra* note 8, art. 7(5); *U.N., BASELINES*, *supra* note 9, ¶ 58. The economic interests test is available only if the preliminary geographical requirements have been met. Thus, with the exclusive economic zone jurisdiction now available to all coastal States, no economic rationale can alone justify a straight baseline claim.

36. LOS Convention, *supra* note 8, art. 7(5); Territorial Sea Convention, *supra* note 12, art. 4(4). Consequently, the coastal State must advance historic economic data to establish this exception. Clearly, Article 7(5) does not refer to *potential* economic interests. Professors Reisman and Westerman suggest a test combining geographic proximity, practice through time, and intensity of past use. REISMAN & WESTERMAN, *supra* note 17, at 100–101.

37. *U.N., BASELINES*, *supra* note 9, ¶ 51. Article 7(1) of the LOS Convention provides that the straight baseline segments must join "appropriate basepoints." Those basepoints will be appropriate only if the segments drawn satisfy the delimitation rules of paragraphs 2 through 6 of Article 7. The Convention nowhere authorizes the use of abstract points at sea, described in terms of coordinates of latitude and longitude but otherwise failing the requirements of the Convention, as basepoints.

38. LOS Convention, *supra* note 8, art. 13(1); Territorial Sea Convention, *supra* note 12, art. 10(1).

39. The same rule appeared in the Territorial Sea Convention, *supra* note 12, art. 4(3).

40. This second exception is new and not contained in Territorial Sea Convention, Article 4(3). Professors Reisman and Westerman argue that this new authority cannot be used unless and until there is a substantial demonstration of the existence of widespread international recognition of the particular low-tide elevation lacking a lighthouse as a basepoint. REISMAN & WESTERMAN *supra* note 17, 93–94.

41. U.S. Commentary, *supra* note 6, at 10; REISMAN & WESTERMAN, *supra* note 17, 93–94. See MUNAVVAR, *supra* note 28, at 125.

42. The comparable provision in the Territorial Sea Convention appears in Article 4(5). An example of state practice complying with this rule is the French baseline decree of October 19,

1967, which provides for noncontinuous segments leaving Monaco with unrestricted oceans seaward. 7 I.L.M. 347 (1968); LIMITS IN THE SEAS No. 37, STRAIGHT BASELINES: FRANCE (1972). The Spanish enclaves of Cueva and Melilla and the Islas Chafarinas almost completely enclosed within Moroccan straight baselines are another example. FARAJ ABDULLAH AHNISH, THE INTERNATIONAL LAW OF MARITIME BOUNDARIES AND THE PRACTICE OF STATES IN THE MEDITERRANEAN SEA 190–193 (1993).

43. The same rule appeared in the Territorial Sea Convention, *supra* note 12, art. 5(2). An example of this situation is the Piombino Channel between the Italian Island of Elba (the main island of the Tuscany archipelago) and the Italian mainland, which connects two parts of the high seas, while lying entirely within Italian internal waters as defined by Italy's 1977 straight baseline decree. Tullio Scovazzi, *Management Regimes and Responsibility for International Straits, with Special Reference to the Mediterranean Straits*, 19 MARINE POL'Y 137, 151 (1995).

44. LOS Convention, *supra* note 8, art. 7(2). Applicable deltas include those of the Mississippi and Nile Rivers, and the Ganges-Brahmaputra River in Bangladesh. U.N., BASELINES, *supra* note 9, ¶ 50; PRESCOTT, *supra* note 18, at 15; REISMAN & WESTERMAN, *supra* note 17, at 101–102.

45. Territorial Sea Convention, *supra* note 12, art. 11; LOS Convention, *supra* note 8, art. 13.

46. LOS Convention, *supra* note 8, art. 14. There is no corresponding provision in the 1958 Territorial Sea Convention. Article 14 does not permit a coastal State to draw straight baselines in a locality not meeting the required geographic criteria; in those circumstances, the low-water line must be followed. See U.N., BASELINES, *supra* note 9, ¶¶ 31–32. Closing lines are discussed *infra*.

47. Territorial Sea Convention, *supra* note 12, art. 8; LOS Convention, *supra* note 8, art. 11; IHO Definition 38, in U.N., BASELINES, *supra* note 9, at 56; U.N., BASELINES, *supra* note 9, ¶ 76. Professors Reisman and Westerman would add a prohibition against the use of atolls and fringing reefs as basepoints for straight baseline segments along the coast or around the islands. REISMAN & WESTERMAN, *supra* note 17, at 94.

48. LOS Convention, *supra* note 8, art. 11.

49. Territorial Sea Convention, *supra* note 12, art. 13; LOS Convention, *supra* note 8, art. 9. The fact that the river must flow "directly into the sea" suggests that the mouth should be well marked.

50. See the 1956 I.L.C. draft of what became Article 13 of the Territorial Sea Convention (the predecessor of Article 9 of the LOS Convention), U.N. Doc. A/3159, II Y.B.I.L.C. 1956, at 253, 271, and IHO Definition 54, in U.N., BASELINES, *supra* note 9, at 59. An estuary is the tidal mouth of a river, where the tide meets the current of fresh water. IHO Definition 30, in *id.* at 54. The Conventions do not state exactly where, along the banks of estuaries, the closing points should be placed. No special baseline rules have been established for rivers entering the sea through deltas, such as the Mississippi, (*i.e.*, either the normal or straight baseline principles above may apply) or for river entrances dotted with islands. The Territorial Sea and LOS Conventions place no limit on the length of river closing lines. Further, the Conventions do not address ice coast lines, where the ice coverage may be permanent or temporary.

51. Territorial Sea Convention, *supra* note 12, art. 7(2); LOS Convention, *supra* note 8, art. 10(2).

52. Territorial Sea Convention, *supra* note 12, art. 7(3); LOS Convention, *supra* note 8, art. 10(3).

53. Territorial Sea Convention, *supra* note 12, art. 7(4); LOS Convention, *supra* note 8, art. 10(4).

54. Territorial Sea Convention, *supra* note 12, art. 7(5); LOS Convention, *supra* note 8, art. 10(5). The waters enclosed by a baseline of a wide-mouth bay need not meet the semicircle test, since the wide mouth bay as a whole must meet that test to be a juridical bay. In this case, there is no requirement to draw the closing line between prominent points; they can be fixed on smooth coasts. PRESCOTT, *supra* note 18, at 60. Historic bays, bays bounded by more than one State, and bays converted to internal waters by straight baselines under Article 7, are not covered by Article 10.

55. Territorial Sea Convention, *supra* note 12, art. 7(6); LOS Convention, *supra* note 8, art. 10(6).

56. LOS Convention, *supra* note 8, art. 16(2). This rule applies to both normal and straight baselines. Under the Territorial Sea Convention, Article 4(6), only straight baselines were required to be clearly shown.

57. LOS Convention, *supra* note 8, art. 6. There is no corresponding provision in the 1958 Territorial Sea Convention.

58. *Id.*, art. 16(2). The Territorial Sea Convention also required due publicity in Articles 4(6) (straight baselines) and 9 (roadsteads). See U.N., BASELINES, *supra* note 9, ¶¶ 2–8, 29 & 94–102.

59. LOS Convention, *supra* note 8, art. 16.

60. *Id.*, arts. 11, 60(8), 147(2) & 259.

61. The criteria for establishing safety zones are set out in LOS Convention, *supra* note 8, arts. 60, 177(2) and 260.

62. LOS Convention, *supra* note 8, art. 12.

63. U.S. Commentary, *supra* note 6, at 13.

64. Anglo-Norwegian Fisheries Case, (U.K. v. Nor.) 1951 I.C.J. Rep. 132.

65. CHURCHILL & LOWE, *supra* note 14, at 46–47.