

State Practice regarding Straight Baselines in East Asia
– Legal, Technical and Political Issues in a Changing Environment

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Abstract

Article 5 of the United Nations Convention on the Law of the Sea (UNCLOS) provides for normal baselines consisting of “the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State”. However, in particular restricted geographical circumstances, straight baselines may be employed. UNCLOS Article 7 establishes three main criteria for drawing these baselines. Firstly and crucially, they should only be used in localities where the coastline is deeply indented, or if there is a fringe of islands along the coast in its immediate vicinity.” Secondly, “[t]he 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 linked to the land domain to be subject to the regime of internal waters. Thirdly, account may be taken of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage. Additionally, rules specific to deltas and similarly unstable coasts are provided. These seemingly strict criteria have been interpreted very flexibly, or even ignored in practice by countries in East Asia.

Flexible and liberal criteria have entered into State practice with drawing straight baselines in East Asia. Almost all regional countries (i.e. Cambodia, China, Japan, North Korea, South Korea, Malaysia, Myanmar, the Philippines, Thailand and Vietnam) have used straight baselines for parts of their coasts which are neither deeply indented or with a “fringe” of islands. For example, in 1996, China claimed a system of straight baselines along most of its mainland coast and around the Paracel islands in the South China Sea. In another extreme example, Malaysia has employed a system of implicit straight baselines by proclaiming outer limits of the territorial sea, which because they are straight, are therefore implicitly based on straight lines.

This paper will address technical, legal and political issues arising from State practice with the drawing of straight baselines in East Asia. The straight baseline claims have excited international protests, most notably from the USA. The existence of excessive straight baseline claims has complicated the process of maritime boundary delimitation in the region and inhibited the management of regional seas more generally. The paper concludes that as regional countries continue to grow economically, displaying greater political confidence and exercising increased maritime power, they are unlikely to step back from their straight baselines systems. This presents these States with both opportunities and challenges in terms of the maintenance and enforcement of their claims in a changing environment, and potentially has implications for emerging norms in regional state practice and, ultimately customary international law.