Chapter Two

The Application of Straight Baselines on the Basis of Article 7 LOSC and State Practice: Implications for Coastal Archipelagos

2.1 Introduction

Article 7 LOSC has no reference to coastal archipelagos. It provides for the use of straight baselines in localities where there is a ‘fringe of islands along the coast in its immediate vicinity’. It has been suggested that this provision can provide a viable solution for coastal archipelagos. However, this is not without problems. Not only because the terminology used in this article does not seem to be in accord with the archipelagic concept, but also because the application of this article is ingrained with uncertainties.

The imprecise requirements stipulated in article 7 and the absence of numerical conditions, such as those prescribed for archipelagic states, have created implications for its interpretation and application in state practice. Various authors and the UN have interpreted the provisions of this article in a rather ‘strict’ way ensuring that the geographic particularities of an exceptional coast justifying the application of a special system of baselines are present. On the contrary, most states have been quite liberal in their interpretation of the conditions and the actual application of such a system in their coasts. This liberal application of the rules of article 7 by states has been criticised by authors as inconsistent with the LOSC,¹ but has attracted little attention by other states, with the exception of the US, which has been consistent in its objections against straight baselines allegedly incompatible with article 7 and also reluctant to apply straight baselines in its coasts.²

Uncertainty in the application of article 7 derives not only from its imprecise requirements and conditions, but also from the ambiguity concerning its purpose and objective. This chapter reviews the conditions specified in article 7 LOSC

² See J.A. Roach & R.W. Smith (2012), pp. 72–133. See also the publications of the US Department of State (Office of the Geographer, Bureau of Intelligence and Research) Limits in the Seas Series.
with regard to the application of straight baselines in ‘fringes of islands along the coast in its immediate vicinity’ in the light of academic literature and current state practice. It discerns specific approaches in state practice with regard to the application of straight baselines based on the purpose of such application. It further assesses the implications arising from the application of article 7 to coastal archipelagos and examines the compatibility of instances of state practice in coastal archipelagos with article 7. Finally, it assesses the impact of state practice upon the interpretation and application of article 7 of the LOSC.

2.2 Article 7 LOSC and Application of Straight Baselines in Localities where there is a ‘Fringe of Islands along the Coast in Its Immediate Vicinity’

A. Rationale and Objectives for the Application of Straight Baselines to ‘Fringes of Islands’

The rationale for the application of straight baselines is principally based on geography, particularly on the fact that the coast presents such geographic particularities that a system different from the low-water mark is necessitated. The reasons why such a system is necessary are diverse. It has been suggested that straight baselines function as a rationalisation technique in order to eliminate complex patterns and to simplify and ‘smooth out’ the inner and outer limit of the territorial sea. Scovazzi points out that ‘nature cannot be made over changing in a radical way the shape of a state. What is allowed is to rectify by a geometrical device a manifestly irregular coastline. To simplify without altering. That is the philosophy of the straight baselines method’. Complexities created by deep indentations of the coast and the existence of islands could lead to the inner and outer limit of the territorial sea having the form of irregular zigzags which would

---

3 *Fisheries case, ICJ Reports 1951*, p. 139: ‘The Court is thus led to conclude that the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast’.

4 In discussions preceding and during the 1930 Hague Conference on International Law, geographers noted the implications from the use of the low-water mark following the sinuosities of the coast; see S.W. Boggs, ‘Delimitation of the Territorial Sea: the method of delimitation proposed by the delegation of the US at the Hague Conference for the Codification of International Law’ 24 *AJIL* (1930) 541; also S.W. Boggs, ‘Delimitation of seaward areas under national jurisdiction’ 45 *AJIL* (1951), 240 at 245. See discussions in the ILC: Summary Records, 257th Meeting of the YBILC (1954), para. 24, p. 74; 255th Meeting [1954] 1 *YBILC* 68 UN Doc A/CN.4/SER.A/1954. Also J.A. Roach & R.W. Smith (2012), p. 59. It is argued by Prescott and Schofield that the rationalising effect refers mostly to the territorial sea, as a radius of 200 n.m. from a basepoint ‘would smoothed out even the most complicated coasts’; V. Prescott & C. Schofield (2005), p. 142.