Baselines under the Law of the Sea: Benefits and Challenges
- Capt. J. Ashley Roach

Baselines are locations separating internal waters under the complete sovereignty of the coastal State from waters where rights are shared with other States, and from which the breadth of the territorial sea and other maritime zones is measured.

Identifying the baseline is essential for public order, and therefore must be publicized.

Similarly publicizing the location of maritime boundaries is essential for public order.

The Law of the Sea Convention, articles 16(2), 47(9), 75(2), 84(2) and 76(9), set out those requirements: deposit the coordinates and/or nautical charts, and location of maritime boundaries, with the UNSG (DOALOS) via dipnote. Can’t rely on registering maritime boundary agreements with the Secretariat or providing legislation to DOALOS as meeting these deposit requirements (see DOALOS guidance at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/background_deposit.htm (paragraphs 2 and 4)).

Failure to deposit them may mean that the coastal State can’t enforce violations of its limits or boundaries because mariners will not officially know the locations of those limits or boundaries, thereby putting at risk the coastal State’s sovereignty, sovereign rights and jurisdiction.

Many States have not deposited with the UN their baselines, maritime zone limits and boundaries.

These 31 coastal States have not deposited their baselines and maritime zone limits: Albania, Algeria, Angola, Barbados, Bulgaria, Cameroon, Canada, Dem. Rep. Congo, Denmark, Djibouti, Dominica, Egypt, Estonia, Guinea, Guinea-Bissau, Haiti, Iceland, Republic of Korea, Malaysia, Malta, Mauritania, Morocco, Mozambique, Oman, Portugal, Senegal, South Africa, Sudan, Sweden, Thailand, Ukraine.

These 8 (of the 22) archipelagic States have not deposited requisite information on their baselines, maritime zone limits and maritime boundaries: Maldives, Marshall Islands, Solomon Islands, Cape Verde, Mauritius, Antigua & Barbuda, Grenada, Dominican Republic.

Only these 18 States have deposited all (not just some) of their maritime boundaries: Kenya, China, Cook Islands, Lebanon, Nauru, New Zealand, Niue, Palau, Tuvalu, Finland, Ireland, Latvia, Norway, Russia, Argentina, Brazil, Chile, Uruguay.
Sources of technical assistance: DOALOS, Commonwealth Secretariat, South Pacific Forum, Training programs (Rhodes Academy, CIL-ANCORS, IBRU), and expert consultants (who may be geographers, cartographers, or lawyers).
Baselines under the Law of the Sea: Benefits and Challenges

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Outline

- Baselines and Closing Lines
- Normal Baseline
- Depositing Charts
- Straight Baselines – State Practice
- Straight Archipelagic Baselines – State Practice
- Sources of Technical Assistance
- Conclusions
What are baselines?

- Locations separating internal waters under the complete sovereignty of the coastal State from waters where rights are shared with other States.
- Locations from which the breadth of the territorial sea (and other maritime zones) is measured.
- Identifying the baseline is essential for public order.
Normal Baseline

“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” (LOS Convention article 5; TSC article 3)

ICJ holds LOS Convention article 5 is customary international law (CIL) binding on all States (Nicaragua v. Colombia, Judgment, 2012 ICJ Rep. 97, para. 184)
Must baselines be claimed?

- Normal baseline: NO. It is the default baseline.
- Other baselines and closing lines: YES
- Coastline, including low-water line, must be identifiable
  - Nautical charts
  - Satellite imagery
Purposes of Depositing

- Protect the sovereignty of the coastal State of and in its territorial sea, now and in future (effects of sea-level rise)
- Ensure the international community is adequately informed of the boundaries of the territorial sea, including the baselines, outer limit lines, and lines of boundary delimitation
- Provide adequate information to ensure that international navigation does not unwittingly enter the territorial sea/EEZ of a coastal State and infringe the rules of innocent passage/protecting sovereign rights
- Failure to deposit may jeopardize enforcement of violations of the boundaries
Publicizing SBL

- Article 16(2) requires coastal States to deposit with the UN Secretary-General charts showing straight baselines, or list of geographical coordinates of points, specifying the geodetic datum (same requirement under article 47(9) for ASBL)
- These 31 coastal States have not deposited:
  - Albania, Algeria, Angola, Barbados, Bulgaria, Cameroon, Canada, Dem. Rep. Congo, Denmark, Djibouti, Dominica, Egypt, Estonia, Guinea, Guinea-Bissau, Haiti, Iceland, Republic of Korea, Malaysia, Malta, Mauritania, Morocco, Mozambique, Oman, Portugal, Senegal, South Africa, Sudan, Sweden, Thailand, Ukraine

Publicizing Maritime Boundaries

- Law of the Sea (LOS) Convention requires deposit of coordinates of, or charts showing, all maritime boundaries with the UN
  - articles 16(1), 75(1), 84(1), 76(9)
- Some States have not done so, and thus put at risk their sovereignty or sovereign rights
- Mariners will not know where are those boundaries and thus inadvertently cross the line
- Enforcing the boundaries made very difficult
Maritime Boundaries

- Coordinates of all their maritime boundaries have been deposited with the UN by these 18 States:
  - Kenya
  - China, Cook Islands, Lebanon, Nauru, New Zealand, Niue, Palau, Tuvalu
  - Finland, Ireland, Latvia, Norway, Russia
  - Argentina, Brazil, Chile, Uruguay
What is to be Deposited @ UN

- Nautical charts or list of coordinates
- Both often submitted to DOALOS then posts them on its maritime space web page for each State (http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/_derived/regionslist.htm_cmp_blueprint110_vbtn_a.gif)
- Must specify the geodetic datum (often WGS 84)
- Coastal State may create and publish its own charts or use charts published by a foreign hydrographic service if it is recognized “officially”, e.g.
  - UK Hydrographic Office – Admiralty Charts (https://www.admiralty.co.uk/charts)
- Don’t wait for maritime boundaries to be agreed
DOALOS Guidance on Deposit

- Deposit of charts or of lists of geographical coordinates of points with the UNSG is an international act by a State Party to the Convention in order to comply with the deposit obligations.
- This act is addressed to the UNSG in the form of a note verbale or a letter by the Permanent Representative to the United Nations or other person duly authorized to do so, which should (i) be accompanied by the relevant information, (ii) clearly state the intention to deposit and (iii) specify the relevant article(s) of the Convention.
- The mere existence or adoption of legislation or the conclusion of a maritime boundary delimitation treaty registered with the Secretariat, even if they contain charts or lists of coordinates, cannot be interpreted as an act of deposit with the Secretary-General under the Convention.
- States parties are encouraged to provide all the necessary information for conversion of the submitted geographic coordinates from the original datum into the World Geodetic System 84 (WGS 84), a geodetic datum system that is used by the Division for its internal data storage.
Deposits Not Required

- Normal baseline, although must be depicted on large-scale charts officially recognized by the coastal State, and
- Outer limit of the territorial sea measured from normal baselines
- However, with introduction of electronic nautical charts, likely that even these will be required to be deposited if closing lines for all river mouths and bays are shown on the charts
Straight Baselines (1)

- Text of LOS Convention article 7:
  - “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” (TSC article 4.1)
  - “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” (TSC article 4.2)
Straight Baselines (2)
Straight Baselines (5)

● “The Court [ICJ] observes that the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number or conditions are met.

● “This method must be applied restrictively.

● “Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in the immediate vicinity.”

● Maritime Delimitation and Territorial Question between Qatar and Bahrain, Merits, Judgment, 2001 ICJ Rep. 40, at 67, para. 212
Straight Baselines (6)

- Of the 153 coastal and island States, 79 States have drawn straight baselines (SBL)
- Many of the SBL segments do not appear to conform to one or more of the requirements of article 7 LOSC
- State practice table as of 2015 of SBL segments is on the ILA Baseline Committee page at ila-hq.org and is being updated
Combination of Methods

- The coastal State may determine baselines in turn by any of the methods provided for in articles 5-13 to suit different conditions (new in LOS Convention, article 14):
  - Normal baseline (article 5)
  - Reefs (article 6)
  - Straight baselines (article 7)
  - Mouths of rivers (article 9)
  - Bays (article 10)
  - Ports (article 11)
  - Roadsteads (article 12)
  - Low-tide elevations (article 13)

- China does not permit the use of the normal baseline (1992 Territorial Sea Law, article 3)
State Practice - Asia

- Normal baseline only
  - Bahrain, Brunei, DPRK, Israel, Jordan, Kuwait, Lebanon, New Zealand, Palau, Qatar, Singapore, Sri Lanka, Timor-Leste, Tonga

- Combination of normal and straight baselines
  - Bangladesh, Cambodia, Fiji, India, Iran, Iraq, Japan, Malaysia, Myanmar, Nauru, Oman, Pakistan, Republic of Korea, Malaysia, Samoa, Saudi Arabia, Thailand, UAE, Vietnam

- Straight baseline only
  - China
State Practice - Africa

- Normal baseline only
  - Benin, Congo, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Ghana, Liberia, Namibia, Nigeria, Sierra Leone, Togo

- Combination of normal and straight baselines
  - Algeria, Angola, Cameroon, Democratic Republic of the Congo, Cote d’Ivoire, Djibouti, Egypt, Gabon, Guinea, Guinea-Bissau, Kenya, Libya, Madagascar, Mauritania, Morocco, Mozambique, Senegal, Somalia, South Africa, Tunisia, United Republic of Tanzania, Yemen

- Straight baseline only
  - None
State Practice – Latin America

- Normal baseline only
  - Barbados, Belize, Dominica, El Salvador, Guatemala, Guyana, St Kitts & Nevis, St Lucia, Suriname
- Combination of normal and straight baselines
  - Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Honduras, Mexico, Nicaragua, Peru, Venezuela
- Straight baselines only
  - Ecuador, Nicaragua (in the Caribbean)
State Practice – Europe

- Normal baseline only
  - Belgium, Bosnia & Herzegovina, Croatia, Georgia, Greece, Lithuania, Montenegro, Poland, Slovenia, Turkey, USA

- Combination of normal and straight baselines
  - Albania, Bulgaria, Canada, Denmark, Estonia, France, Germany, Ireland, Italy, Latvia, Malta, Netherlands, Portugal, Romania, Russia, Spain, Sweden, UK

- Straight baselines only
  - Cyprus, Finland, Iceland, Norway
Combination of Methods

- Combination of normal and straight baselines is used by many states.
- Locations where the low-water line is used is proper and SBLs would not be appropriate.
- SBLs are used in two ways:
  - In localities where the coast is deeply indented and cut in or where there is a fringe of islands along the coast in its immediate vicinity (the law).
  - Where the coastline does not meet these criteria.
SBL Segment Lengths

- No specific maximum length decided in 1951 ICJ Fisheries case and none specified in 1958 Territorial Sea Convention or 1982 LOS Convention
- Maximum length approved by ICJ in 1951 was 40 nm
- 31 of 79 coastal States have drawn no segments > 40 nm
- 48 States have one or more segments > 40 nm
- Total number of SBL segments > 40 nm worldwide = 260
Segment Lengths < 40 nm

- **Asian States**
  - Iraq, Nauru, Oman, Samoa, UAE

- **African States**
  - Algeria, Cameroon, Democratic Republic of the Congo, Djibouti, Egypt, Morocco, Senegal, Somalia, Yemen

- **Latin American States**
  - Mexico

- **European States**
  - Estonia, Finland, France, Latvia, Malta, Netherlands, Romania, Sweden, Ukraine
Segment Lengths > 40 nm

- **Asian States**
  - Bangladesh, Cambodia, China, Guinea-Bissau, India, Iran, Japan, Malaysia, Myanmar, Pakistan, Saudi Arabia, Republic of Korea, Thailand, Vietnam

- **African States**
  - Gabon, Kenya, Libya, Madagascar, Mauritania, Mozambique, South Africa, Tunisia, United Republic of Tanzania

- **Latin American States**
  - Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Haiti, Honduras, Nicaragua, Peru, Uruguay, Venezuela

- **European States**
  - Canada, Denmark, Germany, Iceland, Italy, Norway, Portugal, Russia, Spain, UK
Implications of Segment Lengths

- In locations where States have drawn straight baseline segments > 40 nm long, the coastline generally does not meet either of the two basic criteria: deeply indented and cut into, or fringe of islands.
- Often these straight baseline segments also do not meet the separate criterion of not departing from the general direction of the coast.
- Consequence: those States have taken ocean space that should be shared with all States.
SBL Segment Lengths (2)

- 40-50 nm = 83 segments by 32 States
- 51-60 nm = 53 segments by 30 States
- 61-70 nm = 42 segments by 23 States
- 71-80 nm = 25 segments by 15 States
- 81-90 nm = 24 segments by 16 States
- 91-100 nm = 7 segments by 8 States
- 101-110 nm = 8 segments by 6 States
- 111-120 nm = 6 segments by 7 States
- 121-130 nm = 3 segments by 3 States
- 131-140 nm = 2 segments by 2 States
- 141-150 nm & 161-70 nm = 1+2 segments by 1 State
- 181-190 nm = 1 segment
- 221-230 nm = 1 segment
- > 300 nm = 1 segment
Protests of SBLs

- 82 publicly available protests of straight baseline claims have been identified
- of 39 States (almost 50%)
- by 21 States (and the EC/EU on behalf of its member States), 19 of which are party to the LOSC
- Wording of protests varies; not all are precise as to non-compliance with specific provisions of article 7
- Texts are on the Baselines Committee’s web page at ila-hq.org
“8. The baselines drawn in accordance with this article [47] shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.”

“9. The archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations”
Compliance with Article 47(9)

- Asian archipelagic States
  - Comoros, Fiji, Indonesia, Kiribati, Papua New Guinea, Philippines, Tuvalu, Vanuatu
- African archipelagic States
  - Sao Tome & Principe, Seychelles
- Latin American States
  - The Bahamas, Jamaica, St Vincent & the Grenadines, Trinidad & Tobago
- Not deposited charts:
  - Maldives, Marshall Islands, Solomon Islands
  - Cape Verde, Mauritius
  - Antigua & Barbuda, Grenada, Dominican Republic
- DOALOS guidance same as for SBL/MB
Compliance with Article 47(1)-(5)

- **Asia**
  - Comoros, Fiji (one archipelago falls below land:water ratio), Indonesia, Kiribati (one archipelago exceeds land:water ratio), Maldives (exceeds 3% rule), Marshall Islands (one archipelago exceeds land:water ratio), Papua New Guinea (one segment longer than 125 nm), Philippines, Solomon Islands (one archipelago exceeds land:water ratio), Tuvalu, Vanuatu

- **Africa**
  - Cape Verde, Mauritius, Sao Tome & Principe, Seychelles (3 of 4 archipelagos exceed land:water ratio)

- **Latin America**
  - Antigua & Barbuda, The Bahamas, Grenada, Jamaica, St Vincent & the Grenadines, Trinidad & Tobago, Dominican Republic (?)
Sources of Technical Assistance

- DOALOS
- Commonwealth Secretariat
- South Pacific Forum
- Training programs
  - Rhodes Academy
  - CIL-ANCORS
  - IBRU
- Expert consultants
  - Geographers, cartographers, lawyers
Conclusions

- Precision in requirements for archipelagic straight baselines in article 47(1-2) is responsible for the wide adherence to those requirements by archipelagic States.
- In contrast, the lack of mathematical specificity in article 7 has resulted in many States claiming more sea area than they are entitled to (note the ICJ’s criteria of restrictive (strict) adherence to article 7).
- Analysis of state practice suggests States with baseline segments longer than 40 nm are situated in localities that do not meet one or more of article 7 criteria.
- Problem remains how to convince these States to bring their SBL claims into conformity with article 7 as repeatedly called for by the UNGA.
Thank you for your attention
Questions?

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