

# INTERNATIONAL LAW OF TERRITORIES

LAW OF THE SEA PART 1

## BASELINES

- internal limit of the territorial sea
- line from which the extent of the territorial sea is measured
- the other coastal zones, which are defined in terms of distance from the coast, are also measured from the same baseline
- **NORMAL BASELINE** – the low-water line along the coast (art. 5 LOSC)
  - juridical boundary between the land and the sea normally coincides with the natural one, following the configuration and curvatures of the coastline
  - except where LOSC allows for the use of straight baselines

### **Why low-water line?**

Fisheries Case (United Kingdom v Norway)

- *for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, or to the mean between the two tides, which has generally been adopted in the practice of States.*
- *This criterion is the most favourable to the coastal State and [especially along coastlines where there is a great difference between the high and low-water marks]*
- *clearly shows the character of territorial waters as appurtenant to the land territory*

### **REEFS: Baseline = seaward low-water line of the reef**

- in the 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 (art. 6 LOSC)
- applies to reefs created by corals in the warm tropical and sub-tropical waters of the Pacific and Indian Oceans and the Caribbean Sea
- The waters of the atolls and the waters between the fringing reefs and the main island are to be considered as internal waters



### **PORT**

- An exception to the rule that the normal baseline follows the natural configuration of coastline (art. 11 LOSC)
- the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast
  - applies only to harbour works—docks, piers etc.
  - Forming integral part of harbour system
  - does not apply to other artificial structures which are built along the coast but serve different purposes
  - nor does it apply to offshore installations and artificial islands which are detached from the coastline

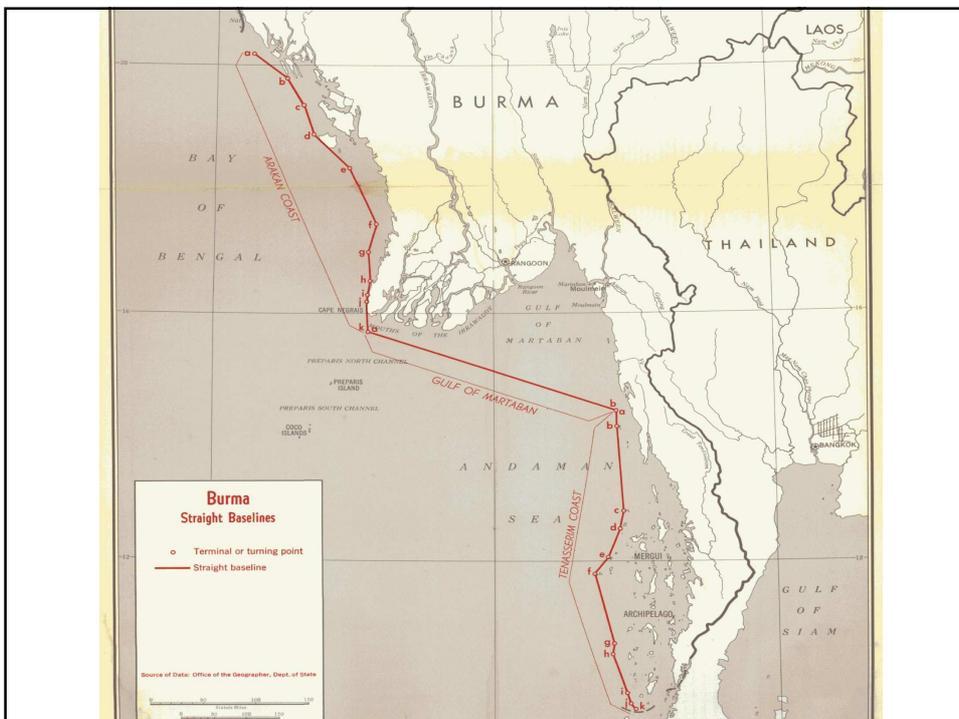


### **STRAIGHT BASELINES**

- drawn on the basis of an artificial construction
- They run into the sea and connect appropriate points
- Used in exceptional cases – examples?
  - on deeply indented coastlines and fringes of islands (Art. 7 LOSC)
  - bays (Art. 10 LOSC)
  - mouths of rivers (Art. 9)
- waters on the landward side of the baseline form part of the internal waters → what about right of innocent passage?

### **Deeply indented coastlines and fringes of islands (Art. 7 LOSC)**

- Only one of the two situations specified – sufficient to allow for the drawing of straight baselines
- 1) must not depart to any appreciable extent from the general direction of the coast
- 2) Taking into account: economic interests peculiar to the region concerned
  - Unlike geographical factors, economic factors play a subordinate role under LOSC
  - The reality and importance of the economic interests in question must be clearly evidenced by long usage (past)
- 3) may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or EEZ

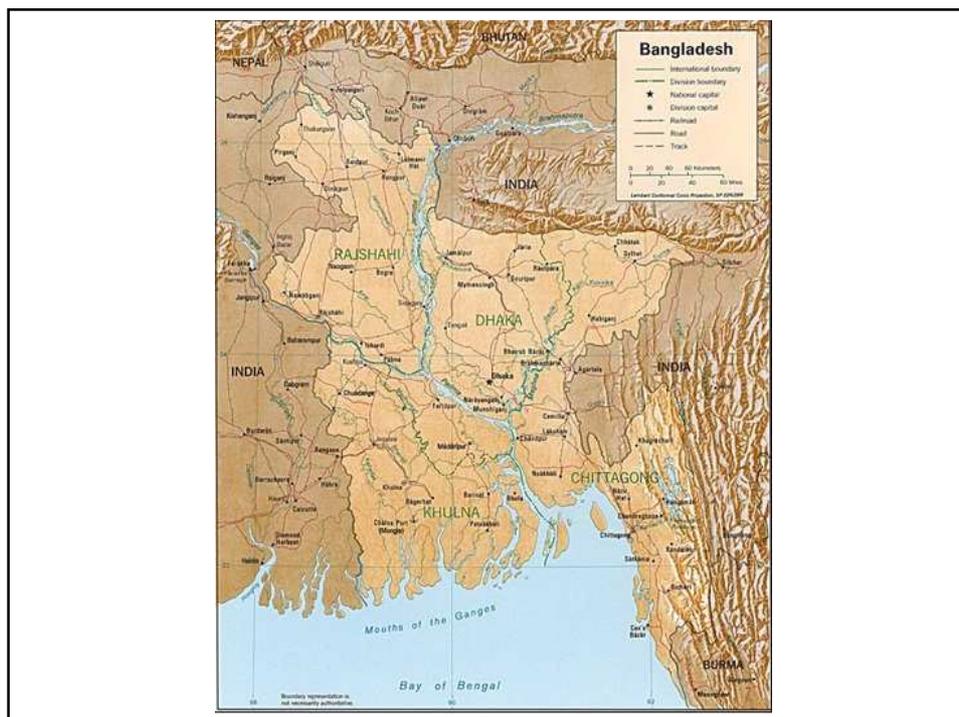


Art. 7 LOSC – assessment:

- **its wording does not contain sufficient geometrical precision** (the ratio between the length of the closing line of the indentation and the distance between this line and the most internal point of the indentation; At what distance from the coast should a fringe of islands be located to be considered in its immediate vicinity)
- The **lack of precision** can perhaps be explained in the light of a surprising, although evident, circumstance → description of norweigna coast (so influences by ICJ judgment, *that they literally reproduce some passages of the decision*)

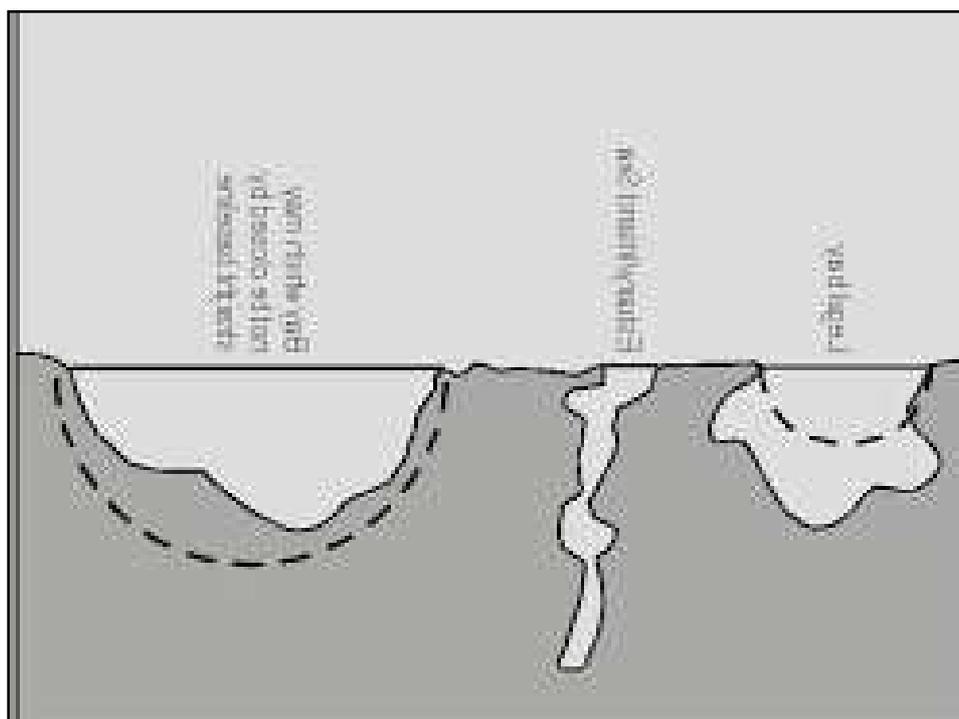
### **Deltas (art. 7(2) LOSC)**

- *where because of the presence of a delta and other natural conditions the coastline is highly unstable*
- So-called „Bangladesh exception“
  - where the cumulative effects of river flood, monsoon rainfall, cyclonic storms, and tidal surges contribute to a highly shifting, and unstable low-water mark along the delta of the Ganges River and the Brahmaputra River

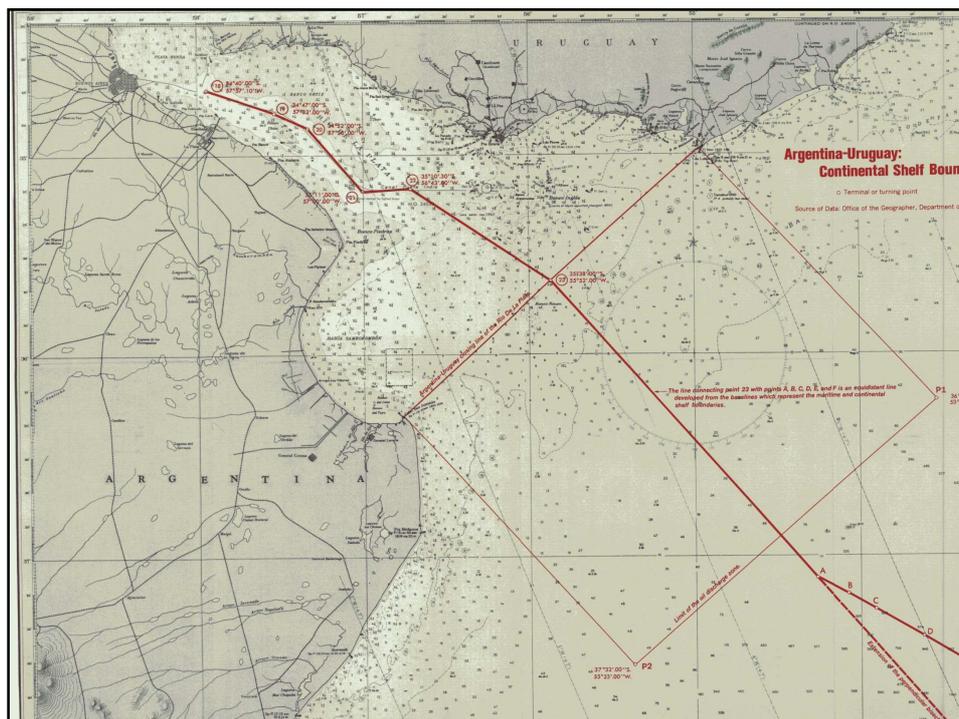


### **Bays (art. 10 LOSC)**

- two geometrical conditions which must concur in order to enclose them as internal waters **[juridical bays]**
- 1) to distinguish it from a mere curvature of the coast [semi-circle rule]**
    - the bay must be a well-marked indentation,
    - having an area as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of the indentation
  - 2) the distance between the natural entrance points of the bay must not exceed 24 nautical miles**



- islands within an indentation are considered as belonging to the water area
  - the semi-circle is drawn on a line as long as the sum total of the lengths of the lines across the different mouths
- the provisions on juridical bays relate only to bays the coasts of which belong to a single State
- **Historic bays:**
  - provisions on juridical bays do not apply to the so-called historic bays
  - the assumption is that such bays can be closed even if they do not meet one or both of the conditions set forth for juridical bays
- usually considered to be a species of the wider category of historic waters



### Low-tide elevations

- Must meet three criteria (art. 13(1) LOSC):
  - naturally formed area of land
  - surrounded by and above water at low tide
  - but submerged at high tide
 [shoals, sandbars]
- Basic remarks:
  - cannot be assimilated to an island; may not generate territorial sea
  - Situated within the limits of territorial sea measured from the mainland / island – low-water line may be used as a baseline

**Low-tide elevations cannot be used as a basepoint for drawing a straight baseline segment**

• **Exceptions**

- Lighthouses or other similar **installations** which are **permanently** above **sea level** have been built upon these features
  - Similarity due to a shape (a tower) or due to a function (buoy to prevent accidents of navigation)
- OR
- There has been **general international recognition** of the legitimacy of the use of such features for drawing of baselines art. 7(4) LOSC

## **INTERNAL WATERS**

- the concept comprises saltwater areas, as well as internal freshwater areas (rivers and lakes)
- **Status:**
  - Integral part of the territory of a coastal State
  - Subject to the same legal regime as the landmass (possess the closer and more direct linkage to land territory)
  - zone over which a coastal State has the most unrestricted jurisdictional powers in the modern law of the sea.
  - Principle distinction of internal waters, as compared with the territorial sea → no right of innocent passage of foreign ships therein

- **In principle**, the coastal State enjoys full territorial sovereignty over foreign ships in its internal waters
  - Exercise of the sovereignty may be limited by international customary law
  - By bilateral or multilateral treaties

State sovereignty exists over its internal waters and extends to the air space over internal waters as well as to the sea bed and subsoil

- **Scope**
  - those waters which lie on the landward side of the baselines (from which the territorial sea and other maritime zones are measured)
  - generally defined in relation to the territorial sea as the waters inside the inner limit of the territorial sea

## **RIGHT OF ACCESS TO FOREIGN PORTS**

- General principle: State does not have unlimited power to prohibit access to its ports
- Coastal States have the right to open their ports and close them where the vital interests (peace, order, security, public health) are at stake
- No right of access under customary international law:
  - The mere repetition of rights of entry in particular treaties does not automatically constitute rule of customary law
  - The recurrent stipulation of the right of entry into international agreements reflects the fact that there exists no such right under customary law

- *Suadi Arabia v. Armaco 1958* – According to a great principle of public international law, the ports of every State must be open to foreign merchant vessels and can only be closed when the vital interests of the State so require
- State practice: The general open access to commercial ports for foreign merchant ships is based on a similarly widespread reciprocal comity

- The coastal State enjoys a right to set conditions for access to its ports, especially with regard to the standards and requirements of ship safety and environmental protection (by virtue of its sovereignty)
- Consequently, there would be obligations upon the coastal states:
  - To announce the access conditions
  - To ensure that waterways, used as necessary access channels leading to the ports, remain in sound state
  - Not to discriminate among foreign ships in internal waters (state parties to the agreements establishing the mentioned rule)

## SHIPS IN DISTRESS

- It is a long-established rule in customary international law since the *Eleanor case* in 1809 that ships in distress or *under force majeure* may enter foreign ports to seek shelter
- Distress due to:
  - conditions on board, such as structural or equipment failure, the urgent need for fuel or provisions, navigational error, or mutiny
  - external factors, either natural (an actual or anticipated storm) or of human origin (e.g. a collision caused by another vessel or an attack by pirates or enemies)

### Distress:

- imminent danger
- something of a grave necessity
- *The Eleanor [1809]* → 'The necessity must be urgent, and proceed from such a state of things as may be supposed to produce on the mind of a skilful mariner, a well-grounded apprehension of the loss of vessel and cargo, or of the lives of the crew'



### **Rights of ships in distress:**

- ships in distress entering a port, offshore terminal, or place of refuge **enjoy significant immunity from local laws** (customary rule)
- The immunity from local jurisdiction also applies to arrest of the vessel, to local health, criminal, and tax laws, and, traditionally, to public charges normally levied for entry into port
- With respect to **warships** in distress, principles of sovereign immunity reinforce the immunity of such vessels from the application of local laws
- Art. 218 (1) and (3), 220 (1) LOSC

### **Scope of the immunity:**

- rule of exemption does **not** mean that a ship in distress is **absolutely** immune from local laws and regulations
- the exemption applies solely to those violations that have been committed by the ship in distress and inevitably resulted from the distress
- breaches of customs law, frontier control and entry clearance are normally deemed unavoidable by reason of *force majeure*
- ship in distress obliged to comply with
  - the instructions of the port authority
  - with the laws and regulations regarding navigation management, environmental protection, port facility protection and safety control
  - as long as it is in a position to do so

However, in some exceptional cases, the ship in distress

**may not claim exemption from local jurisdiction:**

- a distress is intentionally contrived in order to evade local laws and regulations [violates *the* general principle of prohibition of the abuse of rights in international law]
- if a distress occurs to a ship while it is engaged in an unlawful activity, examples:
  - smuggling
  - espionage
  - subversive broadcasting
  - conspiracy
  - illegal fishing
  - terrorism, drug traffic and piracy against the international community as a whole

## **RIGHT OF EXIT PORT**

Although rights of access, to the extent that they exist, imply a right to leave port, **the right of exit is subject to important limitations**

- States are entitled to arrest ships in ports, in accordance with their normal legal process (for example vessels may be seized for customs offences)
- Ships in port are liable to arrest as security, in civil actions or actions *in rem* against the ship itself
- States may detain ships which are in unseaworthy condition or otherwise unfit to proceed to sea
- States may require ships to obtain clearing papers from the port authorities, certifying compliance with customs and health formalities, before they leave port

## **COASTAL STATES JURISDICTION IN INTERNAL WATERS**

- A foreign merchant ship which voluntarily enters a port or other internal waters of a coastal State puts itself **fully under the territorial jurisdiction of the State**
- the coastal State may prescribe rules and enforce them by executive or adjudicative means against foreign merchant ships as well as the crew members, passengers and goods aboard
- foreign ships are, at the same time, also **subject to the jurisdiction of the flag States** wherever they are

### **State practice:** Coastal States are always reluctant to

exercise their criminal and civil jurisdiction over foreign ships in internal waters, unless their significant interests are involved

- Anglo-American position
  - the jurisdiction of a coastal State is complete over foreign merchant ships lying in its internal waters and over persons and cargoes on board. But the State may, out of consideration for public policy, choose to forgo the exertion of its jurisdiction
- French jurisprudence
  - coastal State can only exercise its jurisdiction in matters endangering its essential interests that would affect the peace and good order of the port
  - State has in law no jurisdiction over purely "internal economy"

The assertion of jurisdiction depends on whether the consequences of an act on board in view are confined within the ship or go beyond

- **Matters with external effects** – affect the peace and good order of the coastal State or the tranquillity of the port
  - collision
  - environmental pollution by illegal dumping, discharge and even sinking
  - damage to navigational aids
  - business fraud
  - smuggling
  - drug traffic
  - illegal immigration
  - subversion attempts against the coastal State
  - acts involving a non-crew member

- **matters with internal effects**
  - all matters solely related to internal discipline, internal legal relations and all things done on board which affect only the ship, its crew and interior economy
  - the enforcement of internal discipline
  - implementation and interpretation of employment contracts
  - issues of labour protection and insurance
  - internal business administration, including the keeping of ship stores and backlog and the maintenance of operation records

(matters left to the ship itself and to the authority of the flag State)