

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

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Importance of Baselines

- **Fundamental to maritime claims**
 - Define outer limits of internal waters
 - Starting point for claiming maritime zones
 - Provide basepoints for generation of limits of national maritime claims

Importance of Baselines

- **Fundamental to maritime boundary delimitation**
 - Determine basepoints for construction of median line
 - Median line often starting point for delimitation
 - Presumption in favour of equidistance line in territorial sea delimitation (Article 15)
 - Majority of maritime boundary agreements wholly or partially based on equidistance

Normal Baselines

Geneva Convention on the Territorial Sea
and the Contiguous Zone, Article 3

LOSC, Article 5

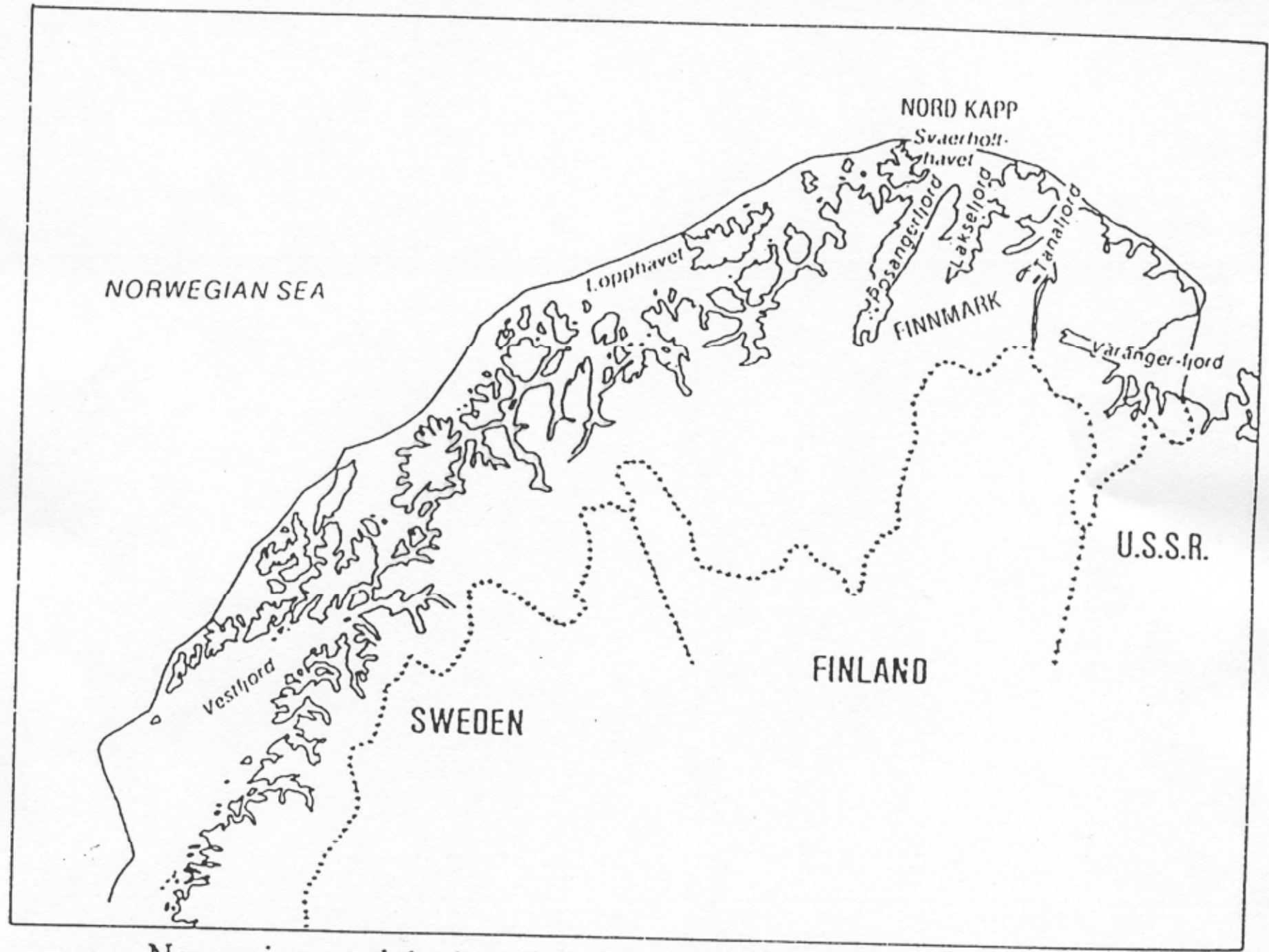
Article 5 of the LOSC states:

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 recognised by the coastal State.

Straight Baselines: The United Kingdom vs. Norway ICJ Case

- Norway claimed straight baselines along its northern coast from 1935
- Four nautical mile fishery zone claimed from straight baselines
- UK fishing vessels arrested in 'extra' fishery zone claimed
- UK brought case before ICJ against Norway in 1949
- Judgment in 1951





Norwegian straight baseline (see 111)

The ICJ's 1951 Judgment

The ICJ found in favour of Norway, stating that:

“Where a coast is **deeply indented and cut into...** or where it is bordered by an archipelago such as the ‘skjaergaard’ along the western sector of the coast...”

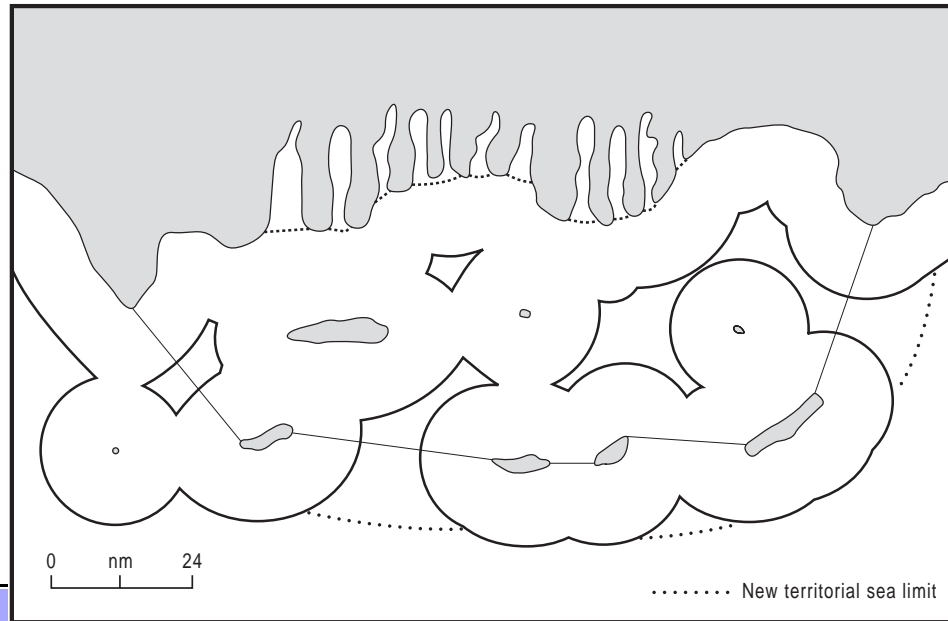
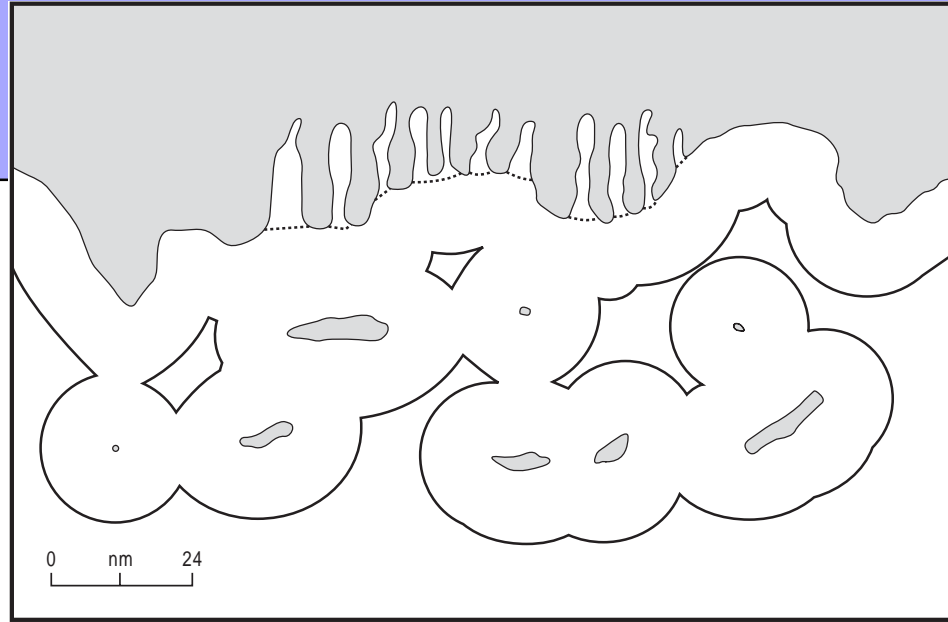
“Such a coast, viewed as a whole, calls for the application of a different method; that is, the method of base-lines which **within reasonable limits**, may depart from the physical line of the coast.”

- Judgment therefore fundamental to the introduction of the straight baselines concept
- Led directly to the drafting of Article 4 of Geneva Convention and hence Article 7 of the UN Convention

Intentions of Article 7

- Cater for unusual coastal geography
- Avoid situations where normal/bay closing lines result in enclaves of non-territorial sea
- Avoid complex mosaic of territorial sea and non-territorial sea areas
- Simplify marine management





Source: United Nations, 1989



Straight Baselines

Geneva Convention on the Territorial Sea and the Contiguous Zone, Article 4

LOSC, 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.
2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low water line and notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.
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 to be subject to the regime of internal waters.
4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses 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.
5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by long usage.
6. The system of straight baselines 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 an exclusive economic zone.

Deeply indented or Fringe of Islands

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.

Deeply indented or Fringe of Islands

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 - What constitutes a **“deeply indented and cut into”** coastline?
 - How is a **“fringe”** of islands defined and at what distance offshore is such a fringe of islands in the coastline’s **“immediate vicinity”**?
 - No objective tests provided
 - US Guidelines detailed

General Direction of the Coast

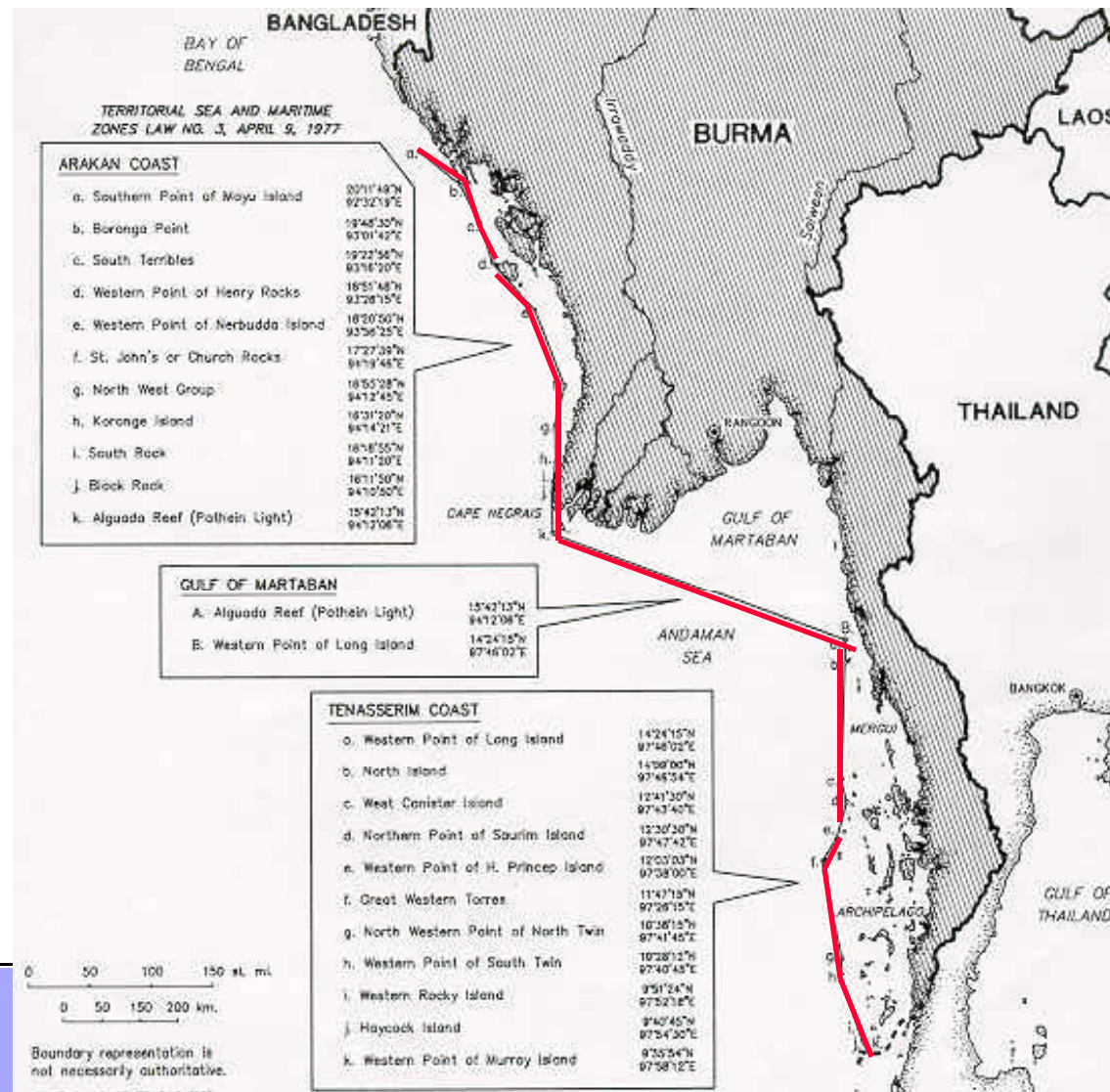
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In sum:

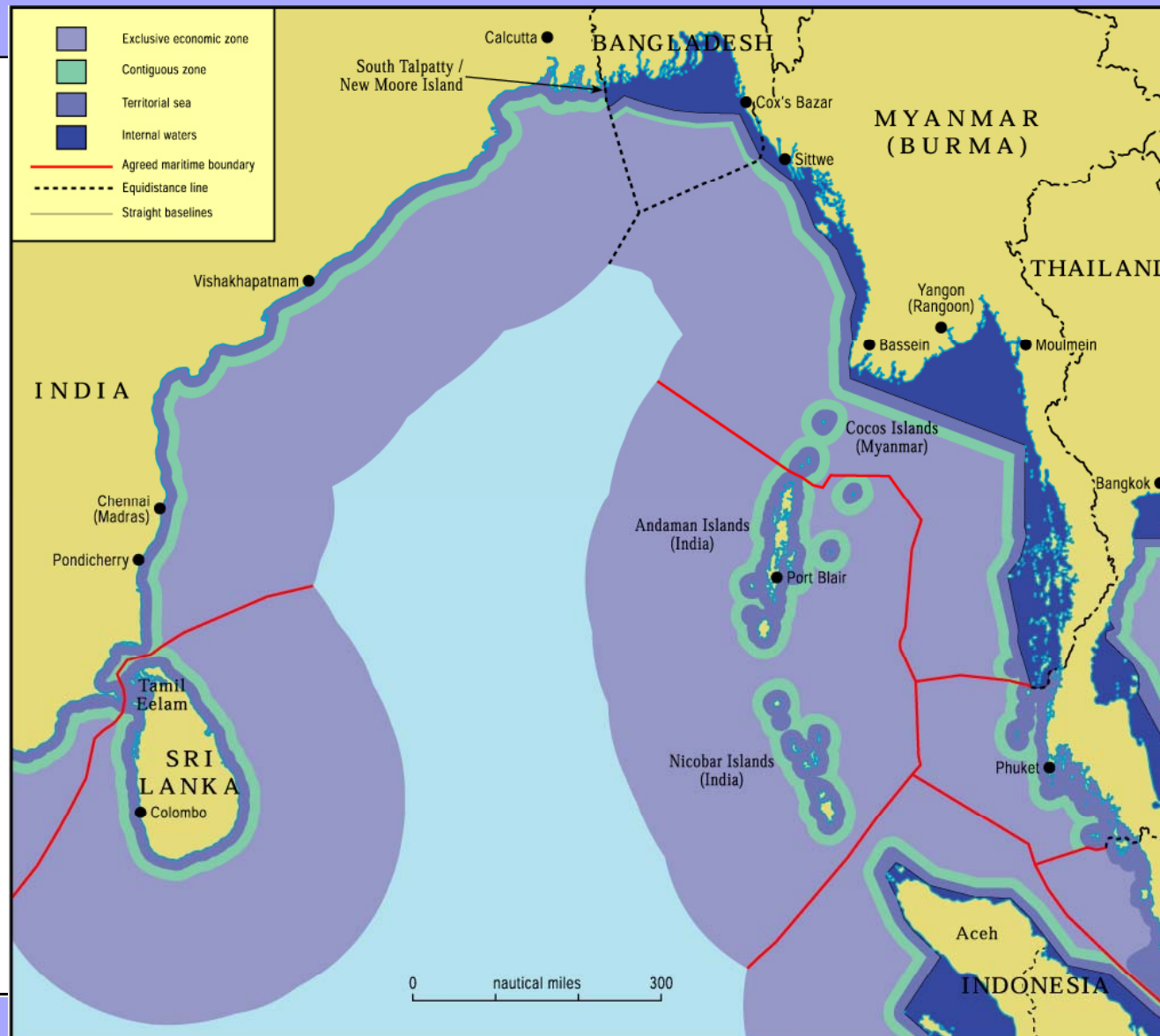
“the imprecise language [of Article 7] would allow any coastal country, anywhere in the world, to draw straight baselines along its coast.”

Prescott, 1985

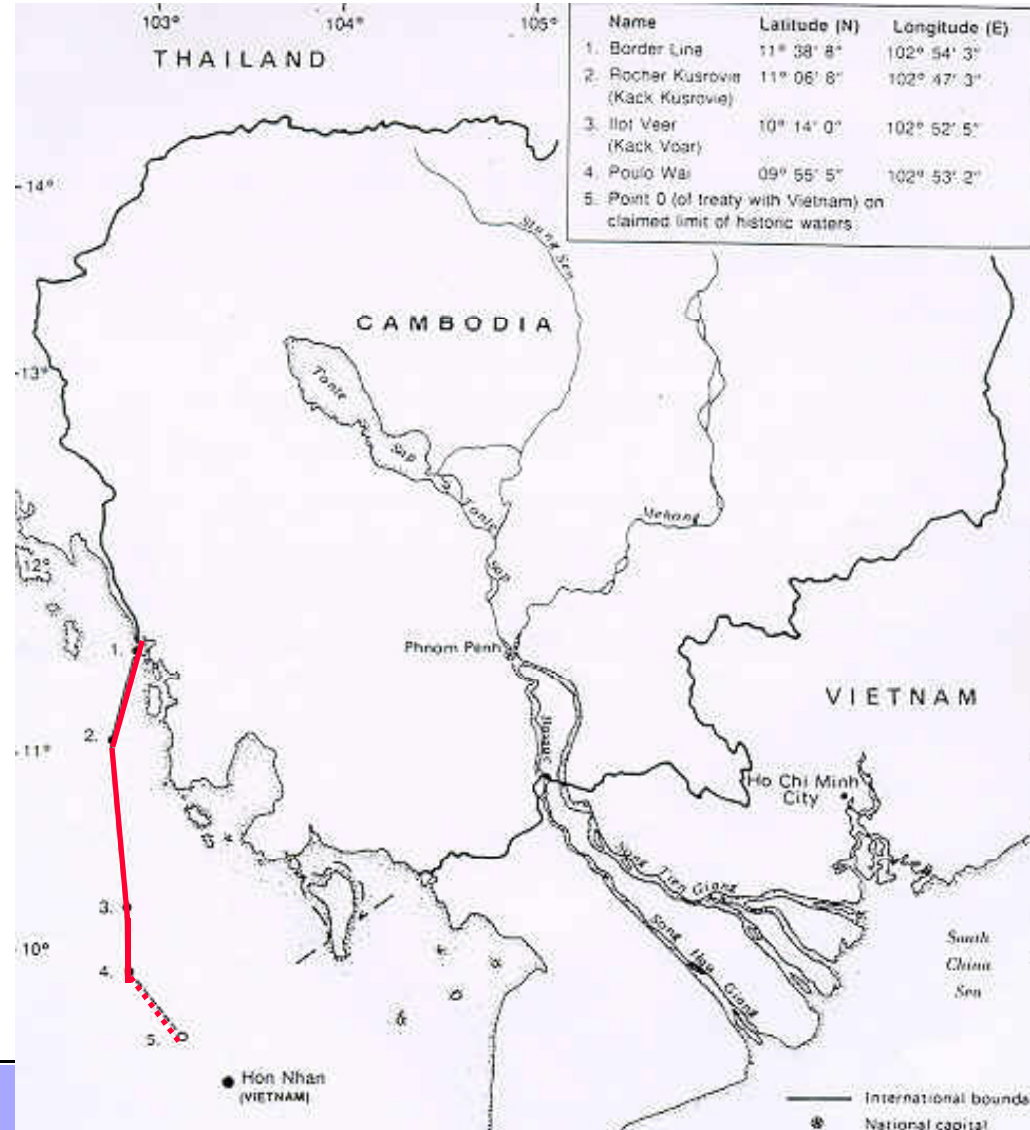
Burma's Claimed Straight Baselines



The Andaman Sea



Cambodia's Claimed Straight Baselines

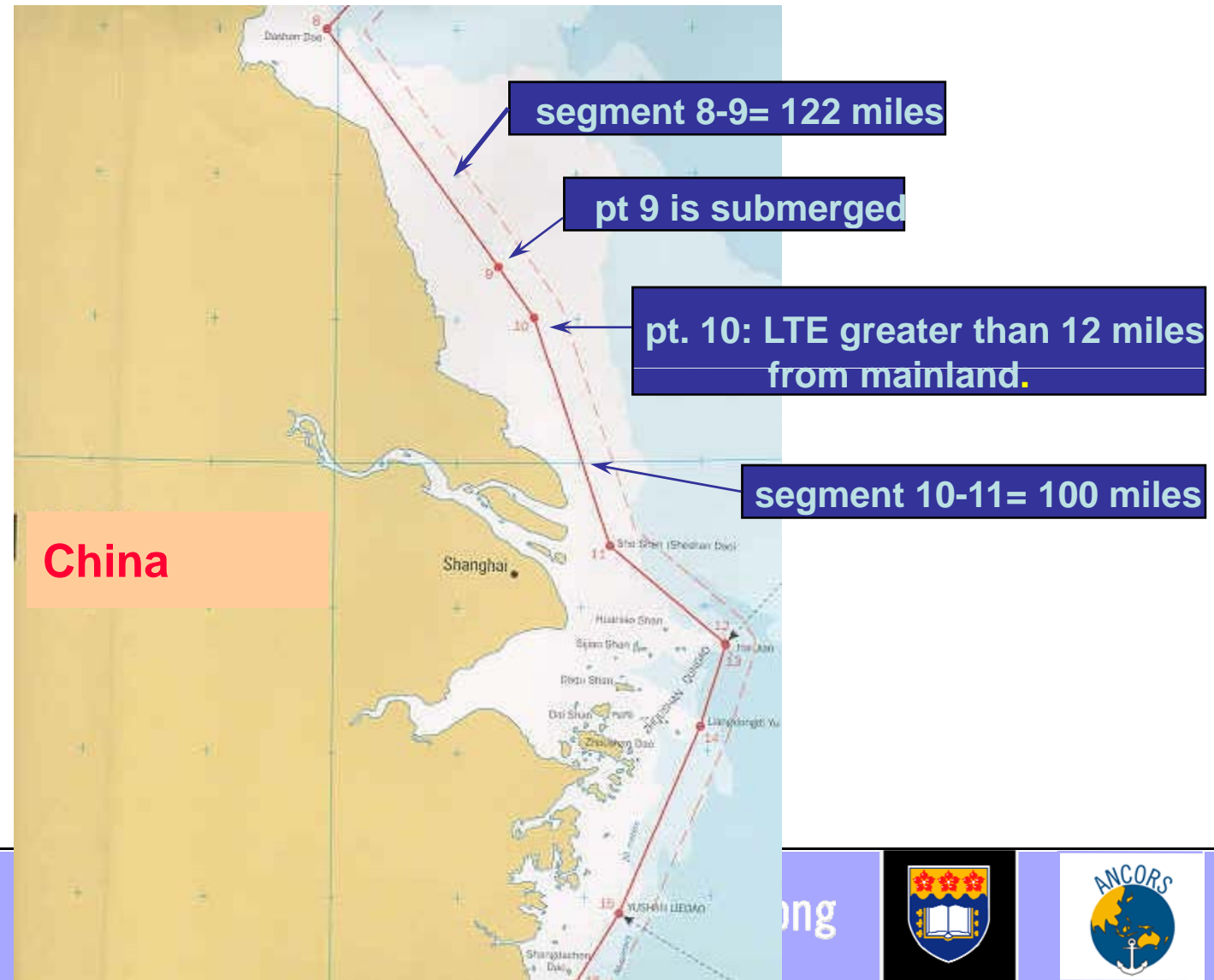




China's Straight Baselines

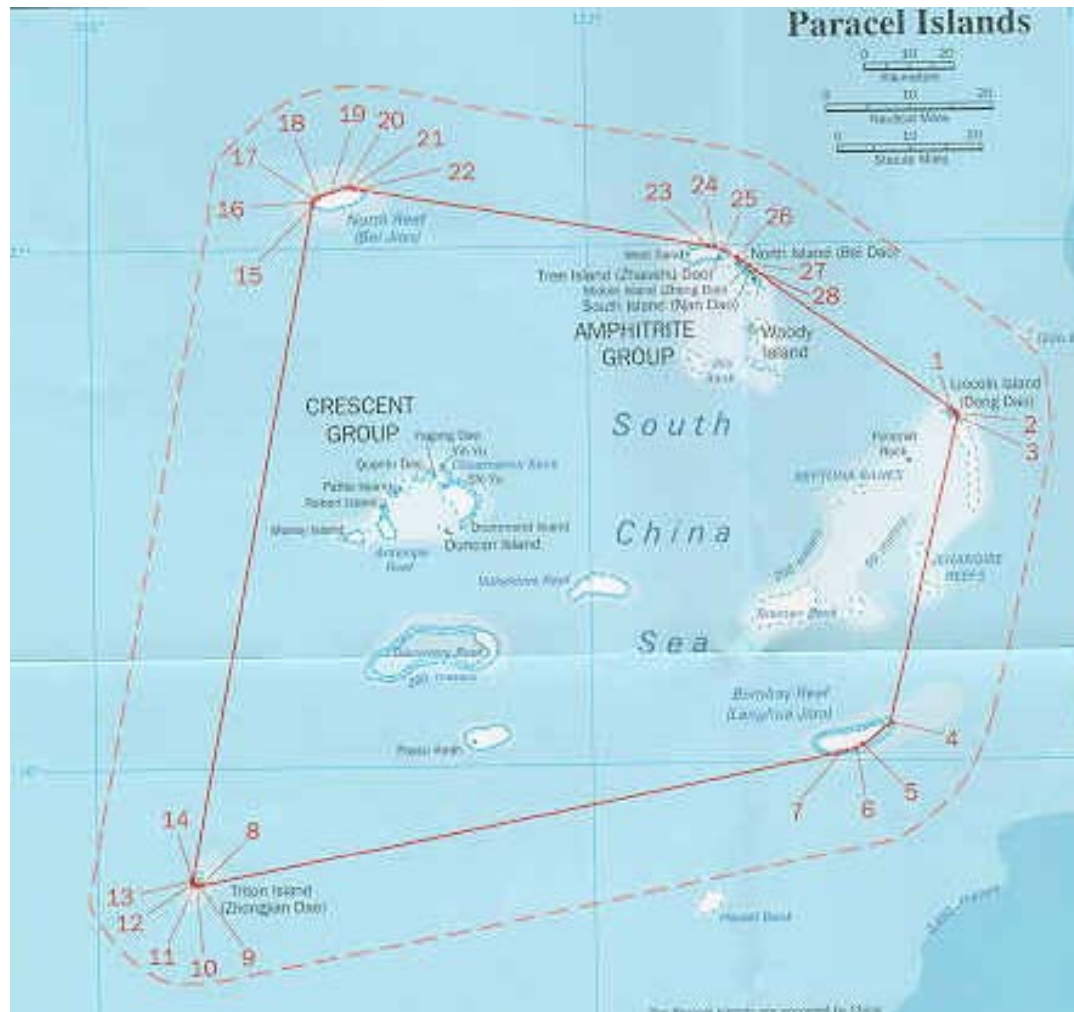
May 15, 1996
Declaration

Segment of China's Straight Baseline System



China's Straight Baseline claim around the Paracel Islands

Encloses
17,400km²



Vietnam also
claims sovereignty
over the Paracel
Islands

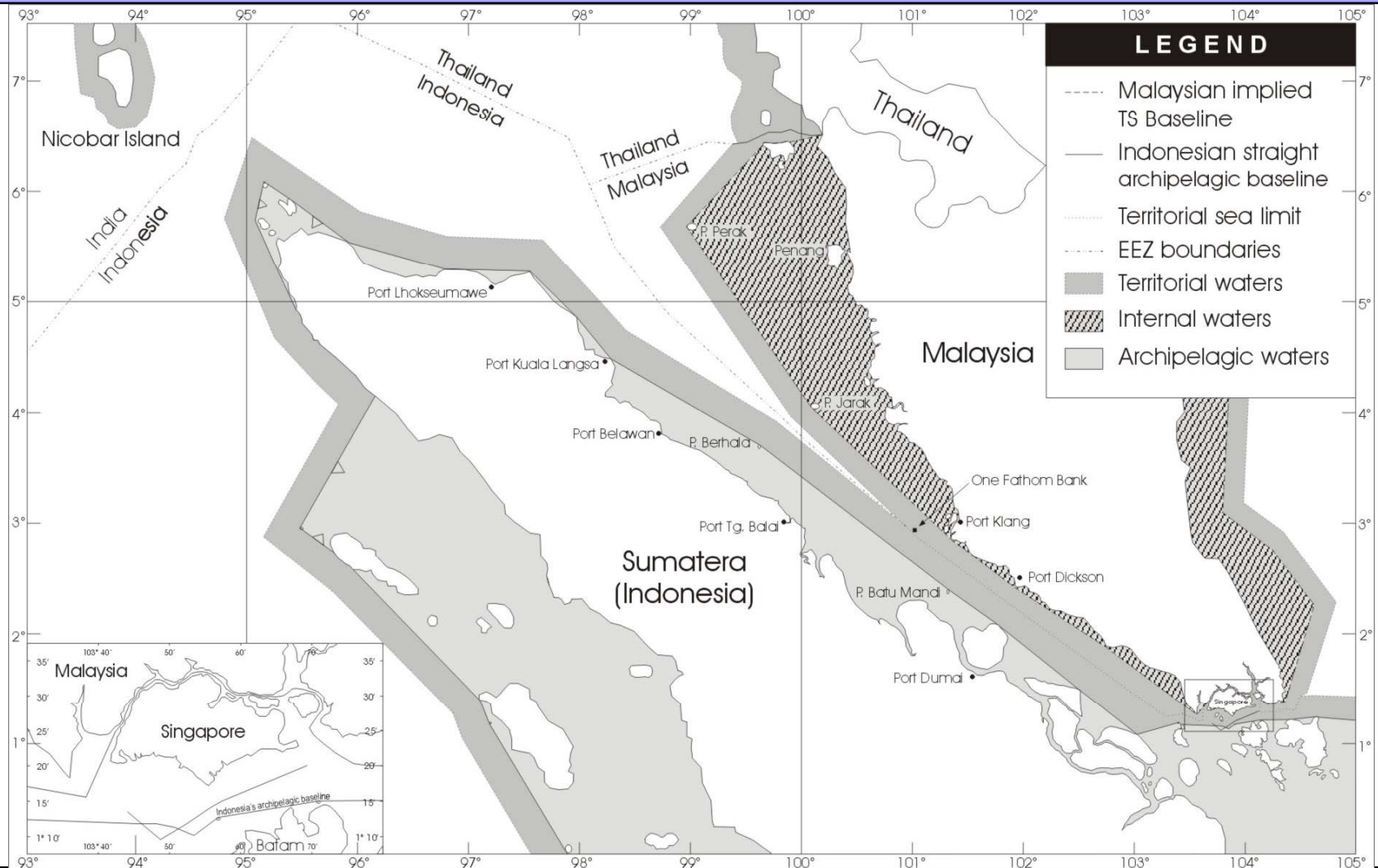
Japan's Straight Baseline Claim



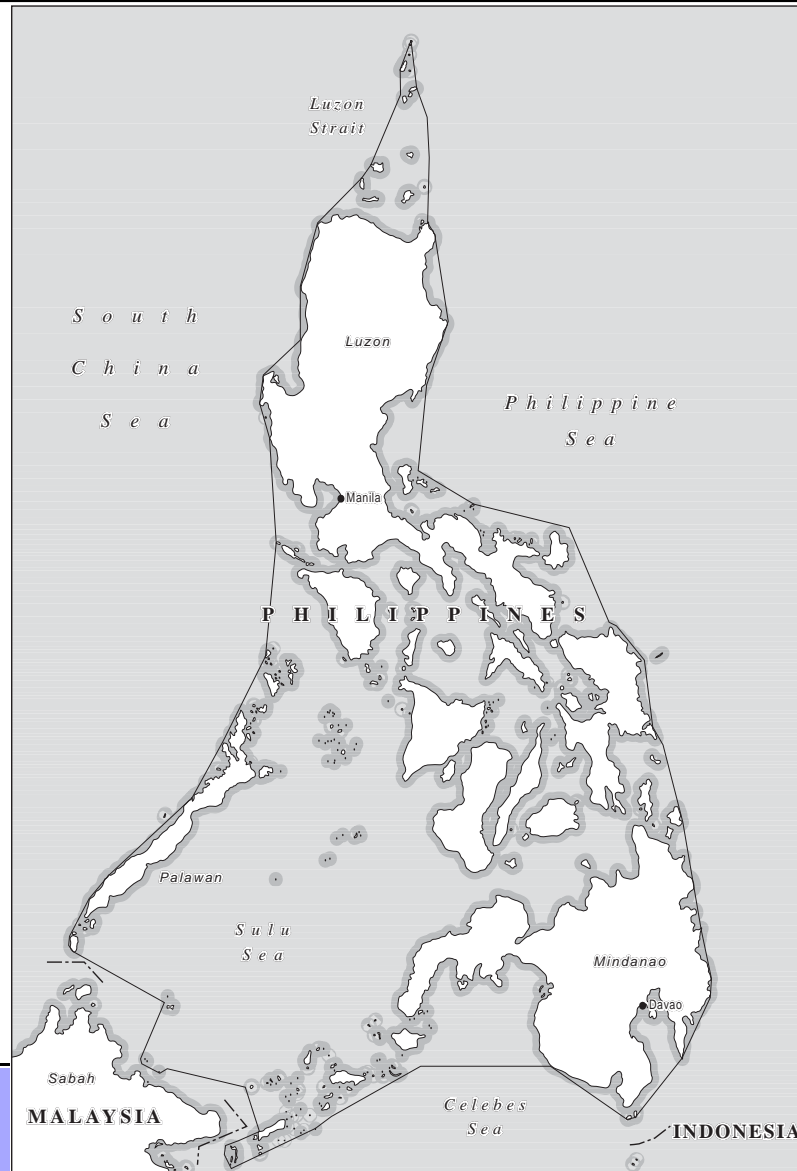
South Korea's Straight Baselines



Malaysia's Inferred Straight Baselines



The Philippines



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Vietnam's Claimed Straight Baselines



Gulf of Thailand

**Excessive
baselines need
not prevent the
delimitation of
maritime
boundaries**



Archipelagic States

According to Article 46 of the LOSC an archipelagic state is one constituted wholly by one or more archipelagos but may also include other islands.

Archipelagos themselves are defined in Article 46 as:

...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 form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Global state-of-play

- 92 of 151 coastal States have claimed straight or archipelagic baselines along all or part of their coasts
- Or 61%
- Excessive claims?

Implications of Straight Baselines Claims in a Changing Environment

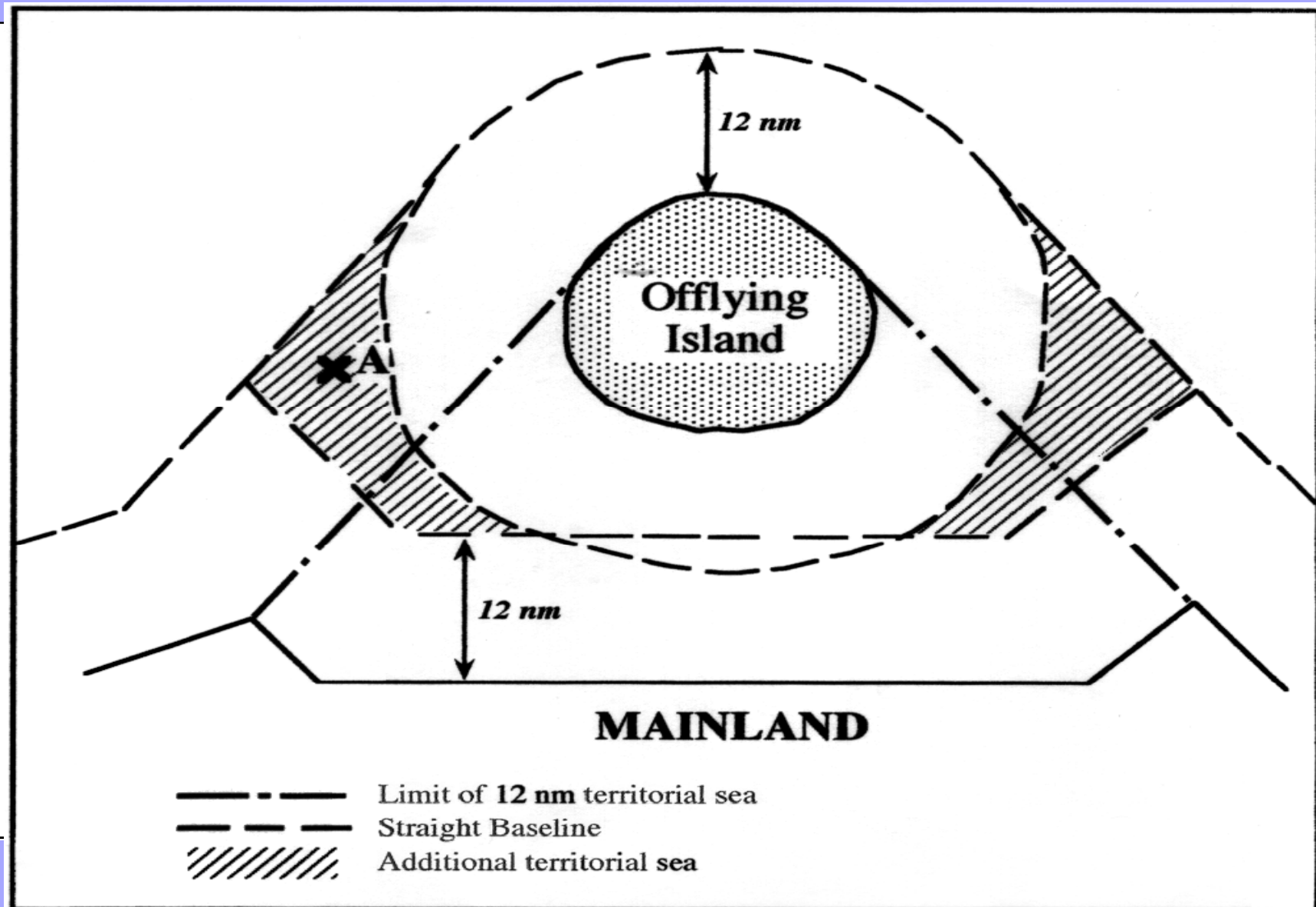
- Maritime Jurisdictional Claims
- International Legal Implications
- Maritime Boundaries
- Political Issues
- Operational Implications
- Oceans Management

Impacts on Maritime Jurisdictional Claims



- May increase coastal State jurisdiction
 - Internal waters
 - Offshore jurisdiction
- But situation should not be overstated
 - Geographical realities of East Asia

Possible Advantage of Straight Baselines



International Legal Implications

- Does East Asian liberal use of straight baselines influence customary norms of international law?
- Arguments against:
 - UNCLOS Article 7 very clear
 - ICJ cases – including 2001 *Qatar v. Bahrain* decision
- But some division of scholarly opinion
 - Regional v. Global views



Maritime Boundary Issues

- Maritime boundaries very problematic in East Asia
 - Relatively few have been agreed
- Straight baselines may deflect lines of equidistance
- Influence in some regional boundary delimitations e.g. Malaysia-Indonesia continental shelf boundary negotiations



Political Issues

- “Creeping jurisdiction” by coastal State
 - Straight baselines detract from international community’s use of ocean space
- Balance of maritime power shifting towards East Asia
- Future influence of East Asia on State practice with the Law of the Sea?

Operational Implications

- Straight baselines restrict freedoms of navigation and overflight
- They can complicate maritime law enforcement
 - Place additional demands on operators
- Do East Asian countries strictly enforce their straight baseline claims?
- US Freedom of Navigation (FON) program

Conclusions

- Virtually all claimed straight baseline systems in East Asia are “excessive”
- **But** East Asian countries unlikely to step back from their baseline claims
- What can be done to resolve current situation?
 - Scope for further research
 - Implications for regional stability - situation might be addressed at a regional level

“Throughout the region under review (i.e. East Asia), many more boundaries remain to be settled than have already been resolved. Further settlements are rightly regarded as no easy task. On the other hand, this cannot be indefinitely avoided by continuing the policies of some of the states in the region.”

(Choon-Ho Park, “Central Pacific and East Asian Maritime Boundaries”, p.302)