

# STATE PRACTICES OF STRAIGHT BASELINES INSTITUTE EXCESSIVE MARITIME CLAIMS

\* Dr. Waseem Ahmad Qureshi

## I. INTRODUCTION

Today, owing to a surge in commercial activities in sea trade, such as shipping and extraction of natural resources, the laws of the sea hold utmost importance in international law.<sup>1</sup> The governing legal framework that regulates the mechanism of the law of the sea is the United Nations Convention on the Law of the Sea (UNCLOS), which is also known as the Law of the Sea Convention (LOSC).<sup>2</sup> The scope of modern sea laws have gone well beyond defining states' national coastal territories and tend toward the protection of trade, environment, and maritime zones in its contents.<sup>3</sup> This evolution of the law faces emerging contemporary challenges in governing maritime legal issues, such as defining the exclusive economic zones (EEZs) and national jurisdictions along disparate coastal lines and unclear low-water marks or baselines.<sup>4</sup>

Historically, coastal states have enjoyed jurisdiction over their immediate coastal waters,<sup>5</sup> but new laws and regulations have defined limits on these jurisdictions.<sup>6</sup> As a consequence, each coastal country possesses an EEZ,<sup>7</sup> in which it enjoys the exclusive right to exploit natural resources.<sup>8</sup> Over time, countries have moved toward increasing their maritime territories

---

\* Advocate Supreme Court of Pakistan

1. VITA ONWUASOANYA, *THE LAW OF THE SEA CONVENTION: US ACCESSION AND GLOBALIZATION* 574 (Myron H. Nordquist, John Norton Moore, Alfred H. A. Soons & Hak-So Kim eds., 2012).
2. RAHUL SHARMA, *DEEP SEA MINING: RESOURCE POTENTIAL, TECHNICAL AND ENVIRONMENTAL CONSIDERATIONS* 494 (Rahul Sharma ed., 2017); *see also* GUIFANG XUE, *CHINA AND INTERNATIONAL FISHERIES LAW AND POLICY* 4 (Martinus Nijhoff Pub., 2005).
3. LOUIS B. SOHN, JOHN E. NOYES, ERIK FRANCKX & KRISTEN G. JURAS, *CASES AND MATERIALS ON THE LAW OF THE SEA* 14 (2d ed. 2014).
4. CATHAL J. NOLAN, *THE GREENWOOD ENCYCLOPEDIA OF INTERNATIONAL RELATIONS: F-L* 93 (Greenwood Pub., 2002).
5. HAIJIANG YANG, *JURISDICTION OF THE COASTAL STATE OVER FOREIGN MERCHANT SHIPS IN INTERNAL WATERS AND THE TERRITORIAL SEA* 117 (2006); *see, e.g.*, STEIN TØNNESSON, *The Tonken Gulf Agreements: a Model of Conflict Resolution?*, *THE SOUTH CHINA SEA* 151, 151-57 (C. J. Jenner, ed., Truong Thuy, trans., 2016).
6. DOUGLAS BURNETT, *Overview of the International Legal Regime Governing Submarine Cables*, *SUBMARINE CABLES: THE HANDBOOK OF LAW & POLICY* 63, 77 (Douglas R. Burnett, Robert C. Beckman & Tara M. Davenport eds., 2014).
7. *Id.*
8. *See generally* BARBARA KWIATKOWSKA, *THE 200 MILE EXCLUSIVE ECONOMIC ZONE IN THE NEW LAW OF THE SEA* 15 (Martinus Nijhoff Pub., 1989).

through generously defining their baseline.<sup>9</sup> However, baselines are the starting points from where all seaward territories and maritime zones, such as contiguous zones and EEZs, are calculated.<sup>10</sup> Furthermore, any landward waters (that is, water inland from the baseline) are called internal waters and are considered the national territory of a coastal state.<sup>11</sup> To enjoy sovereignty over these waters, and to maintain their historical fishing rights and other privileges over these waters, nations are marking baselines excessively so as to extend their national boundaries.<sup>12</sup> Customarily, these baselines are natural low-water marks in coastal regions.<sup>13</sup> However, these baselines have traditionally been marked in geometric patterns in accordance with the general direction of the coasts, in artificially marked straight lines, contrary to the general rule of low-water marks denoting national boundaries.<sup>14</sup> This exceptional practice of marking baselines in patterns is known as the straight baseline method.<sup>15</sup> Historically, in a similar fashion, bays have been marked with closing lines to mark national boundaries.<sup>16</sup>

To enjoy the economic benefits of internal waters and to further increase the area of maritime zones, coastal states have started to mark excessive straight baselines along indented coasts.<sup>17</sup> As a result, neighboring countries with parallel interests in internal waters and with maritime zones contest these demarcations.<sup>18</sup> One such case, the *Anglo-Norwegian Fisheries*<sup>19</sup> case, was brought in the International Court of Justice (ICJ) in 1951 to define the legitimacy of straight baselines along coasts. This case later helped to develop the intricate rules defining baselines along coasts under the LOSC.<sup>20</sup> The world has since seen armed conflicts over the demarcation of baselines in this way; for instance, Libya and United States faced off in armed conflict over the demarcation of straight baselines along coastal lines in Libya.<sup>21</sup> Furthermore, complications in marking these baselines are further complicated when marking baselines along river mouths and fringe islands.<sup>22</sup> Moreover, Thailand, which has the world's largest

- 
9. JOHN O'BRIEN, INTERNATIONAL LAW 398 (2001).
  10. Robin Rolf Churchill & Alan Vaughan Lowe, *The Law of the Sea* 26 (1988).
  11. Patricia Park, *International Law for Energy and the Environment* 91 (22 ed., 2013).
  12. U.N. Dev. Programme, *Environmental Governance Sourcebook* 130 (2003).
  13. Vivian Louis Forbes, *The Maritime Boundaries of the Iranian Ocean Region* 62 (1995).
  14. Churchill & Lowe, *supra* note 10.
  15. *Id.* at 37.
  16. *Id.*
  17. Coalter G. Lathrop, *Baselines*, *The Oxford Handbook of the Law of the Sea* 69, 86 (Donald R. Rothwell, Alex G. Oude Elferink, Tim Stephens & Karen N. Scott eds., 2015).
  18. *Id.*
  19. *Anglo-Norwegian Fisheries*, U.K. v. Norway, Order, 1951 I.C.J. 117 (Jan. 18, 1951).
  20. *See* Churchill & Lowe, *supra* note 10, at 30.
  21. J. Ashley Roach & Robert W. Smith, *Excessive Maritime Claims* 129 (Vaughan Lowe & Robin Churchill eds., 3d ed. 2012).
  22. Dawn J. Wright, *Undersea with GIS* 223 (2002).

number of islands, is currently counting its islands again to revise its baselines along its coasts, in order to enjoy the privileges of internal waters and resolve the conflicting interests of its neighboring countries.<sup>23</sup> Similarly, the US is currently seeking to challenge China's straight baselines in the South China Sea coastal areas, which were claimed by China in 1996.<sup>24</sup>

Similarly, Asia's largest fisheries zone is in the Sir Creek, which is shared between India and Pakistan.<sup>25</sup> Both countries claim the greater part of the internal waters to better exploit the fisheries and other economic activities in this region.<sup>26</sup> Recently, both countries have arrested the other nation's fishermen,<sup>27</sup> and they have historically also faced armed conflict over these disputed maritime territories.<sup>28</sup> Sir Creek is a river estuary, navigable only in high tides and not in low tides,<sup>29</sup> so the demarcation of maritime boundaries between India and Pakistan are still disputed in this area.<sup>30</sup> More interestingly, the boundaries of this disputed creek do not only provide a massive fishing resource; the successful delimitation of borders in accordance with Indian desires will reduce the area of Pakistan's EEZ by 2,246 resource-rich square kilometers.<sup>31</sup> This fact is a substantiation of how a generous demarcation of baseline can affect maritime jurisdiction and the interests of neighboring states. Besides this, Pakistan applied the straight baseline technique to demarcate its coastal areas in 1996; the United States contested the legitimacy of this demarcation in 1997.<sup>32</sup> However, recently, in 2015, the United Nations Commission agreed to Pakistan's extension of the seabed territory from 200 nautical miles to 350 nautical miles, such that Pakistan's continental shelf would enjoy a further 50,000 square kilometers of seabed territory.<sup>33</sup> So, arguably, since the UN has approved the

- 
23. Rafki Hidayat, *Indonesia Counts its Islands to Protect Territory and Resources*, BBC (June 7, 2017), <http://www.bbc.com/news/world-asia-40168981>.
  24. Robert D. Williams, *Vietnam, the UNCLOS Tribunal, and the Latest U.S FONOP in the South China Sea*, LAWFARE (Oct. 25, 2016, 12:21 PM), <https://www.lawfareblog.com/vietnam-unclos-tribunal-and-latest-us-fonop-south-china-sea>.
  25. JAYANTA KUMAR RAY, *Aspects of India's International Relations, 1700-2000*, 10 HISTORY OF SCIENCE, PHILOSOPHY AND CULTURE IN INDIAN CIVILIZATION pt. 6 at 242 (D.P. Chattopadhyaya ed., 2007).
  26. ANNA ORTON, *INDIA'S BORDERLAND DISPUTES: CHINA, PAKISTAN, BANGLADESH & NEPAL*, 85-92 (2010).
  27. Karachi, *85 Indian Fishermen Jailed in Pakistan*, PRIME TIMES.IN (Mar. 6, 2017, 3:08 PM IST), <https://www.primetimes.in/news/38678/85-indian-fishermen-jailed-in-pakistan/>.
  28. VICTORIA SCHOFIELD, *KASHMIR IN CONFLICT: INDIA, PAKISTAN & THE UNENDING WAR* 221 (1st ed. 2000).
  29. MAROOF RAZA, *WARS & NO PEACE OVER KASHMIR* 123 (Lancer Pub., 1996).
  30. Sultan S.M. Hali, *Fencing Sir Creek*, THE NATION (Jan. 2, 2013), <http://nation.com.pk/columns/02-Jan-2013/fencing-sir-creek>.
  31. *Id.*
  32. DENNI RUMLEY, SANJAY CHATURVEDI & VIJAY SAKHUJA, *FISHERIES EXPLOITATION IN THE INDIAN OCEAN: THREATS & OPPORTUNITIES* 112 (2009) [hereinafter RUMLEY ET AL.].
  33. Baqir Sajjad Syed, *Pakistan Seabed Territory Grows by 50,000 Square Kilometres*, DAWN (Mar. 21, 2015), <https://www.dawn.com/news/1170986>.

demarcation of maritime zones of Pakistan,<sup>34</sup> and since the United States alone challenges every nation's baseline without particular interests,<sup>35</sup> demarcation by Pakistan using straight baselines can be argued to be legitimate boundaries.

In order to establish and comprehend excessive state practices of boundary demarcations at sea, it is essential to define the legal framework of the laws governing the demarcation of baselines and understand all maritime zones and national boundaries of coastal states. Therefore, this paper is divided into three sections.

Section 1 will cover the developments of the legal framework that regulates seawater laws, particularly in relation to generous demarcation of baselines. This section is further divided into two subsections. Subsection 1.1 will extensively assess the development of the straight baseline rule in the landmark ICJ *Anglo-Norwegian Fisheries* case of 1951. Afterwards, subsection 1.2 will succinctly assess the LOSC and its developments in regard to specificities of baselines.

Section 2 will define the legal mechanism for the demarcation of baselines. This section is divided into three subsections. Subsection 2.1 will briefly outline maritime zones and their respective rights. Subsection 2.2 will broadly outline normal baselines. Subsection 2.3 will define the notion of the straight baseline and its regulations in accordance with the available legal framework. For this reason, this subsection is further divided into three factions, where the standard imperative, relevant case law of the ICJ, and regulations under the LOSC will be explained. Furthermore, complicating factors for the application of the straight baseline technique will be systematically assessed within this section.

Section 3 will explore the institution of excessive maritime claims through the demarcation of straight baselines by reviewing state practices. In this context, the demarcation of straight baselines by ten countries in the Asia-Pacific region will be fleetingly discussed.

## II. DEVELOPMENT OF BASELINE LAWS

For the purposes of establishing excessive demarcations of baselines and comprehending the contingent issues, defining the concept of the baseline is the first step. Lalonde and McDorman have defined the "baseline" as referring to the "starting line" to delimit the maritime jurisdiction of coastal countries.<sup>36</sup> Baseline has three purposes; the main purpose of which is to bifurcate all sea and coastal waters between the internal seawaters of the

---

34. *Id.*

35. Yvonne Baatz, et al., *Maritime Law* 309 (CRC Press, 2014).

36. Suzanne Lalonde & Ted L. McDorman, *International Law & Politics of the Arctic Ocean: Essays in Honor of Donat Pharand* 292 (2015).

country and seaward waters, where the baseline is the dividing line between them.<sup>37</sup> Another key purpose of the baseline is to demarcate the outward boundaries of maritime zones, thereby defining the territorial waters, the continental shelf, the EEZ juridical zone (200 nm), and the contiguous zone.<sup>38</sup> The last purpose of defining the baseline is to differentiate between the overlap of maritime zones and boundaries of contingent coastal countries.<sup>39</sup> A baseline is defined by the United Nations as “the line from which the seaward limits of a State’s territorial sea and certain other maritime zones of jurisdiction are measured.”<sup>40</sup>

To further comprehend the objectives of baseline laws, a historical view of the objectives of legal developments is vital. At the earliest stage of the development of laws regarding maritime jurisdiction and of the sea in general, the water mark developed by the low-sea level at coasts was defined as the baseline to delimit maritime territory.<sup>41</sup> In the late nineteenth and early twentieth centuries, lawmakers stressed the need for definitive rules to provide for irregular water marks and the complex overlapping of maritime jurisdictions.<sup>42</sup> For instance, coastal areas near “fringe islands” were frequently disparate, which raised certain legal questions regarding the demarcation of maritime jurisdiction.<sup>43</sup> As such, the legal developments in the last century concentrated on describing the topographies of coastal areas in order to advance legal regulations to define sea boundaries, such as introducing the notion of straight baselines.<sup>44</sup> Global attention to the need to define rules to outline maritime jurisdiction was drawn in 1951, when the ICJ adjudicated on the landmark case of *Anglo-Norwegian Fisheries*.<sup>45</sup> This case related to the juncture between two major sea jurisdictions.<sup>46</sup> It was also in the mid-twentieth century that the International Law Commission (ILC) provided its deliberations over maritime territories, resulting in the UNCLOS I, drafted in Geneva in 1958.<sup>47</sup>

- 
37. Barry Hart Dubner, *The Law of Territorial Waters of Mid-Ocean Archipelagic States* 9 (1976).
  38. Cengiz Gunay & Nina Witjes, *Border Politics: Defining Spaces of Governance & Forms of Transgressions* 40 (2016).
  39. Stephen Fietta & Robin Cleverly, *Practitioner’s Guide to Maritime Boundary Delimitation* 624 (2016); *see also* Dawn J. Wright & Darius J. Barlett, *Marine & Coastal Geographical Information Systems* 303 (2000).
  40. Myron H. Nordquist, *United Nations Convention on the Law of the Sea, 1982: A Commentary* V.2, 81 (Satya N. Nandan & Shabtai Rosenne eds., 1993).
  41. Bruce S. Flushman, *Water Boundaries: Demystifying Land Boundaries Adjacent to Tidal or Navigable Waters* 125 (2002).
  42. Sophia Kopela, *Dependent Archipelagos in the Law of the Sea* 55 (2013).
  43. *Id.*
  44. O’Brien, *supra* note 9.
  45. *Id.*
  46. Eric Heinze, M. Fitzmaurice, *Landmark Cases in Public International Law* 147 (1998).
  47. *See* Churchill & Lowe, *supra* note 10.

To take an overview of the legal developments, this section will only cover the progression of the legal framework governing the regulations of maritime law and more particularly in relation to baselines. This section is divided into two subsections. Subsection 1.1 will extensively assess the development of the straight baseline rule by the ICJ in the landmark *Anglo-Norwegian Fisheries* case of 1951. Subsection 1.2 will briefly explore the LOSC and its legal framework in the context of baselines.

#### A. The Anglo-Norwegian Fisheries Case, 1951

This landmark case was brought to the ICJ by the United Kingdom against Norway in 1951.<sup>48</sup> The United Kingdom contended that Norway had marked its sea territories very generously. It maintained that under the international law of the sea, Norway was not entitled to use the straight baseline technique to include fringe islands and other low tide areas such as rocks, reefs, and islets within its sovereign territories.<sup>49</sup> The UK added that the Norwegian claims to fisheries zones and sea territories could not surpass the water marks of low tide coastal lines, historically used areas, and permanently dry areas.<sup>50</sup>

Surprisingly, by a majority, the ICJ's judgment held that the Norwegian practices of drawing fisheries zones and its baseline systems to encompass subsidiary islands, rocks, and reefs were acceptable as a legitimate system in international law.<sup>51</sup> The ICJ validated the Norwegian technique of marking low tide regions—in agreement with the parties—to define maritime jurisdiction.<sup>52</sup> The court in this context noted that “[t]his criterion is the most favourable to the coastal state and clearly shows the charter of territorial waters as appurtenant to the land territory.”<sup>53</sup>

The ICJ then observed the unique Norwegian coastal line at its watermark and established that Norwegian water marks are not as clear as water marks in other coastal countries, which are usually distinctive in nature.<sup>54</sup> In other countries, the definitive coastal line of the watermark is naturally very well defined, definitively dividing the land from the sea.<sup>55</sup>

---

48. HERSCH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 213 (1977). See *Anglo-Norwegian Fisheries, U.K. v. Norway*, Order, 1951 I.C.J. 117 (Jan. 18, 1951).

49. ROBERT CRIBB & MICHELE FORD, *INDONESIA BEYOND THE WATER'S EDGE: MANAGING AN ARCHIPELAGIC STATE* 35 (2009).

50. MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* 293–94. (Cambridge University Press 2005).

51. See CHURCHILL & LOWE, *supra* note 10, at 28–29.

52. HIRAN WASANTHA JAYEWARDENE, *THE REGIME OF ISLANDS IN INTERNATIONAL LAW* 73 (1990).

53. MARTIN DIXON, ROBERT MCCORQUODALE & SARAH WILLIAMS, *CASES & MATERIALS ON INTERNATIONAL LAW* 358 (6th ed. 2016) [hereinafter DIXON ET AL.].

54. Alexander Orakhelashvili, *The Interpretation of Acts & Rules in Public International Law* 121 (2008).

55. *Id.*

Having understood the particularities of the case, the ICJ validated the Norwegian technique of using a straight baseline to determine its territories by allowing a departure from the traditional procedure for drawing coastal watermark lines.<sup>56</sup> In essence, the U.K. had argued that the straight baseline was only an acceptable technique while drawing the closing boundaries of a bay.<sup>57</sup> The ICJ disagreed and maintained that the straight baseline technique was also usable in cases of fringe islands, rocks, reefs, and islets that are not strictly within the definition of bays.<sup>58</sup> It hence established a landmark case, which developed the straight baseline technique in lands with irregular formations.<sup>59</sup>

However, the ICJ did not maintain that a coastal country could unilaterally determine its maritime territory without considering international law.<sup>60</sup> It conceded certain elementary points in defining baselines. For instance, the ICJ noted that when defining sea territories from coastal lines the baselines should not depart extensively and in an unreasonable fashion from natural formations.<sup>61</sup> It maintained that such a determination could rely on historical economic use and the general use of the coast.<sup>62</sup> ICJ noted regarding the geographical link of fringed Norwegian coasts that the demarcation of baseline should be liberally applied in the case of Norway.<sup>63</sup> The relevant excerpt from the judgment reads as follows:

The real question raised in the choice of base-lines is in effect whether certain sea areas lying within these lines are sufficiently closed linked to the land domain to the subject to the regime of internal waters. This idea, which is at the basis of the determination of the rules relating to bays, should be liberally applied in the case of a coast, the geographical configuration of the rules relating to bays, should be liberally applied in the case of a coast, the geographical configuration of which is as unusual as that of Norway.<sup>64</sup>

In conclusion, the ICJ established that the Norwegian usage of the straight baseline method was particular to its unique topography of coastal

---

56. Jorge A. Vargas, *Mexico and the Law of the Sea: Contributions and Compromises* 80 (2011).

57. Yoshifumi Tanaka, *The International Law of the Sea* 57 (2d. ed. 2015).

58. Douglas M. Johnston, *The Theory and History of Ocean Boundary-Making* 110 (1988).

59. Gerhard von Glahn & James Larry Taulbee, *Law Among Nations: An Introduction to Public International Law* 299–300 (11th ed. 2017).

60. Chris Carleton & Clive H. Schofield, *Developments in the Technical Determination of Maritime Space: Charts, Datums, Baselines, Maritime Zones & Limits*, 3 *Maritime Briefing* 38 (Shelagh Furness ed., 2001).

61. *Id.*

62. Lauterpacht, *supra* note 48 at 216.

63. Dixon et al., *supra* note 53 at 359.

64. *Id.*

lines, and its exercise was sustained by historical practices, including that no country had ever questioned its accordance with international law.<sup>65</sup> This decision of the ICJ has received a considerable amount of academic attention. For instance, Dejo Olowu has noted that the *Anglo-Norwegian Fisheries* case does provide a general rule that the straight baseline procedure to demarcate coastal lines and sea territories, while following the general formation of coastlines, is in accordance with international law and customary practices.<sup>66</sup> Later, even international conventions incorporated this case when defining rules for baselines and straight baselines.<sup>67</sup> For this reason, subsection 2.2 in this paper briefly evaluates the correlation between the LOSC and the *Anglo-Norwegian Fisheries* case.

## B. The Law of the Sea Convention (LOSC)

The LOSC, also known as the UNCLOS,<sup>68</sup> came into force in 1994 after acquiring sixty ratifications.<sup>69</sup> Three conferences were held between 1956 and 1982 to draft the UNCLOS conventions: UNCLOS I (1956–1958), UNCLOS II (1960) and UNCLOS III (1973–1982).<sup>70</sup> Currently, the LOSC of 1982 governs the legal framework of regulations regarding maritime jurisdiction and utilization of seawater by all nations.<sup>71</sup> By 2017, there were 168 parties to this convention.<sup>72</sup> The LOSC has also established a subsidiary organ to implement the legal mechanisms of the LOSC: the International Seabed Authority.<sup>73</sup> Similar establishments, such as the International Maritime Organization and the International Whaling Commission, also employ and enforce the LOSC.<sup>74</sup>

Before the LOSC, the rule of the cannon shot was used to delimit national boundaries at coasts, and this was not usually more than three

---

65. KOSKENNIEMI, *supra* note 50 at 293–95; *see also* LAUTERPACHT, *supra* note 48.

66. 'DEJO OLOWU, INTERNATIONAL LAW: A TEXTBOOK FOR THE SOUTH PACIFIC 38 (2010).

67. ADEMOLA ABASS, COMPLETE INTERNATIONAL LAW: TEXTS, CASES & MATERIALS 224 (2d ed. 2014).

68. DONALD ROTHWELL, STUART KAYE, AFSHIN AKHTAR KHAVARI & RUTH DAVIS, INTERNATIONAL LAW: CASES & MATERIALS WITH AUSTRALIAN PERSPECTIVES 592 (2d ed. 2014) [hereinafter ROTHWELL ET AL.].

69. GERRY O'REILLY, *Ceuta & the Spanish Sovereign Territories: Spanish & Moroccan Claims*, 1 BOUNDARY AND TERRITORY BRIEFING 13 (Clive Schofield ed., 1994).

70. JOHN P. GRANT & J. CRAIG BARKER, PARRY & GRANT ENCYCLOPEDIA OF INTERNATIONAL LAW 335–37 (3d ed. 2009).

71. SHARMA, *supra* note 2.

72. *See* Chronological List of Ratifications of Accessions and Successions to the Conventions and Related Agreements, Oceans & the Law of The Sea (United Nations, May 23, 2017).

73. *See generally* Aline L. Jaeckel, The International Seabed Authority & The Precautionary Principle: Balancing Deep Seabed Mineral Mining & Marine Environment Protection (2017).

74. Thomas Dux, Specially Protected Marine Areas in the Exclusive Economic Zone (EEZ): The Regime for the Protection of Specific Areas of the EEZ for Environmental Reasons Under International Law 93 (2011).



nautical miles in width. After this three-mile boundary, all waters were considered international waters.<sup>75</sup> In the nineteenth century, the United States exorbitantly extended its rights to exploit the natural resources on the continental shelf.<sup>76</sup> Other countries, such as Ecuador, followed this example and extended their rights to the extent of 200 nautical miles.<sup>77</sup> So as to limit national claims and standardize the universality of regulations, the LOSC covered all contingent issues regarding maritime jurisdiction, such as navigation, resource extraction, archipelagic jurisdictions, environmental protection, coastal or national jurisdiction, maritime zones demarcations (such as EEZs and contiguous zones), internal waters, territorial waters, and continental shelves, by defining limits and marking baselines, straight baselines, and baselines at bays and islands.<sup>78</sup> For the clarification of baselines and straight baselines, the LOSC relied heavily on the ICJ's ruling in the *Anglo-Norwegian Fisheries* case.<sup>79</sup>

### III. BASELINES

For the purposes of understanding how lawful maritime jurisdiction and seaward territories are marked, this section will delimit the legal framework of marking baselines. For instance, the leading rules relating to baselines, the concept (and complications) of the straight baseline and their legal standing in defining jurisdictions, will be set out within this section.

The primary function of sea laws in general is to define coastal countries' maritime jurisdictions.<sup>80</sup> To do this, baselines are used to draw all kinds of zones, such as seaward borders. For this reason, rules and regulations regarding baselines remain the utmost focus of sea laws,<sup>81</sup> and baselines and their rules receive considerable attention.<sup>82</sup> Similarly, the positions of islands, islets, and rocks in maritime law determine the state's maritime jurisdictions.<sup>83</sup>

The laws of the sea require delimitations of maritime zones on the basis of measured spaces from states' coasts to define the maritime borders of a

---

75. Douglas M. Johnston, *The International Law of Fisheries: A Framework for Policy-Oriented Inquiries* 174 (Martinus Nijhoff Pub. ed. 1987).

76. Nat. Res. Council, et. al., *Assessment of the U.S. Outer Continental Shelf Environmental Studies Program: III. Social and Economic Studies* 109 Nat. Acad. Press (1992).

77. Roach & Smith, *supra* note 21, at 195.

78. Abass, *supra* note 67.

79. *See* Churchill & Lowe, *supra* note 10, at 30.

80. *See generally* Clive H. Schofield, Seokwoo Lee & Moon-Sang Kwon, *The Limits of Maritime Jurisdiction* 2013).

81. Patrick H.G. Vrancken, *South Africa and the Law of the Sea* 83 (2011) [hereinafter Vrancken].

82. *Id.*

83. Hance Smith & Adalberto Vallega, *The Development of Integrated Sea Use Management* 52 (2002).

country.<sup>84</sup> Therefore, the defining line that marks external seaward water territories is essential to demarcate the national maritime jurisdiction of any coastal country. This line is termed the baseline.<sup>85</sup> The baseline also serves the purpose of differentiating between internal waters and sea territories.<sup>86</sup> This differentiation by baseline in states' internal waters and seaward waters territories is essential because the mechanism of the legal framework in each case is entirely different.<sup>87</sup>

In accordance with the LOSC's legal framework, baselines are drawn in two different ways to curtail problems. The first type of baseline is the regular or normal baseline; the second type of baseline is the straight baseline.<sup>88</sup>

To understand baselines systematically, this section is divided into three subsections with one subsection being further divided into three factions. Subsection 2.1 will briefly outline maritime zones and their respective rights. Subsection 2.2 will broadly outline normal baselines. Subsection 2.3 will define the notion of the straight baseline and delimit its regulations in accordance with the law. For this reason, this subsection is further divided into three factions. Subsection 2.3(a) addresses standard imperatives; Subsection 2.3(b) assesses the relevant case law of the ICJ; and Subsection 2.3(c) discusses regulations under the LOSC. Furthermore, complicating factors within the application of the straight baseline technique will be evaluated systematically within this subsection.

#### A. Understanding Maritime Zones

The baseline at low waters is the juncture between deep waters and low waters at the coast.<sup>89</sup> Anything within the internal waters of a coastal country before the baseline is the sovereign territory of that state. After the baseline come twelve nautical miles of territorial sea, then twelve nautical miles of contiguous zone, then 200 nautical miles of EEZ, and then the high seas. However, the twelve nautical mile region of the contiguous zone is included within the 200 nautical miles of EEZ.<sup>90</sup> In addition, the continental shelf comprises 200 to 350 nautical miles of seabed territories.<sup>91</sup> Continental Shelf

---

84. VRANCKEN, *supra* note 81.

85. *Id.*

86. DUBNER, *supra* note 37.

87. S. GRUBBAY, MARINE PROTECTED AREAS: PRINCIPLES AND TECHNIQUES FOR MANAGEMENT 33 (Springer 2012).

88. ILIAS BANTEKAS & SUSAN NASH, INTERNATIONAL CRIMINAL LAW 173 (3d ed. 2009).

89. TULLIO TREVES & LAURA PINESCHI, THE LAW OF THE SEA: THE EUROPEAN UNION AND ITS MEMBER STATES 522 (1997).

90. See Schematic Map of Maritime Zones, THE OXFORD HANDBOOK OF MARITIME ARCHAEOLOGY 927 (Alexis Catsambis et al. eds., 2011).

91. *Maritime Zones and Boundaries*, NAT'L OCEANIC AND ATMOSPHERIC ADMIN., [http://www.gc.noaa.gov/gci\\_maritime.html](http://www.gc.noaa.gov/gci_maritime.html) (last visited Nov. 4, 2017).

starts at the end of territorial sea limits and includes all seabed area within the contiguous zone and the EEZ, plus claimable 150 nautical miles of the high seas.<sup>92</sup>

All maritime zones, such as internal waters, territorial waters, EEZs, and continental shelves, offer different kinds of rights and privileges for coastal countries.<sup>93</sup> All landward waters from the baseline are internal waters and are considered the sovereign borders of the state, offering the same rights as a stretch of sovereign land.<sup>94</sup> Marking of this region will be discussed later in this section. Then, twelve nautical miles of territorial waters are also considered the sovereign territory of a state.<sup>95</sup> Like internal waters, territorial waters also offer airspace rights to the coastal state that has control over its boundaries to its coastal state.<sup>96</sup> Territorial waters and internal waters offer similar rights; the only dissimilarity to internal water rights is that it must allow safe passage to foreign sailors.<sup>97</sup> Then, the twelve nautical miles of the contiguous zone offer limited enforcement in the region.<sup>98</sup> The EEZ then offers exclusive rights over natural resources in the sea waters, which includes living and nonliving resources.<sup>99</sup> Finally, 150 extra nautical miles of the seabed of the continental shelf offers only the nonliving resources of the sea.<sup>100</sup> To further understand these rights and zones more thoroughly for the purposes of understanding the discussion in the later sections, please see the outlined regions and their rights in the following figure (Figure 1: Offshore extent of the maritime zones recognized under international law).<sup>101</sup>

---

92. MARK MONMONIER, *NO DIG, NO FLY, NO GO: HOW MAPS RESTRICT AND CONTROL* 74 (2010).

93. *See* CARLETON & SCHOFIELD, *supra* note 60, at 17.

94. ROBIN WARNER & STUART KAYE, *ROUTLEDGE HANDBOOK OF MARITIME REGULATION AND ENFORCEMENT* 383 (2015).

95. *Maritime Zones and Boundaries*, *supra* note 91.

96. *Id.*

97. JAMES KRASKA & RAUL PEDROZO, *INTERNATIONAL MARITIME SECURITY LAW* 218 (2013).

98. M.D. SHARMA, *PARAMILITARY FORCES OF INDIA* 47 (2008).

99. NORDQUIST, *supra* note 40 at 491.

100. JOANNA MOSSOP, *THE LAW APPLICABLE TO THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES: RIGHTS AND RESPONSIBILITIES* 71, 150 (2016).

101. *Offshore Petroleum and Greenhouse Gas Storage Amendment*, PARLIAMENT OF AUSTL. (Feb. 27, 2015), [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1415a/15bd077](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1415a/15bd077).

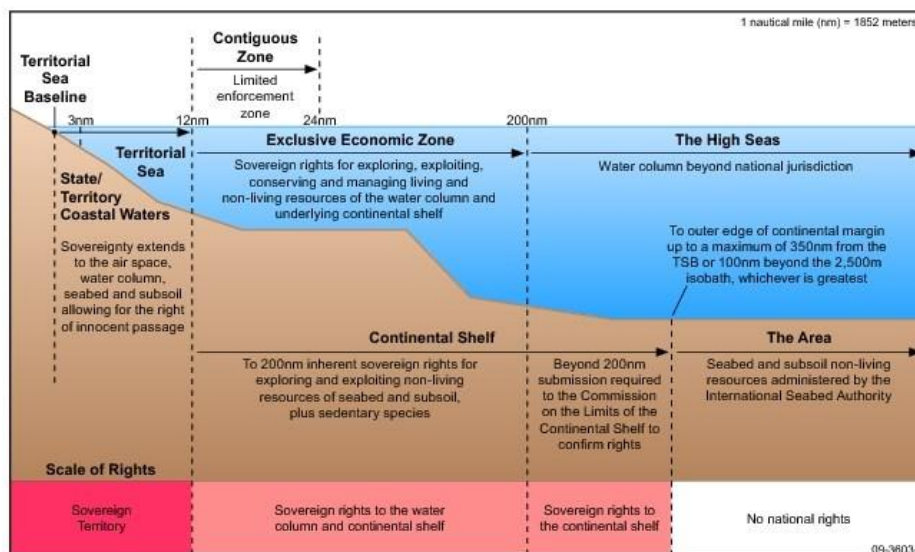


Figure 1: Offshore extent of the maritime zones recognized under international law

## B. Normal Baselines

Normal baselines are, in essence, natural low-water marks near the coastal regions of states in low tide regions.<sup>102</sup> Article 5 of the LOSC describes normal baselines in the following manner:

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.<sup>103</sup>

This provision from the LOSC establishes the general rule that, in all circumstances where the LOSC has not exceptionally defined the baseline in regard to the specificity of the situation, water marks' lines at the coast are the defining baselines to calculate seaward maritime jurisdiction.<sup>104</sup> Analogously, the ICJ explained normal baselines in the landmark *Anglo-Norwegian Fisheries* case. In this case, the ICJ noted as follows:

102. FORBES, *supra* note 13.

103. United Nations Convention on the Law of the Sea, art. 5, Dec. 10, 1982 [hereinafter LOSC].

104. DAUD HASSAN, TUOMAS KUOKKANEN & NIKO SOININEN, *TRANSBOUNDARY MARINE SPATIAL PLANNING AND INTERNATIONAL LAW* 76 (2015).

[F]or the purposes of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, or the mean between the two tides, which has generally been adopted in the practice of States. This criterion is the most favourable to the coastal State and clearly shows the character of territorial waters as appurtenant to the land territory.<sup>105</sup>

The ICJ established that, normally, in accordance with a state's general practices, the low-water mark or the mean between low and high-water marks is used as the baseline to define seaward territories.<sup>106</sup> This baseline is used by coastal states to differentiate between seaward territories and land territories.<sup>107</sup>

It is pertinent to note that it is the coastal country's discretion to demarcate suitable baselines, which are customarily marked by low-water marks on relevant maps.<sup>108</sup> Within this context, the ILC has noted that "there is no uniform standard by which States in practice determine this line."<sup>109</sup> However, the predominant rule for determining the low-water mark is that it stems from the "tidal datum."<sup>110</sup> The "tidal datum" is defined in various ways, and it is each country's choice to cherry-pick any definition it chooses.<sup>111</sup> Countries generally choose lower-tide water marks, since that results in extended seaward territory.<sup>112</sup> However, there is very little range available for states to be able to exploit the tidal datum, since the range of the tidal datum is usually minuscule and offers little scope to extend territory.<sup>113</sup>

The provisions of the LOSC are silent on the confrontation of low-water marks against "large-scale charts." As a result, it can be projected that coastal countries enjoy free rein in shaping their normal baselines.<sup>114</sup> The closest specification on this debate can be found in the United Nations Division for Ocean Affairs and the Law of the Sea (UNDOALOS). The UNDOALOS delimits this discretion into a range of 1:50,000 to 1:200,000.<sup>115</sup>

It is pertinent to note that one country's low-water marking on a map can provoke disputes among that state and other contingent coastal states.<sup>116</sup> For instance, in 2007, Guyana brought a claim to the forum of international

---

105. See Sohn, Noyes, Franckx & Juras, *supra* note 3, at 230.

106. See Johnston, *supra* note 58, at 365.

107. *Id.*

108. See Churchill & Lowe, *supra* note 10, at 46.

109. See Nordquist, *supra* note 40.

110. Johnston, *supra* note 58, at 104.

111. *Id.*

112. Tanaka, *supra* note 57, at 45–47.

113. Nuno Sergio Marques Antunes, The Importance of the Tidal Datum in the Definition of Maritime Limits and Boundaries 30–35 (IBRU, 2000).

114. See Tanaka, *supra* note 57.

115. P.B. Beazley, Technical Aspects of Maritime Boundary Delimitation 3 (1994); see also Tanaka, *supra* note 57, at 45.

116. FIETTA & CLEVERLY, *supra* note 39; see also WRIGHT & BARLETT, *supra* note 39.

arbitration in which it claimed that Suriname's baseline point was imprecisely marked.<sup>117</sup> The court, however, did not agree with Guyana on this matter.<sup>118</sup> Yet, as can be seen from this case, while the question of determining baseline points can be brought to international tribunals, the burden of proof is of course to be borne by the accusing country.<sup>119</sup>

Similarly, the LOSC is also silent on the drawing of normal baselines in the polar regions, which are always enclosed in thick layers of ice.<sup>120</sup> There is neither any specific law nor prevalent practice among states, such as customary law, on demarcating baselines in the polar regions.<sup>121</sup> To resolve this uncertainty, scholars propose that the low-water marks along the ice shelves be used as baselines. Of course, the edges of ice shelves change seasonally.<sup>122</sup> Therefore, the question of encompassing seasonal disparities arises within this context. Experts have noted that to avoid this issue the maximum or minimum extensions of ice shelves could be used to demarcate baselines in the polar regions.<sup>123</sup> Nevertheless, it is to be noted that this contextualization of the polar regions remains theoretical.<sup>124</sup>

### C. Straight Baselines

Straight baselines are artificial geometric patterns, marked around coastal regions as an alternate means to denote baselines in some specific conditions, such as indented or archipelagic coasts.<sup>125</sup> This subsection will delineate the standard imperative of straight baselines, coupled with case law and legal mechanisms regarding its regulations and developments.

#### 1. *Standard Imperative of Straight Baselines*

In general practice, low-water marks at coastal areas are customarily considered baselines<sup>126</sup> However, this conventional technique for marking baselines poses difficulties in outlining baselines along a complex set of topographies, such as fringe islands and islets.<sup>127</sup> In such a situation, the

---

117. *Guyana v. Suriname* (Perm. Ct. Arb. 2007).

118. SOHN, NOYES, FRANCKX, & JURAS, *supra* note 3, at 225; *Guyana v. Suriname* (Perm. Ct. Arb. 2007).

119. FABIÁN RAIMONDO, *GENERAL PRINCIPLES OF LAW IN THE DECISIONS OF INTERNATIONAL CRIMINAL COURTS & TRIBUNALS* 111 (2008).

120. ALEX G. OUDE ELFERINK & DONALD R. ROTHWELL, *DECISIONS OF INTERNATIONAL* 341 (Martinus Nijhoff Pub., 2001).

121. *See id.* ("Except for the Canadian polar archipelagic use of baseline, while disregarding the polar aspect. . .").

122. *See* TANAKA, *supra* note 57, at 46–47.

123. *See* ELFERINK & ROTHWELL, *supra* note 120, at 35.

124. *See id.*

125. *See* TANAKA, *supra* note 57, at 47–50.

126. FORBES, *supra* note 13.

127. SILVINA BAKARDZHIEVA, *ARCHIPELAGIC STATES AND BASELINES* 14 (2016).

technique of straight baselines—to demarcate land territory—facilitates convenience. The United Nations has defined the straight baseline technique to demarcate land territories of coastal states as follows:

A system of straight lines joining specified or discrete points on the low-water line, usually known as straight baseline turning points, which may be used only in localities where the coastline is deeply indented and cut into, or if there is fringe of islands along the coast in its immediate vicinity.<sup>128</sup>

In other words, the straight baseline technique is a procedure where some appropriate points that are generally outlying extensions of land geographies or coastal water marks toward sea territories are combined in a straight line to delimit sea territories.<sup>129</sup> This line is marked on sea territories, rather than over natural coastal low-water marks, by adjoining selected points in a straight line.<sup>130</sup>

Correspondingly, Article 7 of the LOSC defined the straight baseline technique as follows:

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.<sup>131</sup>

This approach to the straight baseline technique makes it explicitly clear in international law that the straight baseline technique is employable by coastal countries only if the topography of the coastal formation is in accordance with the prerequisites of Article 7 of the LOSC.<sup>132</sup> Paragraph 1 of Article 7 does not specifically provide that low-water marks should be chosen as appropriate points to draw straight baselines, but it is generally accepted that points should be drawn on the furthest extensions on the side of sea territories, rather than toward the internal waters of land territories.<sup>133</sup> Paragraph 2 of Article 7 of the LOSC covers this supposition and clears up

---

128. DIV. FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, UNITED NATIONS SEA UNUN, HANDBOOK ON THE DELIMITATION OF MARITIME BOUNDARIES 148 (2010).

129. CHURCHILL & LOWE, *supra* note 10, at 29–33.

130. *See id.*

131. LOSC, *supra* note 103, art. 7.

132. KOPELA, *supra* note 42, at 72.

133. Rene Jean Dupuy & Daniel Vignes, A Handbook on the New Law of the Sea 10 (Martinus Nijhoff Pub. 1991).

the ambiguity by mentioning low-water marks, saying that low-water marks should be used to draw straight baselines.<sup>134</sup>

## 2. *Straight Baselines in the Anglo-Norwegian Fisheries Case*

To discuss the legal definition and understandings of the straight baseline procedure to mark national territories, the *Anglo-Norwegian Fisheries* case holds utmost relevance, because it helped to develop the procedure of marking baselines in a straight line. The relevant area in this case is part of Norway, which contains at least 120,000 islands of various sizes and contains hundreds of dispersed rocks, reefs, and islets.<sup>135</sup>

In 1935, Norway demarcated its territories in this area by using the straight baseline rule, adjoining 48 base points in a straight line.<sup>136</sup> Subsequently, owing to this demarcation, Norwegian authorities arrested considerable numbers of British men who were fishing within the nationally marked Norwegian boundaries.<sup>137</sup> These arrests were disputed by the UK, which brought the case to the ICJ in 1949.<sup>138</sup> In 1951 the ICJ pronounced as follows:

[W]here a coast is deeply indented and cut into . . . the baseline becomes independent of the low water mark, and can only be determined by means of a geometrical construction.<sup>139</sup>

Here, the court explained that, in the specific situation where a coast is deeply scooped or cut, the baseline is not to be necessarily drawn by low-water marks but can be drawn by some calculated geometric patterns in a straight line by joining located base points.<sup>140</sup> The court supplemented this as follows:

The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight base-lines method

---

134. The IMLI Manual on International Maritime Law: The Law of the Sea (David Joseph Attard, Malgosia Fitzmaurice, & Norman A. Martínez Gutiérrez eds., 2014).

135. Jan Klabbers, *International Law* 30 (2013).

136. Jayewardene, *supra* note 52, at 48.

137. Ricardo S. Lazo, *Philippine Governance & the 1987 Constitution* 59 (2009).

138. Div. for Ocean Affairs and the Law of the Sea, United Nations, *Digest of International Cases on the Law of the Sea* 6 (2007).

139. Shigeru Oda, *Fifty Years of the Law of the Sea: With a Special Section on the International Court of Justice: Selected Writings of Shigeru Oda* 303 (2003).

140. CHURCHILL & LOWE, *supra* note 10, at 29.



and that they have not encountered objections of principle by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them.<sup>141</sup>

Here, the ICJ constructed the rule that the straight baseline method to demarcate baselines can be used in the general direction of the coast.<sup>142</sup> The court added that the rule was chiefly established by the customary practices of states, many of which had employed the straight baseline method to demarcate their territories and no other neighboring states had contested or objected to these demarcations.<sup>143</sup> Because other countries had used this method for a long time, the ICJ also decided that the use of the straight baseline method to delineate baselines of countries was in conformity with statutory and customary international laws.<sup>144</sup>

To specify the techniques to delimit baselines by the straight baseline method, the ICJ also set down three rules for drawing straight baselines. The first rule was that the straight baseline should not diverge considerably from coastal lines, and it must be drawn in the general direction of the coast, since the land itself provides the right to demarcate baseline boundaries.<sup>145</sup> The second rule was that water included within the new demarcations laid within the straight baselines must be closely knitted to the land domain.<sup>146</sup> The third rule was that the historical practices of trade and economics within the region must also be weighed in the equation when marking any straight baselines.<sup>147</sup> And, decisively, the ICJ concluded by a majority that the straight baseline technique used by Norway was in conformity with international law.<sup>148</sup>

### 3. *Straight Baselines in the LOSC*

Article 7 of the LOSC covers the straight baseline rule to draw baselines in detail. Article 7 of the LOSC reads as follows:

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.

---

141. DIXON ET AL., *supra* note 53, at 359.

142. CARLETON & SCHOFIELD, *supra* note 60, at 38.

143. Abass, *supra* note 67, at 48.

144. F.A. ENGELEN, INTERPRETATION OF TAX TREATIES UNDER INTERNATIONAL LAW 11 (2004).

145. CARLETON & SCHOFIELD, *supra* note 60.

146. *Id.*

147. See ENGELEN, *supra* note 144.

148. Tim Hillier, Sourcebook on Public International Law 372 (1988).

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.
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.<sup>149</sup>

Article 7 of the LOSC incorporates the straight baseline technique as set out in the *Anglo-Norwegian Fisheries* case to demarcate baselines.<sup>150</sup> This incorporation of the *Anglo-Norwegian Fisheries* case is reflected in the language used in Article 7, Paragraph 1, which is a verbatim reproduction of the wording in part of the judgment in the *Anglo-Norwegian Fisheries* case, reading “where the coastline is deeply indented and cut into.”<sup>151</sup>

Paragraph 1 of Article 7 provides general requirements, and envisions certain situations where the straight baseline technique can be used. It establishes the rule that the straight baseline technique can be employed in

---

149. LOSC, *supra* note 103, art. 7.

150. Abass, *supra* note 67.

151. *See id.*

two situations: one, where the coastal line is deep or cut; and, two, where the islands are dispersed close to national land or coast.<sup>152</sup>

Paragraph 2 of the Article then sets out the formula to draw baseline points to formulate straight baselines in particular situations where the baseline is prone to natural changes. It articulates that, in situations where natural coastline is unstable, base points should be drawn to the farthest outward low-water marks toward sea territories.<sup>153</sup>

Paragraph 3 of Article 7 requires that the straight baseline must not diverge extensively away from the natural direction of the coast, and must maintain a close distance to internal waters and land, while marking the baseline points to draw a straight line.<sup>154</sup>

Paragraph 4 explains that straight lines can be marked to or from low tide elevations only in two situations: first, where installations such as lighthouses are already installed on these low-tide elevations; and, second, where international customary practices have approved such markings.<sup>155</sup> Low-tide elevations are explained as the land area that is above water in low tides and submerged in high tides.<sup>156</sup> In 2009, the ICJ, following Article 13 of the LOSC, established that low-tide elevations could not be used to mark base points to define maritime jurisdiction.<sup>157</sup>

Paragraph 5 of the Article suggests that the economic interests of the region with regard to their historical practices must also be weighed in relation to the validity of marking straight baselines along coasts.<sup>158</sup> Finally, Paragraph 6 establishes that straight baseline demarcations must not cut off the territorial sea of other contingent states' economic or high seas zones.<sup>159</sup>

In addition to the striking resemblance of Paragraph 1 of Article 7 to the landmark *Anglo-Norwegian Fisheries* case, most of the directing requirements in almost all paragraphs of Article 7 incorporate the *Anglo-Norwegian Fisheries* judgment. For instance, both the *Anglo-Norwegian Fisheries* case and Paragraph 2 of Article 7 maintain that the straight line must not diverge extensively away from the coastal line.<sup>160</sup> Similarly,

---

152. MICHAEL BYERS, *INTERNATIONAL LAW & THE ARCTIC* 50 (2013).

153. ELFERINK & ROTHWELL, *supra* note 120, at 54.

154. S. JAYAKUMAR, TOMMY KOH & ROBERT BECKMAN, *THE SOUTH CHINA SEA DISPUTES & LAW OF THE SEA* 32 (2014).

155. ROACH & SMITH, *supra* note 21, at 66.

156. SAM BATEMAN & RALF EMMERS, *SECURITY & INTERNATIONAL POLITICS IN THE SOUTH CHINA SEA* 9 (2008); *see also* LOSC, *supra* note 103, art. 13.

157. MICHAEL B. GERRARD & GREGORY E. WANNIER, *THREATENED ISLAND NATIONS: LEGAL IMPLICATIONS OF RISING SEAS & A CHANGING CLIMATE* 60–61 (2013); *see also* Maritime Delimitations and Territorial Questions Between Qatar and Bahrain (*Qatar v. Bahrain*), Judgment, 2001 I.C.J. (Mar. 16, 2001).

158. ROACH & SMITH, *supra* note 21, at 65.

159. GEORGE K. WALKER, *DEFINITIONS FOR THE LAW OF THE SEA: TERMS NOT DEFINED BY THE 1982 CONVENTION* 307 (2011).

160. CARLETON & SCHOFIELD, *supra* note 60.

Paragraph 5, in a very similar way to the *Anglo-Norwegian Fisheries* case, encompasses historical economic use while drawing straight baselines.<sup>161</sup> This incorporation of the ICJ decision in an international instrument substantiates the juridical impression of the progression of international law.

From a broad perspective of Article 7, three paragraphs, namely 1, 2, and 3, address the requirements and conditions of topographical formations of coastal regions, with special regard to unstable natural fluctuations and fringe islands.<sup>162</sup> Three other paragraphs, namely 4, 5, and 6, incorporate regulations regarding international customary law, historical practices, and international consensus by not injuring the economic aspect of coastal regions.<sup>163</sup>

One question on using such a bifurcation for drawing straight baselines is whether a straight line can be used exclusively to include the economic aspect. The answer lies in two sources. First, the *Anglo-Norwegian Fisheries* case plainly maintains that the economic aspect must be encompassed in addition to the general validation of the straight baseline rule.<sup>164</sup> Second, Paragraph 5 of Article 7 explicitly establishes that the economic aspect must be integrated when the straight line baseline practice is vindicated in accordance with the requirements of Paragraph 1.<sup>165</sup> Besides this, similar to Article 7 and the *Anglo-Norwegian Fisheries* case, the ICJ concluded in a 2001 case between Qatar and Bahrain that such conditions were primarily either that the coastline was deeply indented and cut into, or that there was a fringe of islands along the coast in its immediate vicinity.<sup>166</sup>

However, the main issue concerning the straight baseline rule is the ambiguity in the defined criteria of prerequisites to draw baselines. For instance, the straight baseline test requires that to mark a straight baseline the coastal line must be indented or cut into, or include fringe islands.<sup>167</sup> But the test of drawing a straight baseline does not delimit and define the specificities of the maximum allowed length of the straight baseline, the acceptable length of the indented curves in the coast, or the number of islands, islets, or rocks to be considered fringe islands.<sup>168</sup> This vagueness creates uncertainty and

---

161. LILLY WEIDEMANN, INTERNATIONAL GOVERNANCE OF THE ARCTIC MARINE ENVIRONMENT: WITH PARTICULAR EMPHASIS ON HIGH SEAS FISHERIES 90 (2014).

162. HUI-GWON PAK, THE LAW OF THE SEA & NORTHEAST ASIA: A CHALLENGE FOR COOPERATION 19–20 (2000).

163. *See id.*

164. Malcolm Evans, International Law 655 (2010).

165. *Id.*

166. *Id.* at 416; *see also* Maritime Delimitations and Territorial Questions Between Qatar and Bahrain (*Qatar v. Bahrain*), Judgment, 2001 I.C.J. (Mar. 16, 2001).

167. CHURCHILL & LOWE, *supra* note 10, at 3.

168. KRASKA & PEDROZO, *supra* note 97, at 246–47.

makes the drawing of straight baselines very subjective. This in turn allows countries to exorbitantly mark their baselines. For example, Burma has marked a 222-mile straight baseline and subsequently appropriated 14,300 square miles into its internal waters, equivalent to the entire area of Denmark.<sup>169</sup> Similarly, Vietnam has drawn a 161-mile straight baseline, which has encompassed a considerable expanse of sea territory into its internal waters.<sup>170</sup> Furthermore, the economic interests included within the test, and the general direction requirement while drawing a straight baseline, are also vague and subjective in nature and not guided under any law.<sup>171</sup> The notion of straight baselines is too subjective and broad, relying on the discretion of the coastal countries to draw their own boundaries.<sup>172</sup> In the contemporary context, the benefit of this rule by coastal states is vast.<sup>173</sup> This is mainly because straight baselines tend to increase the national jurisdictions of countries by consuming seaward territory.<sup>174</sup> This discretion of coastal countries does not permit the excessive and illegitimate marking of boundaries. The LOSC and the ICJ stress that objections from a relevant state invalidate such markings, while maintaining that only coastal states can unilaterally demarcate their baselines.<sup>175</sup>

In the *Anglo-Norwegian Fisheries* case, the ICJ concluded the following in this context:

The delimitation of the sea areas has always an internal aspect, it cannot be dependent merely upon the will of the coastal state as expressed in its municipal law. Although it is true that the act of delimitation is necessary in unilateral act, because only the coastal state is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law.<sup>176</sup>

Similarly, in the *Qatar v. Bahrain* case the ICJ concluded “[t]he method of straight baselines, which is an exception to the normal rules for the

---

169. ROACH & SMITH, *supra* note 21, at 20.

170. DON McRAE & GORDON MUNRO, ON CANADIAN OCEANS POLICY: NATIONAL STRATEGIES AND THE NEW LAW OF THE SEA 223 (2012).

171. DAVOR VIDAS, WILLY OSTRENG & FRIDTJOF NANSEN-STIFTELSEN PA POLHOGDA, ORDER FOR THE OCEANS AT THE TURN OF THE CENTURY 449 (1999); *see also* Kopela, *supra* note 42, at 97.

172. CHURCHILL & LOWE, *supra* note 10, at 46.

173. *See* Roach & Smith, *supra* note 21, at 20; *see also*, McRae & Munro, *supra* note 170.

174. *See id.*

175. TANAKA, *supra* note 57; *see also* LOSC, *supra* note 103, art. 7; *Anglo-Norwegian Fisheries*, U.K. v. Norway, Order, 1951 I.C.J. 117 (Jan. 18, 1951).

176. THOMAS COTTIER, *EQUITABLE PRINCIPLES OF MARITIME BOUNDARY DELIMITATION* 398-99 (2015); *see also*, RALPH ZACKLIN, *THE CHANGING LAW OF THE SEA: WESTERN HEMISPHERE PERSPECTIVES* 91 (1974).

determination of baselines, may only be applied if a number of coordinates are met. This method must be applied restrictively.”<sup>177</sup>

Another issue in the drawing of straight baselines under Article 7 of the LOSC is that there is no uniform customary international practice in regard to the rules under Article 7.<sup>178</sup> This is mainly because the international practices of each coastal state when marking straight baselines differ enormously.<sup>179</sup> Furthermore, frequent baseless objections from the EU and most particularly the US, against every demarcation of straight baselines—often even when they do not border affected areas—have made *opinio juris* on this matter more convoluted and challenging to achieve unanimous consensus.<sup>180</sup> Besides this, Article 7 establishes that installations such as lighthouses on low-tide elevations can demarcate baselines in low-tide elevations, to endorse international recognition.<sup>181</sup> States do not generally install lighthouses or similar installations, as evidenced by the *Anglo-Norwegian Fisheries* case, where there were no such installations involved,<sup>182</sup> nor do all states conform to straight demarcations, as evidenced by frequent US objections.<sup>183</sup> Furthermore, the prerequisite of not infringing the maritime zones of neighboring coastal countries to ensure freedom of navigation is also not consistently reflected in customary international practices.<sup>184</sup> For instance, France did not infringe Monaco’s sea territory or EEZ by marking its straight baseline.<sup>185</sup> But, on the other hand, Croatia did infringe Bosnia and Herzegovina’s maritime jurisdiction of EEZ.<sup>186</sup>

### C. EXCESSIVE DEMARCATION OF BASELINES

For almost 30 years, states have generously demarcated their baselines to claim excessive maritime jurisdictions.<sup>187</sup> The lack of an objective test in

---

177. SOHN, NOYES, FRANCKX, & JURAS, *supra* note 3, at 252; *see also* Maritime Delimitations and Territorial Questions Between Qatar and Bahrain (*Qatar v. Bahrain*), Judgment, 2001 I.C.J. (Mar. 16, 2001).

178. ALEX G. OUDE ELFERINK, STABILITY AND CHANGE IN THE LAW OF THE SEA: THE ROLE OF THE LOS CONVENTION 108 (2005).

179. *See* ROACH & SMITH, *supra* note 21, at 20; *see also* MCRAE & MUNRO, *supra* note 170.

180. *See* TANAKA, *supra* note 57, at 47–54.

181. CARLETON & SCHOFIELD, *supra* note 60, at 37–38.

182. *See* TANAKA, *supra* note 57, at 47–54.

183. RUMLEY ET AL., *supra* note 32; *see also* MARK MONMONIER, COAST LINES: HOW MAPMAKERS FRAME THE WORLD AND CHART ENVIRONMENTAL CHANGE 106 (2008).

184. *See* TANAKA, *supra* note 57, at 47–54.

185. MIJAMTJA GRBEC, THE EXTENSION OF COASTAL STATE JURISDICTION IN ENCLOSED OR SEMI-ENCLOSED SEAS: A MEDITERRANEAN AND ADRIATIC PERSPECTIVE 157 (2013).

186. TANAKA, *supra* note 57, at 51.

187. JAMES KRASKA, MARITIME POWER & THE LAW OF THE SEA: EXPEDITIONARY OPERATIONS IN THE WORLD POLITICS 110 (2011).

Article 7 of the LOSC gave rise to these extravagant baseline claims.<sup>188</sup> For this reason, the LOSC and its definitional approach to baselines has been the focus of scholars around the world.<sup>189</sup> Article 7 of the LOSC empowers nations to demarcate baselines at their discretion in the coastal areas that are “deeply indented and cut into, or if there is a fringe of islands along the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity.”<sup>190</sup> Regrettably, the LOSC does not provide for how long or short a “deeply indented or cut” coast has to be in order to qualify for the marking of a straight baseline.<sup>191</sup> Similarly, the LOSC is also silent on how many or how far or near the fringe islands should be in order to include them within the perimeters of a straight baseline.<sup>192</sup>

Although the intended purpose of the LOSC is clear that it was meant to ease difficulties in marking baselines at complex coastal areas, the mechanism it provides to draw straight baselines yields certain complications, such as state practices of demarcating excessive territory through the straight baseline technique.<sup>193</sup> Remarking on the loose ends under Article 7 of the LOSC, Clive Schofield has noted that the conditions for straight baselines in the LOSC allow every country of the world to mark straight baselines around their coasts, since every coast in the world is “indented or cut into” to a greater or lesser extent.<sup>194</sup>

Over time, this assertion has been proven correct, as many countries have exploited Article 7 to best suit their interests by demarcating straight baselines very generously.<sup>195</sup> The United States and the ICJ have attempted to control these extravagant baselines. Through its “Freedom of Navigation” program, the United States has constantly challenged straight baseline demarcations by nations around the world, even in the absence of apparent contingent interests.<sup>196</sup> On the other hand, the ICJ, in the *Qatar v. Bahrain* case, held that demarcations of straight baselines in the context of Article 7 of the LOSC must be marked restrictively.<sup>197</sup>

By state practices, it can be noted that, particularly over the last few decades, states in the Asia-Pacific region tend to demarcate excessive straight

---

188. SHICUN WU & MARK VALENCIA, UN CONVENTION ON THE LAW OF THE SEA AND THE SOUTH CHINA SEA 132 (2016).

189. See, e.g., *id.*

190. ROACH & SMITH, *supra* note 21, at 676.

191. JAYAKUMAR, KOH, & BECKMAN, *supra* note 154.

192. See *id.*

193. KRASKA, *supra* note 187.

194. Clive Schofield, *Departures from the Coast: Trends in the Application of Territorial Sea Baselines under the Law of the Sea Convention*, 27(4) INT’L J. OF MARINE AND COASTAL L., 723, 727 (2012).

195. See *id.*

196. BAATZ, *supra* note 35, at 309.

197. Maritime Delimitations and Territorial Questions Between Qatar and Bahrain (*Qatar v. Bahrain*), Judgment, 2001 I.C.J. Rep. 40, ¶ 212-215 (Mar. 16, 2001).

baselines to include as much sea waters in their internal waters as they can.<sup>198</sup> These states have characteristically drawn straight baselines to secure their personal interests by exploiting the vagueness of Article 7 of the LOSC.<sup>199</sup> This aggressive behavior among coastal states is due, at least in part, to the absence of significant penalties in the legal framework.<sup>200</sup>

#### A. The Philippines

The Philippines drew a straight baseline around its archipelagic islands in 1961,<sup>201</sup> long before the LOSC had emerged. The United States contested the Philippines baseline in the same year.<sup>202</sup> After becoming a party to the LOSC in 1982, the Philippines declared, in 1984, that its straight baseline stood despite of the convention.<sup>203</sup> The United States, along with other states, such as Australia, Bulgaria, Belarus, Czechoslovakia, and the USSR contested this declaration and baseline.<sup>204</sup>

#### B. Thailand

In 1959, Thailand introduced its straight baseline.<sup>205</sup> In 1970, Thailand again introduced three more systems of straight baselines, which were revised in 1992.<sup>206</sup> Within seven days, these lines were revised again using an additional straight baseline system and the inclusion of new areas, thereby enclosing all of peninsular Thailand in a straight baseline system. In 1994, Germany, on behalf of European Union, contested the excessive inclusion of internal waters by Thailand.<sup>207</sup> It noted that Thailand's straight baselines are as long as 60, 81, and 98 miles in length in a straight line, which cannot be considered to be in accordance with the legal framework of the LOSC.<sup>208</sup> Similarly, the United States is currently reviewing Thailand's straight baseline systems to note the excessive demarcation of baselines.<sup>209</sup> However,

---

198. KRASKA, *supra* note 187, at 437-40.

199. WU & VALENCIA., *supra* note 188.

200. *See* Schofield, *supra* note 194, at 727-28.

201. JAYAKUMAR ET AL., *supra* note 154, at 50.

202. YANN-HUEI SONG & KEYUAN ZOU, MAJOR LAW AND POLICY ISSUES IN THE SOUTH CHINA SEA: EUROPEAN AND AMERICAN PERSPECTIVES 105 (2016).

203. ROACH & SMITH, *supra* note 21, at 213.

204. TANAKA, *supra* note 57, at 110.

205. PAUL GANSTER & DAVID E. LOREY, BORDERS & BORDER POLITICS IN A GLOBALIZING WORLD 304 (2005).

206. *See id.* at 303.

207. *See id.* at 302-05.

208. *See* ROACH & SMITH, *supra* note 21, at 64.

209. *See* U.S. Navy Judge Advocate General's Corps: JAG Strategic Plan, 2025, *Thailand's Straight Baseline Claims*, <http://www.jag.navy.mil/organization/documents/mcrm/ThailandChart.pdf> (last visited, Aug. 26, 2017) (displaying Thailand's baseline claims and noting that the United States does not officially recognize some).



it is pertinent to note that Thailand has the world's largest number of islands, and it is currently counting its islands to demarcate the baselines along its coasts again, in order to enjoy the privileges of internal waters and resolve the conflicting interests of its neighboring countries.<sup>210</sup>

### C. The Maldives

The Maldives marked its straight baselines in 1964, published them in its constitution, and subsequently communicated them to the United Nations Secretariat in 1972.<sup>211</sup> The United States protested this demarcation as well, claiming that only normal baselines were recognized in international law.<sup>212</sup>

### D. Bangladesh

Bangladesh demarcated its baseline with a straight baseline technique in 1974.<sup>213</sup> Its baseline is 221 nautical miles long, and the nearest land point to any base point is 50 nautical miles away.<sup>214</sup> Bangladesh claimed that such exorbitant demarcation was due to the natural deviation in the Ganges/Brahmaputra Delta.<sup>215</sup> Rumley, Chaturvedi, and Sakhuja have noted that Bangladesh's demarcation of straight baseline is excessively marked and not in conformity with the LOSC.<sup>216</sup> This baseline is internationally contested; Burma, India, and the United States protested this demarcation in 1982, 1982, and 1978, respectively.<sup>217</sup>

### E. Burma

Burma demarcated its straight baseline in 1968, with later reforms in 1977.<sup>218</sup> Burma's straight line is the longest straight baseline in the world, stretching to 222 miles. At one specific point in this line, the nearest land is 75 miles away. Similarly, the river mouth is 120 miles away from one point in this line.<sup>219</sup> In 1982, the United States contested the excessive demarcation

---

210. Hidayat, *supra* note 23.

211. ROACH & SMITH, *supra* note 21, at 124.

212. *See id.* at 123.

213. R. A. WARRICK & Q. K. AHMAD, THE IMPLICATIONS OF CLIMATE & SEA-LEVEL CHANGE FOR BANGLADESH 312 (2012).

214. RUMLEY ET AL., *supra* note 32, at 113.

215. *See id.*

216. *See id.*

217. *See id.*

218. WARRICK & AHMAD, *supra* note 213.

219. *See* ROACH & SMITH, *supra* note 21, at 116.

of the Burmese straight baseline and the inclusion of excessive internal waters within sovereign borders.<sup>220</sup>

#### F. The Democratic People's Republic of Korea

In 1977, the Democratic People's Republic of Korea (North Korea) announced its straight baseline of 50 miles.<sup>221</sup> In 1978, the USSR protested against this baseline, as did Japan in 1985 and the United States in 1990.<sup>222</sup>

#### G. Vietnam

Vietnam declared its employment of a straight baseline in 1982. The United States has repeatedly protested this demarcation.<sup>223</sup> The U.S. Department of State, Office of the Geographer, noted that the base points were at least 50 nautical miles away from the mainland, and were 99–160 nautical miles long, which were inconsistent with the LOSC.<sup>224</sup>

#### H. The People's Republic of China

The People's Republic of China announced its straight baseline in 1996.<sup>225</sup> In the same year, the United States contested its legality by maintaining that a straight baseline segment cannot exceed the length of 24 nautical miles. China replied that its baseline was in conformity with international law and it also followed the general direction of the coastline.<sup>226</sup>

#### I. Japan

Japan amended its laws and declared a straight baseline in 1996. The United States contested this demarcation in 1998. In response, Japan maintained that its baseline was justified and it had not violated international law.<sup>227</sup>

---

220. SU-ANN OH, MYANMAR'S MOUNTAIN & MARITIME BORDERSCAPES: LOCAL PRACTICES, BOUNDARY-MAKING & FIGURED WORLDS 79 (2016).

221. See ROACH & SMITH, *supra* note 21, at 132.

222. J. Ashley Roach & Robert W. Smith, *Straight Baselines: The Need for a University Applied Norm*, 31 OCEAN DEVELOPMENT & INT'L LAW 47, 59 (2000) [hereinafter ROACH & SMITH, *Straight Baselines*].

223. GANSTER & LOREY, *supra* note 205, at 303.

224. See ROACH & SMITH, *supra* note 21, at 100.

225. JAYAKUMAR ET AL, *supra* note 154, at 48.

226. Roach & Smith: *Straight Baselines*, *supra* note 222, at 62–63.

227. See *id.* at 64.

## J. Pakistan

Pakistan employed a straight baseline technique to demarcate its sea territories in 1996 in conformity with international law.<sup>228</sup> The United States contested its legality in 1997, by arguing that a segment of straight baseline cannot exceed 24 nautical miles in length, whereas each segment of the Pakistani straight baseline exceeded 50 nautical miles.<sup>229</sup> In 1997, India also contested the demarcation of a straight baseline by Pakistan by arguing that it overlapped with the maritime jurisdiction of India.<sup>230</sup>

The 10 countries mentioned above have been accused of employing excessive demarcation of baselines along their coasts. However, it is pertinent to note that it is the United States in particular that is keen to challenge every demarcation of straight baselines, despite not having any contingent interest.<sup>231</sup> On a different note, in a report mainly focusing on the excessive demarcation of straight baselines to suit national interests, Clive Schofield writes that, owing to the fact that states are not rolling back their expansive demarcations of baselines, this is likely to continue for a long time.<sup>232</sup>

## IV. CONCLUSION

Every coastal country has an exclusive economic zone, where it enjoys the exclusive right to exploit natural resources.<sup>233</sup> Over time, countries have been moving to increase their maritime territories by generously marking their baselines.<sup>234</sup> Baselines are the starting points from which all seaward territories and maritime zones are calculated.<sup>235</sup> At the earliest stage of the development of laws regarding maritime jurisdiction and the sea in general, the water mark developed by low seawater level at coasts of states was defined as the baseline to delimit sea territory.<sup>236</sup> In the late nineteenth and early twentieth centuries, lawmakers stressed the need for definitive rules to cater for irregular water marks and the complex overlapping of maritime jurisdiction. For instance, coastal areas near “fringe islands” are dispersed, which raises certain legal questions regarding the demarcation of maritime jurisdiction.<sup>237</sup> So the legal developments in the last century began to

---

228. RUMLEY ET AL., *supra* note 32, at 112.

229. See Roach & Smith: *Straight Baselines*, *supra* note 222, at 63–64.

230. See *id.*

231. BAATZ, *supra* note 35, at 309; see also TANAKA, *supra* note 57, at 47–54.

232. SCHOFIELD, *supra* note 194, at 731, 723–32.

233. See KWIATKOWSKA, *supra* note 8, at 7.

234. O'BRIEN, *supra* note 9.

235. CHURCHILL & LOWE, *supra* note 10, at 26.

236. FLUSHMAN, *supra* note 41, at 125.

237. KOPELA, *supra* note 42.

concentrate on describing the topographies of coastal areas in order to advance legal regulations to define sea boundaries, such as introducing the notion of straight baselines.<sup>238</sup> The ICJ drew global attention to the excessive demarcation of baselines in 1951, when it adjudicated the landmark *Anglo-Norwegian Fisheries* case.<sup>239</sup> By a majority, the ICJ held that Norwegian practices of drawing fisheries zones and its baseline techniques encompassing subsidiary islands, rocks, and reefs were acceptable as legitimate international law.<sup>240</sup> The ICJ validated the Norwegian technique of marking low tide regions using a straight baseline to determine its territory by allowing a departure from the traditional procedure for drawing coastal watermark lines to define maritime jurisdictions.<sup>241</sup> The ICJ added that the baselines should not depart unreasonably far from natural formations when defining sea territory by coastal lines.<sup>242</sup> However, the ICJ maintained that such a determination could rely on historical economic use and general use of the coast.<sup>243</sup> Ultimately, the ICJ established that the Norwegian usage of the straight baseline method was permissible due to its unique topography of coastal lines and because its exercise was sustained by historical practices, as no country had ever questioned its accordance with international law.<sup>244</sup> Later, even international conventions (specifically the LOSC) incorporated this case when defining rules for marking baselines and straight baselines.<sup>245</sup>

Today, the legal framework that governs the mechanism for sea laws is the UNCLOS, also known as the LOSC.<sup>246</sup> It lays down the regulations regarding maritime jurisdiction and utilization of seawaters by all nations.<sup>247</sup> For the clarification of baselines and straight baselines, the LOSC relied heavily on the ICJ's ruling in the *Anglo-Norwegian Fisheries* case.<sup>248</sup>

The LOSC requires delimitations of jurisdictional zones on the basis of measured spaces from states' coasts to define their maritime borders.<sup>249</sup> As a consequence, the defining line that marks the external seaward water territories is essential to demarcate the national maritime jurisdiction of any coastal country.<sup>250</sup> This line is identified as the baseline.<sup>251</sup> The baseline also

---

238. O'BRIEN, *supra* note 9.

239. *See id.*

240. CHURCHILL & LOWE, *supra* note 10, at 28–29.

241. JAYEWARDENE, *supra* note 52.

242. CARLETON & SCHOFIELD, *supra* note 60, at, 38.

243. LAUTERPACHT, *supra* note 48, at 216; WEIDEMANN, *supra* note 161.

244. KOSKENNIEMI, *supra* note 50, at 293–95; *see also* LAUTERPACHT, *supra* note 48, at 216.

245. ABASS, *supra* note 67.

246. SHARMA, *supra* note 2; *see also* ROTHWELL ET AL, *supra* note 68.

247. *See* SHARMA, *supra* note 2.

248. CHURCHILL & LOWE, *supra* note 10, at 30–31.

249. VRANCKEN, *supra* note 81, at 83.

250. *See id.*

251. *See id.*

serves to mark the boundary between internal waters and sea territories.<sup>252</sup> In accordance with the LOSC's legal framework, baselines are drawn in two different ways to curtail problems. The first type of baseline is the regular, or normal, baseline. A second type of baseline is a straight baseline.<sup>253</sup>

Article 7 of the LOSC establishes the rule for defining straight baselines. This technique can be employed in two situations: one, where the coastal line is deep or cut; and, two, where the islands are dispersed in close range to national land or coast.<sup>254</sup> It articulates that points should be drawn to the farthest outward low-water marks toward sea territory in situations where the natural coastline is unstable.<sup>255</sup> Furthermore, a straight baseline must not diverge extensively away from the natural direction of the coast and must maintain close distance to the internal waters and land.<sup>256</sup> Similarly, a straight line can be marked to or from low tide elevations only in two situations: first, where installations such as lighthouses are already installed on these low tide elevations; and, second, where international customary practices have approved such markings.<sup>257</sup> The economic interests of the region with regard to their historical practices must also be weighed, and the straight line must not cut off the territorial sea of other contingent states' maritime zones, while marking such lines.<sup>258</sup> From a broad perspective of Article 7, paragraphs 1, 2, and 3 address the requirements and conditions of the topographical formations of coastal regions, with special regard to unstable natural fluctuations and dispersed islands.<sup>259</sup> Paragraphs 4, 5, and 6 incorporate regulations regarding international customary law, historical practices, and international consensus by not injuring maritime zones or the economic aspect of coastal states.<sup>260</sup> But the test of drawing straight baseline does not delimit and define specificities in the maximum allowed length of the straight baseline, the acceptable length of the indented curves in the coast, or the number of islands, islets, or rocks to be considered fringe islands.<sup>261</sup> This vagueness creates uncertainty and makes the drawing of straight baselines very subjective, that is, it is at the discretion of the coastal countries to draw their own boundaries.<sup>262</sup> The LOSC and the ICJ have stressed that objections from another state invalidate such markings, while maintaining

---

252. DUBNER, *supra* note 37.

253. BANTEKAS & NASH, *supra* note 88.

254. BYERS, *supra* note 152.

255. ELFERINK & ROTHWELL, *supra* note 120, at 53, 54.

256. JAYAKUMAR ET AL., *supra* note 154.

257. ROACH & SMITH, *supra* note 21, at 66.

258. WALKER, *supra* note 159.

259. KWON, *supra* note 156, at 19–20.

260. *See id.* at 20–22.

261. KRASKA & PEDROZO, *supra* note 97, at 246–47.

262. CHURCHILL & LOWE, *supra* note 10, at 46.

that only coastal states can unilaterally demarcate their baselines.<sup>263</sup> For this reason, the international practices of each coastal state while marking straight baselines differ enormously.<sup>264</sup> For example, Burma has marked a 222-mile straight baseline and consequently appropriated 14,300 square miles into its internal waters, equivalent to the entire area of Denmark.<sup>265</sup> Similarly, Vietnam has drawn a 162-mile straight baseline, which encompasses a considerable expanse of sea territory into its internal waters.<sup>266</sup>

However, it is noted that the European Union's and the United States' frequent objections to every demarcation of straight baselines, even when they do not neighbor the contested borders, have made *opinio juris* on this matter more convoluted and it is challenging to achieve unanimous consensus.<sup>267</sup> Most interestingly, in a very similar manner, the US has raised ungrounded objections against Pakistan's demarcation of a straight baseline.<sup>268</sup>

---

263. TANAKA, *supra* note 57, at 47–54; *see also* LOSC, *supra* note 103, art. 7; Anglo-Norwegian Fisheries, U.K. v. Norway, Order, 1951 I.C.J. 117 (Jan. 18, 1951).

264. *See* ROACH & SMITH, *supra* note 21, at 20; *see also* MCRAE & MUNRO, *supra* note 170.

265. ROACH & SMITH, *supra* note 21, at 20.

266. MCRAE & MUNRO, *supra* note 170.

267. *See* TANAKA, *supra* note 57, at 47–54.

268. RUMLEY ET AL., *supra* note 32, at 112.