M. Habibur Rahman

THE LEGAL BASIS FOR THE DELINEATION OF BASELINES

Introduction

It is a fact that at present all sea zones within national jurisdiction are measured from baselines. The regime of baselines deals with the regime of internal waters. With the passage of time, different techniques have come into being as to the delineation of baselines. The present paper is an attempt to be aware of historical background, nature and characteristics of baselines and the trends of the coastal states in delineating the same. Emphasis will be given on the bases legally applicable to the delineation of baselines.

Concept and Background

Baselines determine the seaward extent of the coastal state's internal or inland waters. Establishing baselines is of importance because all subsequent international sea zones are determined by reference to these baselines.[1] In the words of Sir Gerald Fitzmaurice, "A baseline is simply the line (whatever it may be, and whether straight, curved or indented) which is properly to be taken as the inner line of the coastal belt of the territorial sea. It may be, and normally is, the coast itself, and in such cases the line of the coast is just as much a 'baseline' as any other. It is merely not a straight one, and has no

1 See Kathleen Walz, "The United States Supreme Court & Article VII of the 1958 Convention of the Tetritorial Sea & Contiguous Zone", *University of San Francisco Law Review* 11 (1976) 1.

end-points except where it abuts on the frontier of another State—in the case of an island there would be no end-points at all".[2]

Much of the difficulty in agreeing upon principles and techniques of delimitation of the sea zones derives from the eagerness of some people to begin by drawing a series of artificial baselines, as if nature were niggardly in proving what men require in this regard. "Many officials, in their patriotic efforts to fence off maximum areas of waters which they hope will go unchallenged, begin by drawing artificial baselines along concave coasts, between islands, and across bays, gulfs and estuaries".[3]

In earlier days, for instance, in the days of "cannon-shot" theory[4] the maritime belt was measured from the coast. The term 'coast' includes the natural appendages of the territory which rise out of water.[5] It is the limit of the land jurisdiction. This limit, however, varies according to the state of the tide ; when the tide is in, and covers the land, it is sea. When the tide is out, it is land as far as low-water mark. Between high and low-water mark it must, therefore, be considered as *divisium imperium*. This principle applies to the limit between the jurisdiction of the admiralty and municipal courts.[6] Whatever it may be, it should bear in mind that the coast is the margin of the land next to the sea.

2 Sir Gerald Fitzmaurice, "Some Results of the Geneva Conference on the Law of the Sea", *International and Comparative Law Quarterly* (ICLQ) 8 (1959) 76,

3 S. Whittemore Boggs, "Delimitation of Seaward Areas under National Jurisdiction". *American Journal of International Law* (AJIL) 45(1951) p 250.

4 Cornelius Van Bynkershoek (1673-1743) in his book *De Dominio Maris Dissertation* (1702) laid down that a state's sovereignty extended as far out to sea as cannon would reach ; and the three-mile limit of the territorial sea has traditionally been represented as simply the range of cannon in the eighteenth century.

5 Henry Wheaton, "Elements of International Law" James Brown Scott, ed. *The Classics of International Law 1866* (1936), Clarendon Press, Oxford, S. 178.

6. Henry Wheaton, *Elements of International Law* Clarendon Press, (1863), p. 321, n. 104.

Generally speaking, the coastline in treated as the baseline of the coastal state. If the coastline is fairly regular, in the sense that it is neither indented nor fringed with islands, there is general agreement that the territorial belt must be measured from the low-water mark of spring tides. No coastline is absolutely straight, but on many coasts the indentations are very shallow in proportion to their width. These cases present no difficulty, and it is agreed that the baseline is that of low-water mark along the whole shore.[7]

But in certain cases, actual coastlines are not well suited for baselines. As such, only the coastlines are not treated as the baselines. Difficulties arise when the coastline is irregular. If the coastline is

---

In order to secure its interests, a coastal state usually wants unquestioned authority over the waters adjacent to the coast. That is why every state wishes to enclose a large area of water by baselines.

---

deeply indented or cut into, or, there is a fringe of islands in its immediate vicinity, straight baselines joining appropriate points may be drawn. However, the drawing of such baselines must not depart to any appreciable extent from the general direction of the coast. It is obvious that there would be a strip of water within the straight baselines and the coastline. This water is regarded as the internal waters of the coastal state. The sovereignty of the coastal state extends to such waters.[8] Unquestionably, tne coastal state can be benefitted from these waters.

In order to secure its interests, a coastal state usually wants unquestioned authority over the waters adjacent to the coast. That is why every state wishes to enclose a large area of water by baselines. There is a complex body of law concerning the location of baselines and it constitutes an important element of the Law of the Sea, because it is from such baselines that all zones of ocean space based on a fixed

7. H.A. Smith, *The Law and Custom of the Sea* Third edition, (1959), Stevens & Sons, p 9.
8 *Infra.*, n. 80.

distance from the shore are measured.[9] The baseline of the territorial sea is certainly conclusively defined, but in practice it does not always work out in that way. In many cases it is not completely clear where the boundary between internal waters and the territorial sea runs.[10]

Actually, the topic 'baseline' has become important since the *Anglo-Norwegian Fisheries Case* (1951). With regard to the provisions for baselines the UNCLOS I[11] appears to have been influenced by the decision of the International Court of Justice in this case. In addition to the UNCLOS I provisions, the UNCLOS III[12] has formulated several provisions on baselines. Still there is no uniformity in the practices over the baselines among the states. Practically, the delineation of baselines seems to oe effected by the coastal state in question.

Different Circumstances and Subsequent Practices

As a matter of fact, there are a great many variations in the configuration of the coasts and in the shape and area of the coastal sea. Such variations have caused the coastal states to assert different claims for fixing the baselines. The indentations existing in the coastal sea are variously described. Categorically, they are regarded as bays,[13]

9 H. Gary Knight, *Managing the Sea's Resources : Legal and Political Aspects of the High Seas Fisheries* D.C. Heath and Company-Lexington (1977), p. 21.

10 Torsten Gihl, "The Baseline of the Territorial Sea", *Scandinavian Studies in Law* 11(1967) p. 154.

11 First United Nations Conference on the Law of the Sea, 1958.

12 Third United Nations Conference on the Law of the Sea.

13 A bay generally is defined as well marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. See Article 7(2) of the Convention on the Territorial Sea and the Contiguous Zone (UN Doc. A/CONF. 13/L. 52(1958), hereafter cited as TS & CS Convention ; M. B. Temple Grey, "Territorial Waters", *The Law Quarterly Review* 42(1926). p. 355 ; *Post Office v. Estuary Radio Ltd.* (Court of Appeals, Queen's Bench Division (1967) P. No. 1216, 2(1968) Q.B. 740-762, 755.

gulfs,[14] firths[15] or fjords.[16] The shore boundary is a complex one, involving major policy decision on the allocation of marine areas, and specific delineation procedure for laying down baselines along the shore and determining the outer limits of national control.[17] In fact, practices on baselines among the states were not uniform. To date no regime of baselines has been developed.

Normal Baseline

The normal baseline from which the breadth of the territorial sea is measured is the low-water line along the coast. The traditional view was that the low-water mark on the coast should be used as the baseline.[18] The location of water levels varies from time to time. It recedes abruptly particularly at the spring tides. "The books on

14 A gulf is a part of the sea which advances into the lands, and whose opening on the side toward the sea is generally large, so as to give it upon a map the shape of a woman's breast ...., from whence comes its name. See Chandler P. Anderson, "The Final Outcome of the Fisheries Question", AJIL 7(1913) p. 13.

15 An arm of the sea or estuary of a river is known as a firth, for instance, the "Morary Firth".

16 A long narrow arm of the sea, running up between high banks or cliffs on the Coast of Norway is called 'Fjord', or Fiord'.

17 Lewis M. Alexander, "The Nature of Off-Shore Boundaries", in Lewis M. Alexander and Gordon Ros Hawkins (eds), *Law of the Sea Workshop*, June (1971) p. 56.

18 It was assumed that the baseline should be drawn along the low-water mark following the sinusoities of the coast. Some writers held that the line is to be drawn along the high water mark. Others drew it along the depth where the waters cease to be navigable. However, the general tendency was to treat the low-water marks as the starting point. See H. Lauterpacht (ed), *Oppenheim's International Law—A Treatise*, Seventh Impression, Longmans 1(1963), 488 n. 4; Ludwik A Teclaff, "The Coastal Zone—Control over Encroachments into the Tidewatets", *Journal of the Maritime Law and Commerce* 1(1949-70) p. 256 ; Y. Bustaments, *The Territorial Sea*, University Microfilm International—London S. 125, p 90.

International Law are understandably somewhat imprecise when dealing with the baseline of the territorial sea of a 'normal' coastline. They are clear in specifying that it is the low-water line rather than the high water line which is used and a few specify further that it is the low-water mark or mean low-water mark at spring tides".[19] In the interest of the coastal state such low-water mark is assumed to be taken as the baseline. If in all cases the low-water mark line is taken as the baseline and the maritime zones are measured from this baseline, then the outer boundary of the maritime zone concerned would be the replica of the coastline.

As regards baselines, the low-water mark line has been in practice among the states. In this context, there were no protests. That is to say, if a state adopted the low-water mark line as the baseline, no state made protests.

Straight Baseline

In certain parts of the world where special geological, morphological or historical circumstances necessitate a special regime because the coast is deeply indented or cut into or fringed with islands in its immediate vicinity, the baseline is regarded to be independent of low-water mark. In these special cases, the method of baselines joining appropriate points on the coast is employed. These sort of baselines are known as straight baselines. The straight baseline was first in practice in England. According to H.A. Smith. "In 1604 King James I issued a proclamation stating that certain defined areas—"King's Chambers"—round the Engligh coast were out of bounds, when England was neutral, for acts of war on the part of the foreign ships. These areas were defined by a continuous series of 26 straight lines drawn from headland to headland and extending from the Northumbrian coast to the Isle of Man. The longest of these lines, which enclosed the Bristol Channel from Land's and to Milford Haven, was

19 E.D. Brown, "Delimitation of Maritime Frontiers ; Radio Stations in Thames Estuary", (1966) *Australian Yearbook of International Law* 105.

94 miles in length. To describe these lines as "base-lines" would be an anachronism, since the notion of a contiguous zone of uniform width did not begin to take shape until the eighteenth century".[20]

The Norwegian Decree of 1869 made use of the straight baselines relating to the coast of Sondmore.[21] As time passed, straight base-lines were used particularly for measuring territorial waters in relation to bays. It was generally agreed that where the configuration and dimension of the bay were such as to show that the nation occupying the adjoining coasts also occupied the bay, it was part of the territory ; and most of the writers on this subject refer to defensibility from the shore as the test of occupation. Some suggest a width of one cannon shot from shore to shore, or three miles ; some a cannon shot from each shore or six miles ; some an arbitrary distance of ten miles.[22] An inlet at the mouth of which one can see clearly from shore to shore was presumed to have been appropriated as part of the national territory and would therefore, constitute a bay. For working purpose this distance was taken as ten miles and the line was assumed to pass from headland to headland.[23]

Since the early half of the nineteenth century, international conventions and judicial bodies have come to express in miles the maximum allowable width of a bay other than a "historic bay".[24] The ten-mile line for bays had been adopted in the Anglo-French Fishery Convention of 1839, and in the regulation of 1843 between the same countries. It was reproduced in the subsequent unratified Anglo-French

20 H.A. Smith, "The Anglo-Norwegian Fisheries Case", 7(1953) *The Year-Book of World Affairs* 289.

21 *Ibid.*, 287.

22 See *Direct United States Cable Co, Ltd. v. The Anglo-American Telegraph Co. Ltd.* (1877) 2 App. Case. 394, 46 L.J. p.71. Conneth R. Simmonds (ed), *Cases on the Law of the Sea* 2(1977), Oceana Publications Inc., 311.

23 Sir Cecil Hurst, "The Territoriality of Bays", 3(1922-23) *British Yearbook of International Law* (BYIL) 54.

24 Mitchell p, Strohl, *The International Law of Bays* (1963), Martinus Nijthoff 6.

Convention of 1859 and the Convention of 1867. The ten-mile rule on bays was accepted in the North Sea Convention of 1882. Article 2 of this Convention provided that in the case of bays, "the distance of three miles shall be measured from a straight line drawn across the bay in the part nearest the entrance to the first point where the width does not exceed ten miles". This rule was reproduced *verbatim* in the Anglo-Danish Fishery Convention of 1901.

In order to clarify the notion 'bays', the tribunal in the *North Atlantic Coast Fisheries Case* (1910) took into account different circumstances. Accordingly, "The interpretation must take into account all the individual circumstances which for any one of the different bays are to be appreciated, the relation of its width to the length of penetration inland, the possibility and the necessity of its being defended by the State in whose territory it is indented, the special value which it has for the industry of the inhabitants of its shores, the distance by which it is secluded from the highways of nations on the open sea and other circumstances not possible to enumerate in general".[25]

For these reasons the Tribunal decided that, "In case of bays the three miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. At all other places the three marine miles are to be measured following the sinuosities of the coast".[26]

It signifies that for bays no rule concerning the distance between promontories was taken into account. That is to say, the coastal state was treated as independent of determining the baselines simply connecting straight line between the promontories. Clearly, it is not possible to reach a conclusion about a fixed limit which can generally be applicable to the bays as to the distance between the promontories. In this respect, the learned Judge Dr. Drago's opinion of dissent stated

25 *The North Atlantic Coast Fisheries Case (Great Britain v. United States* The Permanent Court of Arbitration 7 September 1910. 11(1962) *United Nations Reports of Arbitral Awards* (RIAA), 199,

26 *Ibid.*

"But no rule is laid out or general principle evolved for the parties to know what the nature of such configuration is or by what methods the points should be ascertained from which the bay should lose the characteristics of such".[27]

That means, it was generally recognised that the right of a state to control a particular bay depends, not upon the distance between headlands at the entrance, but rather upon the geographical configuration of the coast of which the inlet or bay forms an indentation, and over which the state exercises solitary dominion.

In 1894 the Institute of International Law provided that "In the case of bays the territorial sea follows the sinuosities of the coast, except that it is measured from a straight line drawn across the bay at the place nearest the opening towards the sea where the distance between the two shores of the bay is twelve nautical miles, unless a continued usage of long standing has sanctioned a greater width" (Article 3).[28] In the *Lokken Case* (1920) some attention was given to the provisions for bays. Accordingly, "...there was a good deal of difference of opinion as to what constitute a bay, and it had been suggested that if the headlands were more than six miles apart, then one ought not to treat them as joined by a line. In this case the line was about fifteen miles long".[29]

A draft codification adopted in 1926 by the Japanese International Law Society provided that "in the case of bays, and gulfs, the coasts of which belong to the same state, the littoral waters extend seawards at right angles from a straight line drawn across the bay or gulf at the first point nearest the open sea where the width does not exceed ten marine miles, unless a greater width has been established by immemorial usage".[30]

---

27 *Ibid.*, 211.

28 See 2(1965) *British International Law Cases* 913; 1(1958) *Official Records of the First United Nations Conference on the Law of the Sea* (UNCLOSI OR) I4.

29 *Consul Genenal for Norway v. The Prosecutor-General* (1920) 5 L.I.L. Rep. 95, 244. 2(1965) *British International Law Cases* 928.

30 See 1(1958) UNCLOS I OR 15.

The Institute of International Law suggested in 1928 that the baselines should not be more than twice the breadth limit of the territorial sea. In reply to the 'questionnaire', several states made similar suggestions to the Preparatory Committee of the 1930 Hague Codification Conference. But as an analogical point of view, the ten-mile rule for bays was assumed to be applicable.[31] In reply to the 'questionnaire' Australia, Belgium, Canada, Great Britain, India, Italy, Japan, New Zealand, South Africa, and the United States suggested that the use of straight baselines between points on the mainland except in the traditional cases such as bays, river mouths, 'ports,, roadstead and straits should be ruled out. Germany's reply claimed the coastal state's right to ignore certain sandbanks and make slight adjustments

The right of a state to control a particular bay depends upon the geographical configuration of the coast of which the inlet or bay forms an indentation, and over which the state exercises solitary dominion.

in the baselines for 'uniformity', 'clearness' and "pracical purposes" but it limited such straight baselines to six nautical miles in length. Finland, Norway, Poland, Spain and Sweden expressed the view that the straight baselines should be drawn joining the outermost points of the coast.

The Preparatory Committee rejected straight baselines connecting salient points of the coast in favour of the line following the sinuosties of the coast, as did the Second Sub-Committee of the Conference in its report. Decrees of Iran 1934, Yugoslavia 1948, Saudi Arabia 1949, Egypt 1951 established straight baselines between outer points of mainland and since the *Fisheries Case* (1951), similar decrees have been promulgated by Iceland in 1952, Cuba 1955 and Finland and Venezuela in 1956.

31 Clive Ralph Symmons, *The Maritime Zones of Islands in International Law* (1979), Martinus Nijthoff 20.

The International Court of Justice in its judgment in the *Fisheries Case* said that the ten mile rule on bays had not "acquired the authority of a general rule of international law".[32] There was in fact no uniformity in the extent of straight baselines.

In July 1935, the Norwegian Government promulgated a Royal Decree defining the provisions for the extent of the zone to be reserved for Norwegian fishermen on that part of the coast which extends from the Finnish (now Russian) frontier to a point on the southern side of the opening of Vestfjord (66.28°N by 11.56°E). Within this area the decree specified 48 basepoints connected by 47 straight lines covering the whole length of the coast. The fishing to be reserved for Norwegians comprised all waters within these baselines and a parallel zone four miles wide on the seaward side. Of the baselines 25 were more than ten miles in length, and some of them much more, the three longest being 44, 40 and 39 miles respectively.[33]

Great Britain was not against four miles for the limit of the territorial belt proscribed by Norway and had no objection to the ten-mile rule for areas of water having the characteristics of a bay. Great Britain however raised protests against Norwegian claims over the water regions outside ten-mile closing line. The dispute was settled by the International Court of Justice 1951. The Court upheld the validity of these lines not only on the historic grounds claimed by Norway but also as not being "contrary to international law".[34]

The Court emphasised the special circumstances of the case, such as the exceptional configuration of the coast of Norway, her economic interests, and her historic claims. Moreover, the Court said that baselines must not depart from the general direction of the coast. That is to say, baselines may not require to strictly follow the actual direction of the coast. To some extent they may change the actual direction. But they should not change the direction of the coast abruptly.

32 See *The International Court of Justice Reports* (ICJ Reports) 131.

33 See H.A. Smith, *The Law and Custom of the Sea* (1959), Third Edition, Stevens & Sons Ltd. 17, 18.

34 ICJ Reports 139.

Thus, nothing can be concluded about the length of the baselines applicable to the bays and to other indentations. However, the decision of the ICJ in the *Fisheries Case* stood clear to the states about the provisions to be applicable for baselines.

The ILC[35] in its fourth session in 1952, formulated a ten-mile rule for bays.[36] The ILC in its fifth session 1953 also formulated the ten-mile closing line for bays.[37] Furthermore, this limit was adopted by the ILC in the sixth session in 1954[38]. But in the seventh session the ILC formulated twenty five miles closing lines for bays.[39] The ILC in its sixth session in 1954 formulated an indentation to be a bay if 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.[40] The subsequent sessions of the ILC maintained this definition for bays. In its eighth session in 1956 the ILC adopted fifteen-mile closing line for bays.[41] Different states made comments on the law of the sea draft articles prepared by the ILC.

The Danish Government by its Permanent Mission to the United Nations mentioned (5 August 1957) that several conditions for drawing baselines might not be applicable for bays. Objection was raised against the provisions for the bay the mouth of which extends not more

35 International Law Commission.

36 2(1952) ILC Yearbook 34, Article 6. UNDoc A/CN. 4/SER. A/1952/Add.1.

37 2(1953) ILC Yearbook 64, Article 6. UNDoc. A/CN. 4/SER. A/1953/Add. 2.

38 2(1954) ILC Yearbook 4, Article 8 UNDoc. A/CN. 4/SER. A/2954/Add. 1.

39 2(1955) ILC Yearbook 36, Article 7(3). UNDoc. A/CN. 4/SER. A/1955.

40 Actually, the semi-circle rule for the indentations such as bays and estuaries was first included in the American proposal submitted to the 1930 Codification Conference. Accordingly, a closing line not exceeding ten miles in length for the indentation requires to be drawn. If the waters inside this closing line is larger than the area of the semi-circle drawn with the radius half of the indentation inside the closing line would be assumed as "Internal waters". See S. Whittemore Boggs, "Delimitation of the Territorial Sea", 24(1930) AJIL 551.

41 2(1956) ILC Yearbook 225, Article 7(2). UNDoc. A/CN. 4/SER. A/1956/Add.1.

than fifteen miles. It was mentioned that in certain circumstances, it would not be justified to draw a closing line, for instance, where geographical conditions are such that no other baselines would be easily recognisable by the navigator on the spot. Furthermore, economic and defence factors, which may legitimately be taken into consideration, may, in certain cases require the application of a baseline exceeding fifteen miles.[42] The Law Commission provided that "baselines shall not be drawn to and from drying rocks and drying shoals". In this regard Denmark concluded. "It will be very difficult to implement a provision of this nature on coasts where the range of the tide is considerable".

At least in Danish theory and practice such rocks and shoals are used in several cases—and this is believed to be in full conformity with international law—as basis for the calculation of limits of fishing zones etc.[43] Finally, Denmark suggested that the Law Commission should delete the provision concerned with the drying rocks and drying shoals. The Note Verbale of the Government of India (12 August 1957) suggested to the Law Commission that, if there is a port located near the mouth of a river or the estuary into which river flows, the baseline requires to be fixed along the outermost limits as notified by the Government or the port authority.[44] Actually, such suggestion for fixing baselines was made in the interest of pilotage and safe navigation to and from the ports.

Norway through her Permanent Mission suggested (12 August 1957) that the baselines should be drawn in conformity with the decision of of the *Fisheries Case*. Moreover, emphasis was given on the necessity of drawing base lines in consideration of the natural configuration of the coasts. The United Kingdom and Northern Ireland by their Note Verbale (20 September 1957) proposed to the Law Commission "...that straight baselines should only enclose waters strictly *inter fauces terranus*" and this should be introduced"...to ensure that

42 1(1958) UNCLOS I OR 82.
43 *Ibid.*
44 *Ibid.*, 90.

baselines are not automatically joined from headland to headland, and that, when dealing with strings of islands, the lines are not invariably used to join the outermost point of one island to that of another...".[45] It was also expressed that the basepoint should be fixed not to be isolated from the true coastline.

The Permanent Mission of Netherlands mentioned (17 October 1967) that a state should take chance of drawing baselines "so that any drying rocks or drying shoals lying within this extension shall not again be taken as basepoints of departure for fresh extensions.[46] The Permanent Mission of China mentioned (27 January 1958) that "there seems to be no precise way to describe the configuration of a coast which shall justify the straight baseline method, the only way possible for these purposes seems to be to set in figures a maximum permissible length of the straight baseline". It was also mentioned that..."the rules for bays would be apparently insignificant if there is no limit for the length of baselines".[47]

"Semi Circle" and "24-Mile Closing Line" Criteria

In point of fact, there is no uniformity in the dimension of the indentations such as bays, gulfs and the like. As such, it is difficult to derive a formula concerning the distance between headlands at the entrance of bays. However, the UNCLOS I adopted "well-marked indentations",[48] "semi-circle", and "twenty-four mile" closing line criteria as to the regime of bays. The UNCLOS III has equally provided these criteria for the bays. According to Article 7(2) of the TS & CZ Convention "An indentation shall not...be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn acorss the mouth of that indentation".[49]

45 *Ibid.*, 102.
46 *Ibid.*, 107.
47 *Ibid.*, 110, 111.
48 *Supra.*, n. 13.
49 See United Nations Convention on the Law of the Sea, Doc. A/CONF. 62/122, 7 October 1982 (hereafter cited as LOS Convention), Article 10(2).

The first criterion for the determination of a bay is that it constitutes a well-marked indentation of the coast. A major change in direction will not suffice ; the bay must "constitute more than a mere curvature of the coast". A minimum objective test of the status is essential and is furnished with the Convention's semi-circle rule which determines the point.

The semi-circle formula appears to have imposed some restrictions on the coastal state so that any indentation is not regarded as a bay. As regards the bay whose entrance does not exceed twenty-four miles, the coastal state is free to enclose it. But the coastal state cannot freely enclose the bay whose entrance exceeds twenty-four miles. To this end, the coastal state is entitled to enclose by a straight baseline of twenty-four miles drawn "within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length". That is to say, the twenty-four mile closing line is applicable to the bay having an entrance equal to or exceeding this limit. In other words, this line can be treated as a limitation imposed on the coastal state bordering a bay whose entrance exceeds twenty-four miles.

Baselines regarding coastal Archipelagos

It is true that islands present complications in the delimitation of maritime boundaries. As regards the baselines, the complications arise equally. Islands may be situated in all manners. They may perch immediately adjacent to the continental masses or be dispersed in mid-ocean. They may be found in singular isolation or grouped by dozens, hundreds or even thousands. They may be arranged in quasi-geometric patterns—arc, quadrangles, triangles, polyhedrons, etc or randomly strewn across the water sufrace.[50]

In delineating baselines the LOS Conferences have taken into account the coastal archipelagos. Every coastal state can accordingly prescribe the baselines. Regarding the coastal archipelagos, the First

50 Robert D. Hodgson, "Islands : Normal and Special Circumstances" in John Gabble Jr and Giudio Pontecorvo (eds), *Law of the Sea : Emerging Regime of Oceans* (1974) 142.

and the Third United Nations Conferences on the Law of the Sea have provided similar provisions applicable to the delineation of baselines. According to Article 4(1)(2) of the TS & CZ Convention "In localities where the coast line 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 baselines from which the breadth of the territorial sea is measured. The drawing of such baselines must not depart to any applicable extent from the general direction of the coast, and the areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters".[51]

It is apparent that the provisions are applicable for determining baselines of the coastal state having a fringe of islands in its "immediate vicinity". If the islands are fringed in the "immediate vicinity" of the coast, then the coastal state can draw straight baselines joining "appropriate points". In this regard, the coastal state is required to comply with the principle that the baselines should not depart to any "applicable extent from the general direction" of the coast.

In essence, the notion "immediate vicinity" or "general direction" is not specific.[52] However, it signifies that the islands which are not in the "immediate vicinity" of the coast cannot be enclosed within the baselines.

Historic Baselines

While the baselines are regarded as the outer boundary of tne internal waters, in case of historic waters the outer boundary may be regarded as the baseline of such waters. That is to say, "where certain waters are recognised as possessing the status of historic bay or other historic waters the baseline or the territorial sea will be extended to encompass these waters".[53]

51 LOS Convention, Article 7(1)(3).

52 See Jens Evenson, "The Anglo-Norwegian Fisheries Case : Its Legal Consequences", 46(1952) AJIL 609.

53 E.D. Brown, *The Legal Regime of Hydrospace* (1971), Stevens & Sons. 69.

The theory of "historic waters" whatever name it is given, is a relevent one. In the delimitation of maritime areas, it acts as a safety valve ; its rejection would mean the end of all possibility of devising general rules concerning this branch of public international law.[54] "On the state and inter-state level the existing legal orders are, in exceptional circumstances, willing to lend their sanction—for the sake of preserving peace and stability—to certain situations of fact, even if the origins of such situations are not free from doubt".[55]

The protagonists of the codification of international law in this field understood that, as a practical matter a long-standing exercise of sovereignty over an area of the sea could not suddenly be invalidated because it would not be in conformity with the general rules being formulated. On the other hand, as the purpose of the codification was the establishment of general rules it was natural to look upon historic cases as exception from the rule.

The theory of 'historic waters" is not used to divide whether a maritime area belongs to one state or another. "Historic waters" are not waters which originally belonged to one state but now are claimed by another state on the basis of long possession. They are waters which one state claims to be part of its maritime territory while one or more other states may contend that they are part of the high seas.

The "historic bays" present the classic example of historic title to maritime areas. Therefore, there seems to be no doubt that, in principle, a historic title may exist also to other waters than bays, such as straits or archipelagos or in general to all those waters which can form part of the maritime domain of a state.

The legal status of "historic waters", that is to say, the question of territorial sea, would in principle depend on whether the sovereinty exercised in the particular case over the area by the claiming state and forming a basis for the claim, was sovereignty as over internal waters or sovereignty as over the territorial sea.

54 Professor Gidel, *Le Droit International Public De La Mer* 674, quoted in 2(1953) ILC Yearbook. 35.

55 Yehuda Z. Blum, *Historic Titles in International Law* (1965), Sijthoff, 4.

It is generally assumed that historic title of a state over any water areas should not be affected by other states. The criteria for proving "historic title" are related to the requisite element being as exercise of sovereign rights by a coastal state over a period which is acquiesced in by other nations. It would appear that the number of such claims are few and that the burden of proof on a claimant state is a difficult one.[56]

The Law of the Sea Conferences have recognised the historic title. According to the Article 4(4) of TS & CZ Convention, "Where the method of straight baselines is applicable under the provisions of 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".[57]

It seems that, in determining the straight baselines, the coastal state can take account of its economic interests. In so doing, the coastal state requires to show that the importance and reality of such interests have historically been established. That is to say, under these circumstances, there is no bar for the coastal state to deviate from paragraph 1 for fixing the straight baselines. The Convention has also regarded the "historic bays" as exception to the "semi-circle" and "twenty-four mile" closing line criteria. According to Article 7(6), "The foregoing provision shall not apply to so-called 'historic bays', or in any case where the straight baseline system provided for Article 4 is applied".[58]

Whatever boundary for the "historic waters" has been adopted by the coastal state, it would be treated as independent of the conventional provisions. That is to say, the boundary would be treated as the base-line for such waters. Anyway, the historic titles do not constitute the

56 R.D. Lumb, *The Law of the Sea and Australian Off-Shore Areas* (1978), Second edition, University of Queensland Press, 12.

57 This provision has equally been prescribed by the LOS Convention in its Article 7(5).

58 This provision has also been prescribed by the LOS Convention in its Article 10(6).

rule ; they can be regarded as "... a deviation and departure from the general rules of customary international law and being basically founded on adverse holding, they find their legal justification in the fact that the state or states faced with such an exceptional claim have acquiesced in

---

In determining the straight baseline, the coastal state can take account of its economic interests. In so doing, the coastal state requires to show that the importance and reality of such interests have historically been established.

---

a situation which is contrary to, and derogatory of, the normally aplicable rules of international law".[59]

The purpose of recognising "historic title" is to aquiesce in the state of things which exists and has existed. This principle was made effective in the *Grisbadarna Arbitration* (19.9). It is in this context that one should analyse the tribunal's statement. That is to say, "...it is a settled principle of the law of nations that a state of things which actually exists and has existed for a long time should be changed as little as possible".[60]

In the *Fisheries Case* the Court did not expressly indicate whether or not it approved the "historic title" of Norway over the water areas enclosed by the so called baselines. "But, having regard to the general tenor of the judgment, it seems reasonable to conclude that the Court approved it".[61] In examining the legal validity of the Norwegian system of delimiting territorial waters the Court considered "whether the application of the Norwegian system encountered any opposition from foreign states".[62] The court found that, "Norway has been

59 Yehuda z. Blum, *op. cit.*, 23.

60 *Grisbadarna Arbitration* (*Norway v. Sweden*) 23 October 1909. See 11 (1961) RIAA 155 (in the original French). The English translation of the award has been published in 4(1910) AJIL 225, 233.

61 D.H.N. Johnson, "Consolidation as a root of Title in International Law", (1955) *The Cambridge Law Journal* 222.

62 ICG Reports 116.

in a position to argue without contradiction that neither the promulga tion of her Delimitation Decrees in 1869 and 1889, nor their application, gave rise to any opposition on the part of foreign states...'The general toleration of foreign states' with regard to the Norwegian practice is an unchallenged fact. For a period more than sixty years the United Kingdom Government...in no way contested it"[63].

The Court apparently accepted the basic United Kingdom contention with regard to historic waters. By "historic waters", it said, "are usually meant waters which are treated as internal waters, but which would not have that character, were it not for the existence of an historic title".[64]

The judgment delivered in the *Fisheries Case* is not a "precedent in the strict sense for the reason that the Court went out of its way to stress the exceptional features of the case, even to the extent of making those exceptional features one of the bases of its decision".[65] But it may not be unusual that in some cases the existing provisions concerning the baselines may not enable the coastal state to suit its local requirements". As such, it may not be possible on the part of the state to avoid asserting exceptional claims for the baselines. That is to say, some reference of this case may automatically arise.

At present there is no doubt about the "historic waters" to be accepted as exception to the general principles of international law. Despite the area of the "historic waters" the boundary would be treated as the baselines for such waters. Though the historic waters require to be treated as exception to general principles, theoretically these waters appear to have inspired the coastal states to assert claims to an extended area of the sea.

Deltaic Baselines

Still this system of baselines is not well-known. The UNCLOS III has introduced this system of baselines. That means, the deltaic baselines are of recent origin.

63 *Ibid.*, 161.

64. *Ibid.* 330.

65 D.H.N. Johnson, "The Anglo- Norwegian Fisheries Case", 1/2(1952) ICLQ 150.

For the presence of delta and other national, conditions if the coastlines is highly unstable, neither the low-water line nor the straight baselines are properly applicaole to the state concerned. In this context, the appropriate points for the baselines are assumed to be located along the furthest seaward extent of the low-water line. Actually, the provisions for this system of baselines came into being in the UNCLOS III as an advance on the existing TS & CZ Convention (Article 4) on straight baselines and this is a major innovation in existing international law. According to Article 7(2) of the LOS Convention, "Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be located along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, such baselines shall remain effective until changed by the coastal state in accordance with this Convention".

It is difficult to say whether this provision would be applicable to the coastal state as regards its alluvial deposits and formation of mud-flats in the coastal sea. The large deltaic fans such as those of the Ganges and Indus deltas in the Bay of Bengal and the Arabian Sea are very expansive and represent natural prolongation of the continental sediment of greatest depth.[66] In this regard, claims for fixing the baselines along the outermost points of the alluvial deposits would not be practicable. The existence of extensive sedimentary mud-flats which may make the determination of the low-water line difficult and thus justify the use of the high-water mark as the territorial sea baseline".[67]

As a matter of fact, the coastal state may be benefitted from the low-water line more than the high-water line. Consequently, it is difficult to impose on the coastal state the high-water line as baseline in lieu of

66 See E.D. Brown, "The Continental Shelf and the Excusive Economic Zone : The Problem of Delimitation at UNCLOS III", 4(1977) *Maritime Policy and Management* 388.

67 E.D. Brown, "Rockall and the Limits of National Jurisdiction of the UK-Part I", (1978) July *Marine Policy* 192.

the low-water line. If a formula can give benefit more than or similar to the low-water line, then the formula for baselines may be applicable to the coastal state.

It is apparent that Article 7(2) mentioned above has not specified the term 'mudflats'. There may arise question whether the mudflats should be taken into consideration for fixing baselines. However, the vague clause "other natural conditions" of the article enables the coastal state to fix the baselines subject to this article, According to this article how far it would be possible to fix the baselines by depth method,[68] is difficult to conclude. Though there is no expressed indication in the article but there is no restriction in international law to draw base lines as to suit "local requirements" of the coastal state.

It goes without saying that with the passage of time the regime of baselines is diverging. However, there is no doubt that it is difficult to apply the LOS provisions uniformly. As regards the baselines, it is equally true. Politically states are assumed equal one with another although they differ economically, geographically, geologically, sociologically, geomorphologically and the like. Of all the issues—issues concerning survival of the people are the main which cannot be ignored.

Showing peculiar geographical configuration of the coast and overall economic dependence on the coastal fisheries, Norway defended herself in the *Fisheries Case* against Great Britain. The International Court of Justice in this case came to the conclusion that the straight baselines drawn by Norway were not contrary to international law. In fact, as time passed, the judgement was treated by the coastal state as a precedent for asserting claims to the adjoining seas. That is to say, the judgment gave rise to the coastal state to prescribe baselines subject to its local requirements.

68 Taking into account the geological pecularities of the coast and the peculiar topographical features of the coastal bay Bangladesh has drawn baselines on the basis of the depth-method that is, geographical coordinates which in certain depth of coastal waters have been linked by straight lines to delineate the baselines. The baselines so formulated have been fixed at ten fathoms extending to 16 to 30 miles from the coasline.

It is not questioned that the very purpose of law is to deal with and settle issues that arise in a given situation. A decision on the same but in different context and circumstances may not serve as a perpetual precedent. An existing situation if dealt with by such a precedent without considering the peculiarities of the situation will not only unwelcome but also will result in stagnation in the advancement of law. In dealing with a particular case, a precedent as far as possible should be applied. But application of specific provisions suitable to

---

The very purpose of law is to deal with and settle issues that arise in a given situation. A decision on the same but in different context and circumstances may not serve as a perpetual precedent.

---

that particular case should not be discouraged. In the latter case, however, there is a danger of coming into existence of different standards applicable to the same aspect of the law discarding the uniformity which is desired.

But if the factors regarding economic and social interests of the shore state are assumed to be the basis of designing maritime zones, in this age of flux and competition nos tate will hesitate to claim broader zones. Consequently, every case requires to be studied according to its own merits. While it is desirable that uniform rule for designing maritime zones should be prescribed which may be applicable to most cases, the scope for application of particular provision in conformity with peculiar circumstances obtaining in a particular case must also be recognised.

Baseline for Low Tide Elevation, River Mouths, Ports and Reefs

As regards the baselines the Law of the Sea conferences have taken into account low-tide elevations, river mouths, ports and reefs. In fact, there is no difference between the First and Third Conferences dealing with the delineation of baselines concerning low-tide elevations

and river mouths. The TS&CZ Convention made no provisions for reefs. The UNCLOS III has made provision for reefs. According to Article 13(1) of the LOS Convention, "A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide...".[69]

Actually, the low-tide elevations have been regarded as the areas of land which are at some part of the day covered by waters of the ocean. In consideration of the baselines for low-tide elevations Article 7(4) of the LOS Convention says, "Straight baselines shall not be drawn to and from low-tide elevations, unless light houses 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".[70]

It seems that in order to draw straight baselines regarding low-tide elevations the coastal state is required to build on them light houses or similar installations which are permanently above sea level. Otherwise, such baselines would be applicable provided that they have received "general international recognition". But from a practical point of view, it is significant to cite that, "this, however, would not necessarily prevent a state from erecting permanently emerging structures on low-tide elevations and thereafter promulgating a system of straight baselines to link them together ; whether a concept of bad faith in the light of the Convention's object and purpose could be applied to invalidate such a delimitation remains uncertain".[71]

Because, Article 13(1) of the LOS Convention says "...Where a low-tide elevation is situated wholly or partly at a distance not

69 Article 13 of the LOS Convention is same as Article 11 of the TS & CZ Convention.

70 It is almost similar to article 4(3) of the TS & CZ Convention. But the last part "or except in instances where the drawing of baselines to and from such elevations has received general international recognition" is a new addition.

71 Geoffrey Hartson, "Low-tide Elevations and straight Baselines", 46 (1972-73) BYIL 423.

exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea".

It is significant that the distance of the low-tide elevations is to be reckoned from the "mainland or an island". That is to say, the straight baselines drawn in relation to the "mainland or an island" should not be taken into account. Straight baselines can be drawn in consideration of the low-tide elvations if they are situated at a distance not exceeding the breadth of the territorial sea measured from the "mainland or an island".

It would not therefore, be used as a basis for claiming the area of waters lying between it and the mainland or island as internal waters but would only extend the territorial sea of these land areas measured from their own-water lines. Its legal status was described as follows at a meeting of the International Law Commission which discused the nature of low-tide elevations : "The basic principle is that drying rocks and drying shoals are not points of departure for measuring the territorial sea. However, if a drying rock or a drying shoal were to be found within the territorial sea (such territorial sea being measured as if the drying rock were not there at all), then the drying rock or shoal in question could be used in order to extend the territorial sea and project seawards its limit".[72]

The low-tide elevation within the range of the territorial sea practically has a role of island. That is to say, if an island rises within the territorial sea of a coastal state, the waters between the mainland and the island would be internal[73], and the territorial sea would be measured from the outermost point of the island. This principle is equally applicable to the low-tide elevation existing within the range of the territorial sea from the mainland or island. If the breadth limit of the territorial sea is uniform, then the principle will be applicable uniformly.

In connection with different breadth limits of the territorial sea, it is to be noted that if the low-tide elevation is situated for example at

72 See 1(1955) ILC Yearbook 252. UN Doc. A/CN. 4/SER. A/1955.

the 200 n.m limit, the coastal state exercising 200 n.m territorial sea will be entitled to extend the territorial sea from the low-tide elevation. Obviously, this state will be benefited more than the state exercising a narrow territorial sea.

According to the law of the sea conferences, the baselines should be drawn "across the mouth of the river between the points on the low-tide line of its banks".[74] The nature and structure of the water of the river mouth is influenced by the sea. That means, the navigability of the waters areas depends primarily upon the action of the sea. Consequently, the river mouth by its nature and structure requires to be considered as a part of the sea. Moreover, the nature and structure of the waters areas can be influenced by the action of the river itself. In this regard, the river mouth appears as a part of the river itself. The coastal state usually wants to assert claims to the waters areas which are influenced by the river action as its internal waters.

The UNCLOS I has regarded the outermost permanent harbour works which form as internal part of the harbour as forming part of the coast.[75] Furthermore, the UNCLOS III has formulated off-shore installations and artificial islands not to be considered as permanent harbour works[76]. This provision can be regarded as a limitation imposed on the coastal state. The impact of this provision is to restrict the coastal state so that in the name of "harbour system" it cannot extend the jurisdiction to a larger part of the coastal sea.

Both the First and the Third Conferences have regarded the ports as the part of the coast. That is to say, in the case of a port, the baseline will pass from point to point of the "outermost works" forming the port.

Because of the alluvial deposits or other natural action if the coastal sea is not navigable, then it will not be irrational if the coastal

73 See Myres McDougal and William T. Burke, *The Public Order of the Ocean*, Yale University Press, 1953, p. 373.

74 TS & CZ Convention, Article 13 ; LOS Convention, Article 9.

75 TS & CZ Convention, Article 8

76 LOS Convention, Article 11.

state erects artificial installations in order to keep the port running. It is howevr difficult to exercise strictly the limitation on the coastal state.

A reef is regarded as a narrow ridge or chain of rocks, shingle or sand lying at or near the surface of waters[77]. The ring-shaped coral reef enclosing lagoon is known as an atoll. That is to say, "Atolls are composed primarily of a chain of tiny, low limestone islets (motus) which partially crown a circular or oval coral reef. The reef normally is completely submerged at high tide but heads may dry at low water. Geomorphologically, an atoll may represent several external forms dependent on its stage of development or genesis. They may oe characterized as true atolls, almost atolls, part-raised atolls and raised atolls. Basically, the major difference in the external character affects the nature and character of the lagoon contained within the reef. In a true atoll, the reef is virtually continuous, islands are limited and the lagoon is expansive and completely marine. In the raised atoll, the lagoon has become a saucer-like depression in an island completely above sea level. The two remaining categories are intermediate steps"[78].

As a matter of fact, neither the Codification Conference nor the UNCLOS I dealt with the delineation of baselines in relation to the fringing reefs. However, it is possible to be aware of the fact that the regime of baselines in relation to the fringing reefs was subsumed in the regime of the fringing islands. As such, Article 4(1) of the TS&CZ Convention appears to be dealing with the fringing reefs. But strictly the definition of reefs stated above cannot be treated as similar to that of islands. Therefore, it is necessary to formulate precise provisions concerning the delineation of baselines as regards tne fringing reefs. In this context, the UNCLOS III has provided provisions. According to the LOS Convention (Article 6) "In the

77 See William Little, *The Shorter Oxford English Dictionary* (1973), Third edition 1775.

78. Robert D. Hodgson and Lewis M. Alexander, *Toward an Objective Analysis of Special Circumstances*, Occasional Paper No. 13, April 1972, 52.

case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on official charts".

Here, in order to draw baselines, it is necessary to take into account the islands (i) which situate on atolls as well as the islands (ii) which have fringing reefs. This state is entitled to consider the low-water line of the reef as the baseline from which the maritime zones for the islands can be measured. The baselines so drawn require to be shown by the appropriate symbol on official charts.

Nature, Characteristics and Present Approach

The territorial jurisdiction of a coastal state generally extends to its internal waters. "Waters on the landward side of the baseline of the territorial sea forms part of the internal waters of the State".[79] But the regime of internal waters on the landward side of base lines is no uniform. The territorial jurisdiction of a coastal state had long before been in practice up to the low-water line. There was no doubt as to the state's sovereignty to this line. "Internal waters are, of course, under the absolute sovereignty of the coastal State and, in the absence of treaty commitments to the contrary, may be utilized by it in any way whatsoever".[80]

In some cases the water on the landward side are treated as internal and in some cases not as such. Whatever be the area of the historic waters, they fall entirely under the jurisdiction of the coastal state. In the case of bays, the regime of internal waters extends to the waters on the landward side of the baselines. That means, it extends up to the twenty-four nautical-mile closing line. Actually, the coastal state can regard a considerable part of the waters areas such as, bays, gulfs, etct as internal waters. The fact is that neither the TS & CZ Convention nor

79 TS & CZ Convention, Article 5(8), LOS Convention, Article 8(1).

80 E.D. Brown, "The Legal Regime of Inner Space ; Military Aspect", 22(1969) *Current Legal Problems* 184.

the UNCLOS III has imposed any limitations on the coastal state. In other cases the LOS Conferences have provided different provisions. In this regard Article 8(2) of the LOS Convention says, "Where the establishment of a straight baseline in accordance with Article 7 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 this Convention shall exist in those waters".[81]

Generally speaking, the water areas within the baselines are internal. But according to this provision the water areas within straight baselines cannot be treated as internal water unless the water areas in question had previously been treated as such.

The article stated above appears to have imposed a limitation on the coastal state so that in the name of baselines this state cannot exercise the regime of internal waters. As a matter of fact, the article can be treated as a limitation imposed on the coastal state which had not treated the waters areas concerned as internal waters. That means, this state appears as lacking in the regime of internal waters. But the question may arise, how far this state would concede to such provisions.

If the coastal state had not treated these waters as internal, then the foreign vessels subject to the innocent passage would be able to navigate upon these waters. It signifies that though the waters areas situate on

---

As regards the baseline it may not be surprising that the coastal state will make effort to enclose a larger part of the coastal sea. The purpose of this is to exercise its jurisdiction over such water areas and to measure different maritime zones from these baselines.

---

the landward side of the baselines, practically the regime of territorial sea is applicable. That is to say, though the water areas on the landward side of the baselines are known as internal waters, conven-

81 . It is almost same as Article 5(2) of the TS&CZ Convention.

tionally these waters are receiving the status not only of internal waters but also the territorial sea. In fact, the LOS Conferences have provided a number of provisions as regards the delineation of baselines. But it is not easy to conclude that there will exist uniform practice among the states.

As regards the baselines, it may not be surprising that the coastal state will make effort to enclose a larger part of the coastal sea. The purpose of this is to exercise its jurisdiction over such waters areas and to measure different maritime zones from these baselines. According to the UNCLOS III provisions, the lengths of baseline are 24 nautical miles for the bays and 100 and 125 nautical miles for the archipelagic waters.[82] But practices show that larger limits of the baselines were existing among the states.

The maximum length for baselines is being exercised by Burma. It adopted a line segment measuring over 222 nautical miles in length. Moreover, by 1973 a large number of states employed one or more line exceeding 40 nautical miles. The table can clarify the practices of several states about the baselines.[83]

States	Nautical miles
Dominican Republic	45.0
Faroes	60.0
Burma	222.3
Madagascar	125.0
Venezuela	98.9
United Kingdom	40.25
Mozambique	60.4
Portuguese Guinea	79.0
Thailand	59.15
Philippines	140.05
Iceland	74.0
Indonesia	124.0
Guinea	120.0
Mauritania	89.0
Ecuador	136.0
Haiti	89.0

82 See LOS Convention, Article 47.

83 See Barry Hart Dubner, *The Law of Territorial Waters of Mid-Ocean Archipelagos and Archipelagic States* (1976), Martinus Nijthoff 11.

If the conventional provisions are strictly followed, then it is obvious that the archipelagic state like Philippines requires to cut off the length of the baselines which exceed the conventional limits. It may be questioned how far it would be practicable. There arises nothing to be surprising that the countries which are practising the baselines exceeding the conventional limits will raise the plea that they should delineate the baselines subject to their geographical, geological, geomorphological and economic considerations. As time passes, the coastal states are adopting different techniques in fixing baselines. In the words of R.D. Eckert, "Enthusiasms for enclosure has led few states to draw base lines that ignore land altogether : Bangladesh, for example, has delimited straight base lines according to the criterion of water depth, and the Maldive Islands have defined their internal waters according to geographical coordinates rather than to point on land. By 25, December 1975, about 50 of the 128 independent coastal states in the United Nations had drawn straight base lines to enclose bays, river mouths, or other coastal areas".[84]

From these observations, there is no doubt that difficulties for exercising baselines iniformaly among the states are inevitable.

Taking into account the variations in the configuration of the coast, the presence of islands and different formations in the coastal sea, the Law of the Sea conferences have provided different provisions as far as practicable to the delineation of baselines. Except the binding force, if it is desired that the LOS provisions should be applicable, then without the goodwill of the coastal states and without their alligiance to these provisions, it is not possible to make them practicable.

As regards the states exercising excessive claims to the baselines,[85] it is assumed that in the days to come conflicts will arise between these states and the states claiming navigation through water areas enclosed by the baselines. This may particularly be applicable to the

84 Ross D. Eckert, *The Enclosure of Ocean Resources : Economics and the Law of the Sea* (1979), Hoover Institution Press, Stanford University 28.

85 *Supra.*, n. 83.

"archipelagic waters". In the view of Stevenson and Oxman it can be pointed out that, "the question of archipelago is a good example of the delicate problem of promoting a widely acceptable treaty. Inclusion of the concept is of overriding concern to a limited number of states. However, unless the definition is carefully circumscribed and adequate navigation and overflight rights are guaranteed, inclusion of the concept would seriously reduce the chance of a widely acceptable treaty".[86]

UNCLOS III[87] has established certain criteria for archipelagic states, such as the ratio of the area of water to land and the length of straight baselines. The archipelagic states are entitled not only to

---

If it is desired that the LOS provisions should be applicable, then without the goodwill of the costal states and without their alligiance to these provisions, it is not possible to make them practicable.

---

join the outermost points of the outermost islands by straight archipelagic base lines but also to enclose drying reefs of the archipelago. The heart of the convention to the archipelagic disputes, however, is the provisions relating to sealanes and air routes wnich traverse the archipelago.

The extreme claim for the archipelagic states is to exercise full control over the "archipelagic waters" whereas other states, particularly the marine powers, want free navigation and overflight through such waters. From the international point of view, it is clearly advantageous to have freedom of navigation and overflight through "archipelagic waters". This proposition is highly acceptaole to the marine powers. But "the archipelagic states are in the main to be found

86 John R. Stevenson and Bernard H. Oxman, "The Third United Nations Conference on the Law of the Sea : The 1975 Geneva Session", 69(1175) AJIL 785.

87 See LOS Convention, Articles 47-54.

among the developing States, and have the sympathy of a large part of the third world—a sympathy which buffers them against the force of protest from the developed maritime powers".[88]

As a matter of fact, an archipelagic state can enclose a large area of water within the archipelagi baselines. From the definition of the "archipelagic state"[89] it may be mentioned that a coestal state having a group of islands cannot be regarded as an archipelagic state. As such, the group of islands appears not entitled to prescribe archipelagic baselines. But if the group of islands is an independent state, it would be regarded as an archipelagic state. Ultimately, it will be entitled to prescribe archipelagic baselines. That is to say, if the archipelagic baselines are only aplicable to the "archipelagic states", then it is submitted that the group of islands which is a part of the coastal state, would press for independence. The fact to bear in mind is that the UNCLOS III provisions regarding the "archipelagic states" will encourage the group of islands to be independent from the coastal state concerned.

Concluding Remarks

It is obvious that the coastal state sticks to its standpoint for safeguarding interests in delineating baselines. In point of fact, the coastal state reiterates in favour of the baselines already delineated. The bases for the delineation of baselines appear to emanate from geographical, geological, geomorphological and economic conditions of the coastal state. Where the coastal state depends largely on

88 E.D. Brown, *Passage Through Territorial Sea, Straits used for International Navigation and Archipelagos* (1974), The David Davis Memorial Institute of International Studies, London 109.

89 According to the LOS Convention (Article 46) : (a) "Archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands; (b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features from an intainsic geographical, economic and political entity, or which historically have been regarded as such.

the resources of the coastal sea the question of local requirements to be taken into account arises for delineating baselines. In so doing, pleas are made to give stress on the survival of the population either in part or as a whole of the coastal state.

In order to delineate baselines, the coastal state is required to abide by the provisions conventionally prescribed. But it has been acquainted that there were varying practices on baselines among the coastal states. The Law of the Sea Conventions have taken into account the existing practices. That is to say, the Law of the Sea Conventions have formulated the provisions in conformity with the existing practices. In effect, the legal bases for delineating baselines result from the practices of the coastal states. Speaking practically, such bases are related with the criteria what were already adopted by the coastal states for the delineation of baselines. If this is the fact, then it is doubted how far the Law of the Sea provisions on baselines will be applicable to the coastal states.

With the passage of time, need may arise from different angles for the coastal states. This may compel the coastal state to proceed for enclosing such more coastal zone within baselines. If so, in the days to come a large part of the oceans will fall in the regime of internal waters. It signifies that a considerable part of oceans will come under the national jurisdiction.[90] This will result in conflict among the states on the delineation of internal waters. It is also unquestioned that this will intensity disputes in a degree greater than the present situation.[91]

If a stable regime for oceans is wanted, it is necessary for the coastal state not to prescribe baselines in excess of the conventional

90 See Lewis M. Alexander and Robert R. Hodgson, "The Impact of the 200-Mile Economic Zone on ihe Law of the Sea", 12/3(1975) *The San Diego Law Review* 575, 573.

91 See M. Habibur Rahman's unpublished thesis, *Delimitation of Maritime Boundaries wit h Special Reference to the Bangladesh-India Situation* (1982), Uuiversity of Wales, 362-368.

provisions. But the question arises how long the conventional provisions will be effective. Unlsess a suitable period is elapsed, no assumption can be drawn as to the stability of oceans regime. This proposition is equally applicable to the regime of internal waters. If there is a stable regime, theoretically variations may seldom arise out of the bases legally applicable to the delineation of base lines. But from a practical point of view, it is difficult to conclude that the Law of the Sea convention will be able to maintain a harmony among the coastal states for the delineation of baselines.