

ILA Straight Baselines Study—Protests

Paragraph 20 of the Interim Report (April 2014) states:

30. For the purposes of this Report it is not possible to provide an exhaustive analysis of all relevant state practice. Nor it is possible to discuss the legal grounds on which States may have predicated their recourse to straight (or closing) baselines, as typically that is not made publicly known. Rather mention will be made of some particular examples of state practice in areas that have been the subject to debate.

Paragraph 41 of the 2014 Report states in part “Not entirely surprisingly, the number of States which have protested relevant state practice in this regard, in proportion to the number of potentially interested States, is very small.” This conclusion is based on the statement quoted from Churchill in 2005: “at least eight different States and the EU have protested to one or more baseline claims”.

Since the Report was dealt with in Washington in April 2014, the straight baseline (SBL) claims of 80 States were identified. A detailed search for protests thereof uncovered additional objections as set out in the attached table. It lists a total of 85 protests or other forms of objection. It shows that the straight baseline claims of 39 States (almost 50% of the total SBL claims) -- all but Iran being parties to the LOS Convention -- have been objected to by 21 States and the EU/EC (only two of which – Iran and the US – are not party to the LOS Convention). The table further lists objections to 16 State Parties SBL claims by 19 State Parties. Extracts from these protests are set out after the table. It should be noted that the wording of these protests varies considerably, from the general to the specific, as detailed at the end of this report (thanks to Suzanne Lalonde for this compilation).

The report should be modified to reflect the results of that search, perhaps as follows:

30. After preparation of the Interim Report, the study identified 80 States claiming straight baselines, all claimants but Iran being parties to the LOS Convention. A list of all publicly available protests or other forms of objection of these claims was compiled and the state practice revealed was examined. The study identified a total of 82 objections to SBL claims. The study identified protests by 24 States and the EU/EC of the straight baseline claims (only two of which protesters – Iran and the US – are not party to the LOS Convention). The study further identified objections to 17 State Parties SBL claims by 22 State Parties. Mention will be made of some particular examples of state practice in areas that have been the subject of debate.

The Committee may wish to consider what conclusions and recommendations should be drawn from this new data.

List of Publicly Available Protests of or Objections to Straight Baselines (SBL)

1. Protest of **Albania**'s 1976 SBL

U.S. note 21 July 1989, 1989-1990 Digest 461, LIS No. 116, Roach & Smith 3rd ed. 92

2. Protest of **Argentina**'s 1966 SBL

U.S. aide memoire 2 March 1967, Roach & Smith 3rd ed. 129 & n. 148

3. Protest of **Cameroon** 1962 SBL

U.S. note Feb 1963, Roach & Smith 3rd ed. 94-95

4. Protest of **Canada**'s SBL

U.S. note of 1 November 1967 re Labrador & Newfoundland, Roach & Smith 3rd ed. 96-97

U.S. note of 25 April 1969 re Nova Scotia, Vancouver Island and Queen Charlotte Island, Roach & Smith 3rd ed. 96-97

Canada's 1985 Arctic SBL

U.S. statements 10 January and 26 February 1986, II Cumulative Digest 1785, Roach & Smith 3rd ed. 111-112

UK on behalf of the EC note No. 90/86, 9 July 1986, Roach & Smith 3rd ed. 112

5. Protests of **China**'s 1996 and 1998 straight baseline claims

Philippines and Viet Nam notes verbale 17 May and 6 June 1996 objecting to PRC statement of 15 May 1996, LOSB No. 32, at 88 & 91 (1996)

U.S. note 21 August 1996, LIS No. 117, Roach & Smith, *Straight Baselines* 62-63

Viet Nam note verbale 6 August 1998 re Paracels, LOSB No. 38, at 54-55 (1998)

Viet Nam letter to UNSG, A/68/980 Annex, 22 August 2014

Protests of China's 2012 claim around the Spratly Islands:

Japan note verbale 24 September 2012, LOSB No. 80, at 39 (2013)

U.S. note 7 March 2013, 2013 Digest chapter 12, 369-370

6. Protest of **Colombia**'s 1984 SBL system

U.S. note 14 July 1988, II Cumulative Digest 1786-1787, Roach & Smith 3rd ed. 83-84

7. Protest of **Costa Rica**'s 1988 SBL

U.S. note 18 December 1989, LIS No. 111, 1989-1990 Digest 461-462, Roach & Smith 3rd ed. 83

8. Protest of **Cuba**'s 1977 SBL

U.S. protest 5 July 1983, II Cumulative Digest 1787-1788, Roach & Smith 3rd ed. 102-103, 116, 118

9. Protest of **Denmark**'s 1976 SBL around Faroe Islands

U.S. notes 12 & 18 July 1991, vol. II, 1991-1999 Digest 1583, Roach & Smith 3rd ed. 108

10. Protest of **Djibouti**'s 1985 SBL claim

U.S. note 22 May 1989, II Cumulative Digest 1796, 1989-1990 Digest 459-460, LIS No. 113

11. Protest of **DPRK**'s 1977 claim

USUN note 4 January 1990, LOSB No. 15, at 8-9 (1990), 1989-1990 Digest 462

12. Protests of the **Dominican Republic**'s 2007 baseline claim

U.S./UK note 18 October 2007, 2007 Digest 641-643, LOSB No. 66, at 98-99 (2008)

U.S. and UK notes 26 October 2010, 2010 Digest 522-524

U.S. note 18 January 2012, 2012 Digest 421-422

13. Protest of **Ecuador**'s 1951 straight baseline claim

UK protest 14 September 1951, IV *Anglo-Norwegian Fisheries Case Documents* 589-590

Protest of Ecuador's 1971 SBL

U.S. protest 24 February 1986, Roach & Smith 3rd ed., 105, 109 (Galapagos), 121

Germany protest November 1986 (Galapagos) (unpublished)

Spain (17 October 2013) and Sweden (18 October 2013) of Ecuador's reaffirmation of 1971 SBL in its 24 September 2012 Declaration #VI on accession to the LOS Convention. Belgium (22 October 2013) and Sweden also objected to baselines around the Galapagos. LOS Bulletin No. 83 (2014) at 14-18

14. Protest of **Egypt**'s 1990 straight baseline claims

U.S. diplomatic note 13 June 1991, vol. II, 1991-1999 Digest 1580-1582, LIS No. 116

15. Protest of **Guinea**'s 1964 SBL

U.S. protest 4 December 1964, Roach & Smith 94 (1980 decree uses LWL)

16. Protest of **Guinea-Bissau**'s 1985 straight baseline claim

Senegal note verbale 27 May 1986, LOSB No. 8, at 24 (1986)

Guinea-Bissau note verbale response 21 August 1986, LOSB No. 8, at 23

17. Protests of **Honduras**' 2000 straight baseline claim

El Salvador note DM/No. E-05, 27 April 2000, excerpted in LOSIC No. 12, at 37

Guatemala note 2 June 2000, excerpted in LOSIC No. 12, at 37

Nicaragua note 12 May 2000, excerpted in LOSIC No. 12, at 37

Guatemala note 1 September 2009, LOSB No. 71, at 46 (2010)

U.S. note 28 March 2003, 2004 Digest 705-710, LIS No. 124

18. Protest of **India**'s 2009 baseline claim

Pakistan note verbale 6 December 2011, LOSB No. 78, at 33 (2012)

19. Protests of **Iran**'s 1973/1993 straight baseline claim

USA protest note 11 January 1994, LOSB No. 25, at 101-103 (1994); vol. II, 1991-1999 Digest 1583, LIS No. 114 Annex 3

Iran reply note verbale No. 224 of 24 May 1994, LOSB No. 26, at 35-38 (1994)

Germany (on behalf of EU and acceding States) demarche 14 December 1994 and note verbale 11 September 1995, LOSB No. 30, at 60-61 (1996)

Iran note verbale No. 641/1206 of 3 May 1995 justifying its SBL, LOSB No. 31, at 37-38 (1996)

Saudi Arabia note verbale of 25 July 1996, A/50/1023 Annex, LOSB No. 32, at 90 (1996)

Iran letter of 18 October 1996 replying to Saudi Arabia note verbale, A/51/545, 23 October 1996, LOSB No. 33, at 86-87 (1997)

Qatar note verbale 20 August 1996, A/50/1034 Annex, LOSB No. 32, at 89-90

Iran letter 18 October 1996 replying to Qatar note, A/51/546, 23 October 1996; LOSB No. 33, at 87-88

Kuwait letter of 26 August 1996, A/50/1029, 29 August 1996, LOSB No. 32, at 88

Iran letter 18 October 1996 replying to Kuwait letter, A/51/544, 23 October 1996, LOSB No. 33, at 86

UAE letter of 26 August 1996, A/50/1033, 3 September 1996, LOSB No. 32, at 91

Iran letter of 18 October 1996, replying to UAE letter, A/51/547, 23 October 1996, LOSB No. 33, at 89

US note verbale 6 April 2000, LOSB No. 43, at 105 (2000)

Iran note of 23 October 2006, 2007 Digest 637

U.S. reply note of 12 March 2007, 2007 Digest 637-638

20. Protest of **Italy**'s 1977 SBL

U.S. protest 10 December 1986, II Cumulative Digest 1793, Roach & Smith 3rd ed. 100

21. Protest of **Japan**'s 1996 SBL

U.S. note 17 December 1998, LIS No. 120, Roach & Smith, *Straight Baselines* 64-65

22. Objection to **Kenya**'s 2005 and earlier SBL

Somalia Application instituting proceedings before ICJ concerning maritime delimitation in the Indian Ocean, 28 August 2014, para. 13, <http://www.icj-cij.org/docket/files/161/18362.pdf>

23. Protest of **Libya**'s 1973 SBL Gulf of Sidra

U.S. protest 1974, 1974 Digest 293-294

U.S. note to UNSG 10 July 1985, LOSB No. 6, at 40 (1985), II Cumulative Digest 1762-1771, 1793-1794, 1810

24. Protest of **Mauritania**'s 1988 SBL

U.S. note 25 January 1990, 1989-1990 Digest 461, Roach & Smith 3rd ed. 130

25. Protest of **Mexico**'s 1968 SBL in Gulf of California

U.S. protest 23 July 1969, Roach & Smith 3rd ed., 105-106, 116, 118

26. Protest of **Burma**'s 1977 SBL claim

U.S. note 6 August 1982, II Cumulative Digest 1781, Roach & Smith 3rd ed. 116-117

UK protest in 1993 (unpublished)

Protest of **Myanmar**'s 2008 straight baseline claim around Co Co and Preparis islands

Bangladesh note verbale 6 July 2009, LOSB No. 70, at 61 (2009)

27. Protest of **Nicaragua**'s 2013 SBL claim

Costa Rica letter to UNSG 23 October 2013, A/68/548, 25 October 2013, <http://undocs.org/A/68/548>, http://www.un.org/ga/search/view_doc.asp?symbol=A%2F68%2F548

Colombia letter to UNSG S-GACIJ-13-044275, 1 November 2013, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn99_2013_col.pdf

U.S. diplomatic note No. 070 of 6 March 2014, 2014 Digest chapter 12, pages 30-31

28. Protest of **Oman**'s 1982 SBL

Iran note 4 February 1983, LOSB No. 1, at 38 (1983)

U.S. note 12 August 1991, vol. II, 1991-1999 Digest 1583, LIS No. 113 Annex 5

29. Protest of **Pakistan**'s 1997 baseline claim

India note verbale No. NY/PM/444/3/97 24 February 1997, LOSB No. 34, at 46 (1997)

India note verbale 22 May 2001, LOSB No. 46, at 90 (2001)

U.S. note 17 August 1997, LIS No. 118, Roach & Smith, *Straight Baselines* 63-64

30. Protest of **Portugal** 1985 SBL on mainland coast

U.S. protest 25 August 1986, Roach & Smith 3rd ed. 104-105

Protest of Portugal 1985 SBL around the Azores

U.S. note 25 August 1986, II Cumulative Digest 2068-2069, Roach & Smith 3rd ed. 89, 92, 108

31. Protest of **Republic of Korea**'s 1996 SBL system

U.S. protest 23 December 1998, LIS No. 121, Roach & Smith, *Straight Baselines* 61-62

32. Protests of **Saudi Arabia**'s 3 May 2010 baseline claim

UAE note verbale 2/6/3 368 to UNSG 5 May 2010,
http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn77_2010_are_eng.pdf

Saudi Arabia note verbale 15 June 2011 replying to UAE protest of 5 May 2010, LOSB No. 76, at 37 (2011)

Egypt declaration note verbale 15 September 2010, LOSB No. 74, at 72 (2011)

Iran note verbale 14 August 2012, LOSB No. 80, at 36 (2013); A/67/762 Annex 1, 27 February 2013, <http://undocs.org/A/67/762>

Saudi Arabia reply note verbale 14 March 2013, A/67/836, 12 April 2013, <http://undocs.org/A/67/762>

UAE note verbale WK confidential 3/6/1-181 17 November 2011 (unpublished)

Saudi Arabia letter to UNSG 21 December 2012, A/67/684 (3 January 2013), <http://undocs.org/A/67/684>

33. Protest of **Senegal** 1972 SBL

U.S. protest 29 November 1989, Roach & Smith 3rd ed. 92, 94

34. Protest of **Sudan**'s 1970 SBL

U.S. note 6 June 1989, 1989-1990 Digest 460-461, Roach & Smith 3rd ed. 110-111, 130

35. Protests of **Thailand**'s 1992 straight baseline claims

Germany (on behalf of EU) note verbale 23 December 1994, LOSB No. 28, at 31 (1995), Roach & Smith 3rd ed. 64n

US note 28 August 2000, 2000 Digest 703-706, Roach & Smith, *Straight Baselines* 56-57, LIS No. 122

36. Protest of **UAE** 2009 straight baselines

Saudi Arabia note verbale to UAE 9 August 2009, LOSB No. 71, at 47-48 (2010)

Saudi Arabia note of 7 November 2009, LOS B. No. 71, at 50

UAE reply note verbale 12 November 2009, LOSB No. 71, at 50-51

37. Protest of **USSR** 1984/1985 SBL

U.S. 1988 note, II Cumulative Digest 1796, based on LIS Nos. 107 (1987) & 109 (1988), Roach & Smith 3rd ed. 97

Protest of **Russian** SBL closing access to Murmansk

U.S. note 1992, vol. II, 1991-1999 Digest 1583, Roach & Smith 3rd ed. 97

38. Protests of **Venezuela**'s 1956 SBL

U.S. protest 22 October 1956, Roach & Smith 3rd ed. 122-123

39. Protests of **Vietnam**'s 1982 straight baseline claims (A/37/697, LOSB No. 1, 75-76)

China MFA statement 28 November 1982, LOSB No. 1, at 76 (1983), A/37/682-S/15505 30 November 1982

U.S. *aide memoire* to UNSG 6 December 1982, II Cumulative Digest 1796-1797, Roach & Smith 3rd ed. 99, 121

France note 5 December 1983, LOSB No. 3, at 16 (1984)

Germany note June 1984, Roach & Smith 3rd ed. 99 n.105 (unpublished)

Thailand note 9 December 1985, LOSB No.7, at 111-112 (1986), A/40/1033, 12 December 1985

Singapore note 5 December 1986, LOSB No. 9, at 53-54 (1987), A/41/967 Annex

Viet Nam letter 21 January 1986 responding to Thailand's note of 9 December 1985, A/41/99, 22 January 1986

Protests of Vietnam's 2012 straight baseline claim

U.S. note 7 October 2013, 2013 Digest, chapter 12, 371-372

Of particular note in reviewing these protests is that the following States not only protested the SBL claims of other States as not complying with article 7 of the LOS Convention, but themselves received protests of their SBL claims as not complying with article 7:

1. Pakistan (by India). India (by Pakistan)

2. Oman (by Iran). Iran (by Qatar)
3. Saudi Arabia (by UAE). UAE (by Saudi Arabia)
4. Saudi Arabia (by Iran) Iran (by Saudi Arabia)
5. China (by Vietnam). Viet Nam (by China)

List of Protests of River Closing Line

Argentina and Uruguay closing line of Rio de la Plata January 30, 1961

Protest by the UK, 26 December 1961, 4 Whiteman, Digest 342-343

Protest by the Netherlands 26 June 1962, 4 Whiteman, Digest 342-343

US protest 23 January 1963, 57 Am. J. Int'l L. 403-404 (1963), 4 Whiteman, Digest 342-343

Excerpts of SBL Protests

1. *The United States protested **Albania**'s claim of excessive straight baselines in a note transmitted through the Government of France in June 1989. In particular, the protest stated:*

— The United States wishes to point out that, for the most part, the Albanian coastline, being neither deeply indented and cut into, nor having a fringe of islands in its immediate vicinity, does not meet the geographic criteria required under international law for the establishment of straight baselines. Further the baselines segments from the Cape of Rodom (Muzhit) to the mouth of the Wjose River, and from the Cape of Gjuhe to the Cape of Sarande, enclose waters which are neither juridical bays nor historic waters.

Telegram from the Department of State to U.S. Embassy, Paris, June 17, 1989.

1989-1990 Digest 461. See also LIS 116.

2. *On December 29, 1966, **Argentina** promulgated Law No. 17094 in which it drew straight baselines across the mouths of San Jorge and San Matias gulfs. The State Department Geographer's analysis of these baselines states:*

Golfo San Matias and Golfo San Jorge do not conform to the requirements of a juridical bay in that they can not be closed by 24 nautical mile closing lines. They both, however, would meet the semi-circle criterion and could qualify as oversize bays. The closing line for San Matias measures approximately 65 nautical miles while that for San Jorge, 123 nautical miles.

The United States had previously protested these straight baselines in an *aide mémoire* from American Embassy Buenos Aires dated Mar. 2, 1967. State Dep't telegram 146551, Mar. 1, 1967, File POL 33-4 ARG, *quoted in* State Dep't airgram CA-393, July 17, 1967, File POL 33-4 ARG, cited in Roach & Smith 129 & n. 148.

3. *In 1962, **Cameroon** issued a decree establishing straight baselines across seven indentations in the Bight of Biafra.*

The United States protested that claim in a note stating the view that these baselines did not conform to the criteria for baselines set down in article 4 of the 1958 Territorial Sea Convention.

Roach & Smith 3rd ed. 94-95.

4. *Between 1967 and 1969, the Government of **Canada** claimed straight baselines along the coasts of **Labrador and Newfoundland** (by Order-in-Council 1967-2025), and in **Nova Scotia, Vancouver Island, and Queen Charlotte Islands** (by Order-in-Council 1969-1109). The United States, in a note verbale of which the following is an excerpt, protested the 1967 claim as follows:*

The Department of State refers to the Note Verbale of External Affairs of October 11, 1967, handed to the United States Embassy, Ottawa, October 25, 1967, concerning establishment by the Government of Canada of straight baseline system for delineation of Canada's territorial sea and contiguous fishing zone. In this connection, the Department notes the statement made by Paul Martin, Secretary of State, External Affairs, before External Affairs Committee of the House on October 26, 1967, and the Order of the Governor-General in Council on this subject issued October 26.

As the Government of Canada is aware, the United States Government considers the action of Canada to be without legal justification. It is the view of the United States that the announced lines are, in important and substantial respects, contrary to established principles of international Law of the Sea. The United States does not recognize the validity of the purported lines and reserves all rights of the United States and its nationals in the waters in question.

The United States similarly protested the 1969 additions to the system of straight baselines, in a note from which the following is an extract, as follows:

The Secretary of State presents his compliments to His Excellency the Ambassador of Canada and has the honor to refer to the announcement on April 5, 1969 of the Canadian Minister of Fisheries that the Canadian Government will (a) shortly establish further headland to headland baselines for areas on the east and west coasts of Canada

The Secretary of State also refers to the Note Verbale given to His Excellency the Ambassador of Canada on November 1, 1967 in response to a Note Verbale of the Canadian Department of External Affairs on October 25, 1967 which concerned the establishment by the Government of Canada of straight baselines for areas of the east coast of Canada. The Department of State Note Verbale set forth the position of the United States Government that the action of Canada was without legal justification, that the baselines announced by Canada were, in important and substantial respects, contrary to established principles of the international law of the sea, that the United States did not recognize the validity of the purported lines, and that the United States reserved all rights of the United States and of its nationals in the waters in question. This position, which the United States Government continues to hold, was reiterated verbally to Canadian Counselor of Embassy Burwash on November 4, 1968 together with a request that if, despite the position of the United States, Canada decided to draw additional baselines, the United States would be consulted well in advance of any such decision and would be given an opportunity to comment on the baselines concerned before their announcement.

The Government of the United States wishes to express its disappointment in being given only a few hours advance notice of the announcement by the Canadian Minister of Fisheries on April 5, 1969 and no opportunity to comment upon it. The United States hopes it will be given an opportunity to comment on any baselines Canada plans to draw pursuant to that announcement. It would appreciate receiving their geographical coordinates in sufficient time before their intended announcement to allow proper study and discussion with the appropriate Canadian authorities.

* * * *

The Secretary of State wishes to state the concern of the United States Government that measures such as those seemingly envisaged by the Government of Canada, could do serious harm to multilateral efforts to preserve freedom of the high seas as a fundamental tenet of international law.

Roach & Smith 3rd ed. 95-97.

In 1985, the Government of **Canada** established straight baselines around the perimeter of the Canadian Arctic islands (by Order-in-Council P.C. 1985-2739, *see* Map 16), effective January 1, 1986. During bilateral discussions in Washington, D.C., on January 10, 1986, the United States stated that the Canadian straight baseline claim in the Arctic region is not based upon principles of international law and that Canada is not justified in stating that all the waters between Canadian islands in the Arctic are internal Canadian waters. The United States' rationale was based upon the internationally recognized law of the sea principles. The United States position with respect to Canada's straight baseline claim in the Arctic region was also addressed in a letter from James W. Dyer, Acting Assistant Secretary, Legislative and Intergovernmental Affairs, dated February 26, 1986, to Senator Charles McC. Mathias, Jr. (R. Maryland):

On September 10, 1985, the Government of Canada claimed all the waters among its Arctic islands as internal waters, and drew straight baselines around its Arctic islands to establish its claim. The United States position is that there is no basis in international law to support the Canadian claim. The United States cannot accept the Canadian claim because to do so would constitute acceptance of full Canadian control of the Northwest Passage and would terminate U.S. navigation rights through the Passage under international law. Acceptance would also complicate our maintenance of navigation rights in other areas, such as Indonesia and the Aegean.

Roach & Smith 3rd ed. 111-112.

*The Member States of the **European Community** also commented on the Canada's Arctic straight baseline system, as follows:*

The validity of the baselines with regard to other states depends upon the relevant principles of international law applicable in this case, including the principle that the drawing of baselines must not depart to any appreciable extent from the general direction of the coast. The Member States acknowledge that elements other than purely geographical ones may be relevant for purposes of drawing baselines in particular circumstances but are not satisfied that the present baselines are justified in general. Moreover, the Member States cannot recognize the validity of a historic title as justification for the baselines drawn in accordance with the order.

The Member States of the EC cannot therefore in general acknowledge the legality of these baselines and accordingly reserve the exercise of their rights in the waters concerned according to international law.

Roach & Smith 112.

*5. Statement of the Department of Foreign Affairs on the Ratification by **China** of the United Nations Convention on the Law of the Sea¹*

The Department of Foreign Affairs welcomes the ratification by the People's Republic of China of the United Nations Convention on the Law of the Sea on 15 May 1996. The ratification reaffirms China's stated commitment to the principles enshrined in the Convention which, among other things, calls upon the parties to settle all issues relating to the law of the sea in the spirit of mutual understanding and cooperation.

The Department notes, however, that China has simultaneously issued a declaration proclaiming baselines around a group of disputed islands known as the Paracels as well as the baselines of the sea adjacent to China's mainland.

The Philippines is gravely concerned with this act. China's action in a disputed part of the South China Sea disturbs the stability of the area, sets back the spirit of cooperation that has been slowly been developing in the South China Sea and does not help in the resolution of the dispute there.

The Philippines calls upon China to confer with other parties to the disputes in the South China Sea with a view to settling their differences in a friendly manner on the basis of equality and mutual respect.

The Department is keenly monitoring further developments in the area.

¹ Communicated by the Permanent Mission of the Philippines to the United Nations and contained in an Information Bulletin of the Department of Foreign Affairs dated 17 May 1996.

LOSB No. 32, at 88 (1996).

Objections to the statement of 15 May 1996 made by the Government of the People's Republic of China on the baselines from which the breadth of China's territorial sea is measured¹

1. The People's Republic of China's establishment of the territorial baselines of the Hoang Sa archipelago (Paracel), part of the territory of Viet Nam, constitutes a serious violation of the Vietnamese sovereignty over the archipelago. The Socialist Republic of Viet Nam has on many occasions reaffirmed its indisputable sovereignty over the Hoang Sa as well as the Truong Sa (Spratly) archipelagoes. The above-mentioned act of the People's Republic of China which runs counter to the international law, is absolutely null and void. Furthermore, the People's Republic of China correspondingly violated the provisions of the 1982 United Nations Convention on the Law of the Sea by giving the Hoang Sa archipelago the status of an archipelagic state to illegally annex a vast sea area into the so-called internal water[s] of the archipelago.
2. In drawing the baseline at the segment east of the Leizhou peninsula from point 31 to point 32, the People's Republic of China has also failed to comply with the provisions, particularly Articles 7 and 38, of the 1982 United Nations Convention on the Law of the Sea. B[y] so drawing, the People's Republic of China has turned a considerable sea area into its internal waters which obstructs the rights and freedoms of international navigation including those of Viet Nam through the Qiongzhou strait. This is totally unacceptable to the Socialist Republic of Viet Nam.
3. The Government of the Socialist Republic of Viet Nam has the honour to request His Excellency the Secretary-General, in conformity with Article 319 of the United Nations Convention on the Law of the Sea, to notify all other parties to the Convention about the above-mentioned opinion of the Vietnamese Government.

¹ Communicated by the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations in note verbale dated 6 June 1996, with a non-official translation.

LOS No. 32, at 91 (1996).

Protest by the United States of the Chinese straight baselines of 15 May 1996

The second paragraph of article 3 of China's territorial Sea Law of 1992 states that "the method of straight baselines composed of all the straight lines joining the adjacent basepoints shall be employed in drawing the baselines of the territorial sea of the People's Republic of China." On 21 August 1996, the United States protested the baseline system. In addition to reiterating the U.S. viewpoint on when straight baselines could be drawn, the note stated:

The United States notes that China's coastline is not entirely deeply indented or cut into, or fringed with islands along the coast in the immediate vicinity. Accordingly, international law does not permit the drawing of straight baselines as the only method of employing baselines along the coastline of China. Therefore the second paragraph of Article 3 of the 1992 Law is without foundation in international law.

The United States also notes that much of China's coastline does not meet either of the two geographic conditions specified in article 7(1) of the Law of the Sea Convention required for applying straight baselines; the localities between most of the basepoints identified in the Declaration on Baselines of 15 May 1996 are neither deeply indented or cut into, nor are they fringed with islands along the coast in the immediate vicinity. Further, for the most part, the waters enclosed by the new straight baseline system do not have a close relationship with the land, but rather reflect the characteristics of high seas or territorial sea, and, in some locations, the straight baselines depart to an

appreciable extent from the general direction of the coast. In these areas, the United States believes use of the normal baseline, the low-water line, is required by international law.

The Declaration of 15 May 1996 identified 48 continuous straight baseline segments connecting 49 basepoints along the mainland of China and Hainan Island which total over 1,700 nautical miles. The United States notes that over half of these segments exceed 24 nautical miles in length, and three of them are each more than 100 nautical miles long.

While the Law of the Sea Convention does not place a specific distance limit on the length of a straight baseline, the United States believes that as a general rule baseline segments should not exceed 24 nautical miles. This limit is implied from a close reading of the relevant provisions of the Law of the Sea Convention.

Article 7(1) speaks of the “immediate vicinity” of the coast. Article 7(3) states that “the sea areas lying within the line must be sufficiently closely linked to the land domain to be subject to the regime of internal waters”. In both of these descriptions, the implication is strong that the waters to be internalized would otherwise be part of the territorial sea. China’s coastline does not present any unusual situation where international waters (beyond 12 nautical miles from the appropriate low-water line) could be somehow “sufficiently closely linked” as to be subject to conversion to internal waters.

On 29 October 1996 China replied to the United States that its coastline meets the basic requirements for the use of straight baselines, and that its baselines follow the general direction of the coastline and are consistent with relevant international practice. Other states have sought further explanation from China.

Roach & Smith, *Straight Baselines* 62-63.

Dispute regarding the Law on the Exclusive Economic Zone and the Continental Shelf of the People’s Republic of China which was passed on 26 June 1998¹

The Permanent Representative of the Socialist Republic of Viet Nam to the United Nations [...] the following position of the Government of the Socialist Republic of Viet Nam regarding the Law on the Exclusive Economic Zone and the Continental Shelf of the People’s Republic of China which was passed on 26 June 1998 at the third session of the Standing Committee of the ninth National People’s Congress of the People’s Republic of China:

1. Article 2 of the Law on the Exclusive Economic Zone and Continental Shelf of the People’s Republic of China stipulates that the exclusive economic zone and the continental shelf of China are measured from its territorial sea baseline. With regard to this question, the Government of the Socialist Republic of Viet Nam once again reaffirms its position that the 15 May 1996 statement by the People’s Republic of China on the establishment of the territorial sea baselines of the Hoang Sa (Paracels) archipelago, part of the Vietnamese territory, in such a way that is not in conformity with international law, constitutes a serious violation of the Vietnamese territorial sovereignty, runs counter to international law and is absolutely null and void. On this occasion, we would like to reiterate that Viet Nam has indisputable sovereignty over the two archipelagos, namely Hoang Sa (Paracels) and Truong Sa (Spratly), and possesses sufficient historical evidence as well as legal grounds to assert its sovereignty over these two archipelagos.

[...]

3. The Government of the Socialist Republic of Viet Nam has the honour to request the Secretary-General, in accordance with Article 319 of the United Nations Convention on the Law of the Sea, to

notify all the parties to the Convention of the above-stated position of the Government of the Socialist Republic of Viet Nam.

¹ Communicated by the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations in note verbale dated 6 August 1998.

LOSB No. 38, at 54-55 (1998).

*Position paper of the Socialist Republic of Viet Nam concerning **China**'s illegal placement of the Haiyang Shiyou 981 oil rig in the exclusive economic zone and on the continental shelf of Viet Nam:*

* * * *

2. The baseline used by China to measure the territorial waters of the Hoang Sa (Paracel) islands of Viet Nam fails to comply with the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, to which China is a party. That baseline has therefore been rejected not only by Viet Nam but also by other States. Viet Nam's position was clearly set forth in the note of 6 June 1996 addressed to the United Nations.

3. A baseline incompatible with international law cannot be used as the basis for a maritime claim in a futile attempt to justify the illegal placement of the *Haiyang Shiyou 981* oil rig within the exclusive economic zone and on the continental shelf of Viet Nam.

Extract of a letter dated 22 August 2014 from the Permanent Representative of Vietnam to the United Nations addressed to the Secretary-General, A/68/980 Annex.

Note verbale dated 24 September 2012 from the Permanent Mission of Japan to the United Nations addressed to the Secretary-General of the United Nations in respect of a chart and the list of geographical coordinates deposited by the People's Republic of China

PM/12/303

The Permanent Mission of Japan to the United Nations [...] with reference to communication No. M.Z.N.89.2012.LOS dated 21 September 2012 has the honour to inform the latter of the position of the Government of Japan concerning the deposit of a chart and a list of geographical coordinates of point made by the People's Republic of China with regard to the baselines for the territorial sea of the **Senkaku Islands**.

The People's Republic of China deposited the chart and the list of geographical coordinates on 13 September 2012. Such unilateral action has no ground under international law including within the United Nations Convention on the Law of the Sea. This action by the People's Republic of China concerning the Senkaku Islands, a part of the territory of Japan, is totally unacceptable and legally invalid.

There is no doubt that the Senkaku Islands are an inherent part of the territory of Japan in light of historical facts and based upon international law. The Senkaku Islands are under the valid control of the Government of Japan. There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.

The Permanent Mission of Japan has further the honor to request the Secretary-General that this note verbale be transmitted to all Member States of the United Nations and all States Parties to the United Nations Convention on the Law of the Sea.

[...]

LOS B No. 80, at 39 (2013).

On March 7, 2013, the United States sent a diplomatic note to the Ministry of Foreign Affairs of the People's Republic of China regarding a "Statement of the Government of the People's Republic of China on the Baselines of the Territorial Sea of Diaoyu Dao and Its Affiliated Islands," dated September 10, 2012 ("Statement"). The U.S. diplomatic note protests the establishment by China of straight baselines around the Senkaku Islands, contrary to customary international law as reflected in the UN Convention on the Law of the Sea. The baseline rules in international law distinguish between "normal baselines" (following the low-water mark along the coast at low tide) and "straight baselines," which may only be employed in certain limited geographic situations. The United States has lodged diplomatic protests regarding excessive straight baseline claims of many countries, including a previous protest to China regarding its assertion of straight baselines around mainland China (including Hainan Island) and the Paracel Islands. Excerpts follow from the March 7, 2013 U.S. diplomatic note to China.

* * * *

The Government of the United States notes that the Statement lists 17 base points that connect to create two straight baseline systems around two groups of islands known collectively in the United States as the Senkaku Islands (China refers to the islands as the Daiyou Islands). The first system of straight baselines consists of 12 segments enclosing Uotsuri Shima (Diaoyu Dao), Kuba Shima (Huangwei Yu), Minami Kojima (Nanxiao Dao), and certain other features. The second system of straight baselines consists of 5 segments surrounding one island, Taisho To (Chiwei Yu) and its surrounding features.

The United States recalls that, as recognized in customary international law and as reflected in Part II of the 1982 United Nations Convention on the Law of the Sea, except where otherwise provided in the 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. As provided for in Article 7 of the Convention, only 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, may the coastal State elect to use the method of straight baselines joining appropriate points in drawing the baseline from which the breadth of the territorial sea is measured.

The Senkaku Islands comprise several small features spread over an area of approximately 46 square nautical miles. The United States takes no position on the ultimate sovereignty of the Senkaku Islands. Irrespective of sovereignty claims, international law does not permit the drawing of straight baselines around these features. The Senkaku Islands do not meet the specific geographic requirements for the drawing of straight baselines because their coastline is not deeply indented and cut into and they do not constitute a fringe of islands along the coast in its immediate vicinity.

To the extent that the Statement might be intended to suggest that archipelagic baselines may be drawn around the Senkaku Islands, this also would be inconsistent with international law. Under customary international law, as reflected in Part IV of the Law of the Sea Convention, only "archipelagic States" may draw archipelagic baselines joining the outermost points of an archipelago. Coastal States, such as China and the United States, do not meet the definition of an "archipelagic State" reflected in Part IV of the Convention. China, therefore, may not draw archipelagic baselines enclosing offshore islands and waters, and the proper baseline for such features is the low-water line of the islands.

Accordingly, with regard to the Statement and baselines set forth therein, the United States is obliged to reserve its rights and those of its nationals. These baselines, as asserted, impinge on the rights, freedoms, and uses of the sea by all nations by expanding the seaward limit of maritime zones and enclosing as internal waters areas that were previously territorial sea.

The United States requests that the Government of China review its current practice on baselines, explain its justification under international law when defining its maritime claims, and make appropriate modifications to bring these claims into accordance with international law as reflected in the Law of the Sea Convention. The United States is ready to discuss this and other related issues with China in order to maintain consistent dialogue on law of the sea issues.

2013 Digest chapter 12, 369-370.

6. *By a 1984 Presidential decree, the Government of **Colombia** claimed a system of straight baselines on both the Pacific and Caribbean coasts of Colombia. The United States Government, in a note dated July 14, 1988, of which the following is an excerpt, protested as follows:*

Under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea, the normal baseline for the measurement of 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. However, in accordance with article 7 of the Convention, coastal states may employ straight baselines to delineate the baseline from which the territorial sea is measured in two limited geographical circumstances: 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. In both instances the 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.

Upon review of the claimed Colombian straight baselines system, it is the view of the United States that Colombia has established straight baselines where the requisite limited geographic circumstances do not exist. In numerous instances straight baselines have been employed in areas in which the coastline is not sufficiently indented and cut into, and in areas connecting islands which do not properly constitute a fringe of islands along the coast.

In light of the foregoing, the United States protests those baselines contained in the decree which do not comply with international law and reserves for itself and its nationals all rights in accordance with international law with respect to all waters, both on the Pacific and Caribbean coasts of Colombia, affected by the decree discussed herein

Roach & Smith 3rd ed. 83-84.

7. *In December 1989, the United States protested a **Costa Rican** decree establishing straight baselines for sections of Costa Rica's Pacific coast. After repeating the basic rules governing baselines, the note added:*

Additionally, 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.

While the Pacific coastline of Costa Rica contains two embayments, it is neither deeply indented and cut into, nor fringed with many islands, as those standards are employed and understood in international law. Furthermore, several segments which close off geographical bays are longer than twenty four nautical miles and therefore exceed the juridical bay closing line length that is permitted under international law.

Telegram from the Department of State to U.S. Embassy San Jose, December 13, 1989.

1989-1990 Digest 461-462. See also LIS No. 111.

8. In 1977, the Government of **Cuba** claimed a system of straight baselines around the entire coast of Cuba which, in part, involved basepoints on non-fringing islands. The Office of the Geographer of the Department of State's analysis of the system noted that:

Between points 10-17 it appears (according to U.S. charts) that low-tide elevations on the Cuban fringing reefs have been utilized as basepoints for the system. From point 17 (Punta Gobunadora, west of Bahia Honda) through point 28, the Cuban coastline is neither indented nor fringed with islands....

From 77°40' West to No. 92, the southern entrance to the Gulf of Guacanayabo, the Cuban coastline again is not deeply indented or fringed with islands.

From point No. 92 to No. 93, the baseline extends northwestward across the mouth of the bay to connect with a line of cays that are oriented in the same general direction. A more northward-tending line to follow the entire string of cays, rather than this particular line of cays, would more aptly define the natural closing points of the geographic bay and hence the general direction of the coast.

....

.... From 101-102 the straight baseline continues nearly due west to Cayo Trabuco, an eastern cay of the Canary Archipelago, across an area that contains no islands for over 69 nautical miles. Moreover the Cuban coast north of point 101 westward to Pta. Aristizabal is basically without indentation.

From 102 to 107, the straight baselines extend seaward of the Canary Archipelago cays to the Isle of Pines. Shorter straight baselines would follow more closely the general direction of the coast.

....

Lines 107-110 follow the southern coast of the Isle of Pines, which is neither indented nor fringed with islands.

West of the Isle of Pines, the straight baselines again depart from the actual general direction of the Cayos de San Felipe and extend seaward directly to Cape Frances. The departure advances the baseline approximately 25 nautical miles seaward.

The United States Government, in a 1983 note of which the following is an excerpt, stated:

The Department of State refers the Cuban Interests Section of the Embassy of Czechoslovakia to the diplomatic note of February 2, 1983 of the Ministry of External Relations of the Republic of Cuba, alleging that a ship and aircraft of the United States of America violated Cuban territorial waters and air space on several occasions in December 1982 in the vicinity of the Bay of Cienfuegos.

The Government of the United States wishes to advise the Government of the Republic of Cuba that the ship and aircraft activities referred to in the note of February 2, 1983, were conducted in complete conformity with international law. It is the view of the Government of the United States that the sovereignty of the Republic of Cuba does not extend to the waters or superjacent air space in which the referenced activities occurred.

According to well established principles of international law, as reflected in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone and in the text of the United Nations Convention on the Law of the Sea, the method of straight baselines may be employed only 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 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.

In Decree Law No. 1 of February 24, 1977, the Government of the Republic of Cuba claimed a system of straight baselines connecting 124 points around the entire coast of Cuba. The Government of the United States has studied the straight baseline system of Cuba and has concluded that, in a number of areas along the coast of Cuba, lines drawn pursuant to Decree Law No. 1 do not conform to international law. Included in these objectionable straight baselines is, with reference to points established in Decree Law No. 1, the line which connects points 101 and 102, in the vicinity of the Bay of Cienfuegos.

The baseline between points 101 and 102 is 69 nautical miles long and crosses an area that contains no islands whatever. Moreover, the coastline in this area is not deeply indented and cut into. It is also clear that the sea areas lying within the line are not sufficiently closely linked to the land domain to be subject to the regime of internal waters.

The Government of the United States therefore does not recognize the baseline claimed in Decree No. 1 of the Government of the Republic of Cuba. The Government of the United States reserves its rights and those of its nationals in regard to this and other straight baselines claimed in Decree Law No. 1 that do not conform to established principles of international law.

Roach & Smith 3rd ed. 102-103, 116, 118.

9. In 1976, **Denmark** established straight baselines around the **Faroe Islands**. The United States protested this claim in a note of which the following is an extract:

The United States observes that the baselines around the Faeroes are not straight baselines around individual islands, but are lines connecting the outermost islands and drying rocks of the Faeroes archipelago. Archipelagic States recognized under customary international law, as reflected in the LOS convention, do not include mainland states, such as Denmark and the United States, which possess non-coastal archipelagos. Therefore, straight baselines cannot be drawn around mainland states' coastal archipelagos, such as the Faeroe Islands.

The United States also observes that straight baselines could be employed, consistent with international law, in certain localities of some of the Faeroe Islands which are deeply indented and cut into, or themselves fringed with islands along the coast. Furthermore, some of the islands contain juridical bays that could lawfully be enclosed by straight baselines. However, in localities where neither criteria is met, the method of straight baselines may not be used; rather, in those areas the low water line, as depicted on official charts, must be used.

Roach & Smith 3rd ed. 108.

10. In a note protesting a **Djibouti** claim of straight baselines, the U.S. stated:

The Government of the United States . . . maintains its view that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, unless exceptional circumstances exist, baselines are to conform to the low-water line along the coast as marked on a state's official large-scale charts. Straight baselines may only be employed in localities where the coastline is deeply indented and cut into, or where there is a fringe of islands along the immediate vicinity of the coast. It is the position of the Government of the United States that, in the case of Djibouti, the Seba islands are not fringing islands so as to permit the drawing of straight baselines, and, therefore, the baseline must be the low-water line along the coast of each island, and the mainland.

Telegram from the Department of State to U.S. Embassy, Djibouti, March 31, 1989. The telegram also explained that:

Exceptions [to the low-water line baselines] are permitted where the coastline is deeply indented and cut into or where there is a fringe or islands along the immediate vicinity of the coast wherein a nation may employ straight baselines. Straight baselines where utilized, however, must not depart from the general direction of the coast and the sea areas enclosed must be clearly linked to the land domain. It is our position that the Seba Islands are not fringing islands. The [1982 Law of the Sea] Convention does not define the term “fringing island.” The Department’s Limits of the Sea Series, No. 106, (LIS-106), however, sets forth proposed tests for a determination of fringing islands, which are not met by the Seba Islands.

Id.

1989-1990 Digest 459-460.

11. In January 1990 the United States protested through the United Nations the establishment of maritime boundaries by the **Democratic People’s Republic of Korea** for several reasons, including the use of a straight baseline to measure the breadth of its territorial sea. The United States pointed out that the exceptional circumstances of a deeply indented coastline or a fringe of islands along the immediate vicinity of the coastline did not exist with regard to the Democratic People’s Republic of Korea. The United States also protested an announcement by the Democratic People’s Republic of Korea purporting to establish a maritime boundary of 50 nautical miles in the Sea of Japan and a military maritime boundary coincident with its claimed exclusive economic zone limit in the Yellow Sea, pointing out that “as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, the maximum breadth of the territorial sea is twelve nautical miles measured from properly drawn baselines.”

The United States transmitted its views on these issues to the United Nations for publication in the Law of the Sea Bulletin, published by the Office of the Special Representative of the Secretary-General for the Law of the Sea, making clear that the protest was “made without prejudice to the legal position of the Government of the United States of America which has not recognized the Government of the Democratic People’s Republic of Korea.” Law of the Sea Bulletin, No. 15 (May 1990), pp. 8–9.

1989-1990 Digest 462.

12. *In a diplomatic note delivered October 18, 2007, the embassies of the United States and the United Kingdom informed the Ministry of Foreign Affairs of the **Dominican Republic** that they did not accept the definition of the Dominican Republic as an Archipelagic State and contested certain other claims enumerated in a May 22, 2007, law. The substantive paragraphs of the diplomatic note are set forth below in full.*

The Embassies of the United Kingdom of Great Britain and Northern Ireland and the United States of America [...] refer to Law No. 66-07 of May 22, 2007, by which the Dominican Republic

...

b) drew straight baselines connecting a number of turning points on certain banks and keys,

....

The Embassies recall that articles 46 and 47 of Part IV of the United Nations Convention on the Law of the Sea (the Convention) establish the criteria by which a State may be considered an archipelagic State and may draw archipelagic baselines. One of those criteria is that the turning points of straight archipelagic baselines may only join the outermost islands and drying reefs of the archipelago, and may not be drawn to or from low-tide elevations except in two enumerated circumstances.

The information available to the governments of the United Kingdom and the United States do not show that the turning points set out in Law No. 66-07 are all above water at high tide, or that they qualify for either of the exceptions in article 47, suggesting that they do not qualify as turning points under article 47, paragraph I, of the Convention, and that the Dominican Republic does not meet the other requirements of article 47 to be an archipelagic State.

The governments of the United Kingdom and the United States would be grateful if the Ministry could provide to their Embassies documentation regarding the status of these turning points as islands or drying reefs that are above water at high tide, or that they otherwise meet the requirements of article 47.

2007 Digest 641-643, LOSB No. 66, at 98-99 (2008).

The Embassy of the United States in the **Dominican Republic** [...] refer to Law No. 66-07 of May 22, 2007, by which the Dominican Republic:

...

b) drew straight baselines connecting a number of turning points on certain banks and keys;

....

The Embassies of the United States and the United Kingdom informed the Ministry that their governments contested these claims by the Dominican Republic and requested clarifications in U.S. Diplomatic Note 234 of October 18, 2007, and UK Diplomatic Note 64 of that same date, and in their concurrent joint representation to the Ministry of Foreign Relations.

The Embassies of the United States, the United Kingdom and Japan made a similar demarche to the Ministry of Foreign Relations on December 16, 2008, requesting that the Ministry of Foreign Relations respond to the requests for clarifications contained in U.S. Diplomatic Note 234 of October 18, 2007, and UK Diplomatic Note 64 of that same date.

No substantive reply has yet been received from the Ministry of Foreign Relations to any of these requests for clarification.

The Embassy of the United States emphasizes that the Government of the United States of America contests the Government of the Dominican Republic's claim to be an archipelagic state and requests that the Ministry of Foreign Relations respond to these requests for clarification of the Dominican Republic's claims.

2010 Digest 522-524.

The Embassy of the United States of America in the **Dominican Republic** [...] refer to Law No. 66-07 of May 22, 2007, by which the Dominican Republic:

...

b) drew straight baselines connecting a number of turning points on certain banks and keys;

....

The Embassies of the United States and the United Kingdom informed the Ministry that their governments contested these claims by the Dominican Republic and requested clarifications in U.S. Diplomatic Note 234 of October 18, 2007, and UK Diplomatic Note 64 of that same date, and in their concurrent joint representation to the Ministry of Foreign Relations.

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The Embassies of the United States and the United Kingdom made a similar demarche to the Ministry of Foreign Relations on October 28, 2010, requesting that the Ministry of Foreign Relations respond to the requests for clarifications contained in U.S. Diplomatic Note 234 of October 18, 2007, and UK Diplomatic Note 64 of that same date.

No substantive reply has yet been received from the Ministry of Foreign Relations to any of these requests for clarification.

The Embassy emphasizes that the Government of the United States of America contests the Government of the Dominican Republic's claim to be an archipelagic state and requests that the Ministry of Foreign Relations respond to these requests for clarification of the Dominican Republic's claims.

2012 Digest 421-422.

13. *Note, dated 14th September, 1951, from the Government of the United Kingdom to the Government of Ecuador:*

His Majesty's Embassy [...] has the honour to inform the Ministry that His Majesty's Government in the United Kingdom have come to the conclusion after most careful consideration of the Decree relating to the territorial waters of the Republic of Ecuador, signed by the President of the Republic on 21st February, 1951, that they are unable to accept this decree for the reason that it is not in conformity with the rules of international law.

2. The Decree of 21st February, 1951, has two main functions:

- (a) to define the extent of Ecuadorian territorial waters;
- (b) to lay claim to the continental shelf [...].

3. With regard to 2(a) above, it is noted that Article 3 of the decree claims for Ecuador a territorial sea of 12 nautical miles. His Majesty's Government in the United Kingdom wish to place on record with the Government of the Republic of Ecuador that they do not recognize the right of Ecuador to claim territorial waters outside a limit of 3 miles measured from the low-water mark. In this connection they invite the attention of the Government of the Republic of Ecuador to the notes presented by Mr. Jerome to Señor R. H. Elizalde on 22nd June, 1915, by Mr. London to Dr. Don Alejandro Ponce Borge on 20th March, 1935, and by Mr. Bullock to Dr. Don Luis Bassano on 4th March, 1938. His Majesty's Government wish further to emphasize that, in their view, Article 3 of the Decree of 21st February, 1951, is contrary to international law in that, not only does it claim at 12-mile limit, but it also fails to state that, subject to certain generally recognized exceptions, such as bays and islands, the outer limit of territorial waters must be measured from the low-water mark along the entire coast.

The formula indicated in Article 3 seems to envisage the drawing of base-lines between the "outermost promontories of the Ecuadorian Pacific coast" regardless of the distance apart of such promontories and regardless of the fact whether the waters enclosed by the baselines drawn between successive promontories constitute a bay in law or not.

[...]

5. For the reasons given in paragraph 3 above His Majesty's Government in the United Kingdom feel compelled to place on record with the Government of the Republic of Ecuador that they are also unable to accept Article 2 of the decree relating to the Law on Sea Fishing and Hunting, signed by the President of the Republic on 22nd February, 1951, for the reason that it is not in conformity with the rules of international law.

6. His Majesty's Government in the United Kingdom consider that Ecuador has no right to enforce and the United Kingdom would have no duty to acknowledge the enforcement of those portions of the Ecuadorian Decrees of 21st and 22nd February which His Majesty's Government have stated in this note that they are unable to accept, for the reason that such portions of the decrees are not in conformity with the rules of international law.

[...]

Anglo-Norwegian Fisheries Case, vol. IV, ICJ, Pleadings, Oral Arguments, Documents 589-590.

In 1971, through the Supreme Decree No. 959-A, the Government of Ecuador claimed a system of straight baselines along mainland Ecuador and around the Galapagos Islands that did not conform to international law. The United States Government, in a note delivered 24 February 1986, of which the following is an excerpt, protested as follows:

With regard to the baselines from which [the breadth of] the territorial sea of mainland Ecuador ... is measured, the United States does not recognize their delimitation as valid. In that the mainland baselines do not follow the low water line along the coast, two conditions must be fulfilled in order to enable a state to draw straight baselines: Either the coastline must be deeply indented and cut into; or a fringe of islands along the coast in its immediate vicinity must exist. As it is the view of the United States that neither of these conditions is fulfilled, the United States does not recognize the mainland straight baselines claimed by Ecuador.

With regard to the straight baselines drawn around the Galapagos Islands, such straight baselines, which purportedly represent archipelagic baselines as contained in article 47 of the 1982 Law of the Sea Convention, may only be employed by an archipelagic state, defined in article 46 of the 1982 Law of the Sea Convention as "a state constituted wholly by one or more archipelagoes and may include other islands." As Ecuador is a continental state and the Galapagos Islands constitute part thereof, the United States does not recognize as valid the straight baseline system around the Galapagos Islands, for the purpose of delineating internal waters, territorial sea, economic zone or continental shelf.

The note also protested the terminal point at sea on the Ecuador-Peru maritime boundary and the straight baselines beginning at Cabo Manglares, Colombia, which is neither a juridical nor a historical bay.

Roach & Smith 3rd ed. 105, 109, 121. Germany also protested the Galapagos SBLs in November 1986.

On 24 September 2012 Ecuador deposited its instrument of accession to the Law of the Sea Convention. Accompanying the deposit was a lengthy set of declarations, number VI of which reads as follows:

Ecuador reiterates the full force and validity of Supreme Decree No. 959-A, published on 28 June 1971 in Official Register No. 265 of 13 July 1971, by means of which it established its straight baselines in accordance with international law. It reaffirms that the said lines in the Galapagos Archipelago are determined by the common geological origin of those islands, their historical unity and the fact that they belong to Ecuador, as well as the need to protect and preserve their unique

ecosystems. The baselines, from which the maritime spaces described in paragraph II of the present Declaration are measured, are as follows:

In October 2013 Belgium, Spain and Sweden objected to this declaration (among others) as follows:

Belgium is also concerned about the references to the baselines around the Galapagos islands, which do not correspond to the prescriptions of the Convention.

In particular, Spain does not recognize the drawing of baselines that were not made as required by the Convention.

The Government of Sweden has studied the baselines described by Ecuador in its Declaration. According to the provisions of UNCLOS the normal baseline is the low-water line along the coast. Straight baselines may be employed if the coast is deeply indented or cut into, or if there is a fringe of islands along the coast in its immediate vicinity. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast. The Ecuadorian coastline is stable and even, and the baselines described by Ecuador deviates from the main rules included in UNCLOS provisions. The baselines of islands shall be drawn according to the same criteria. The baselines surrounding the Galapagos Islands, creating a large area of internal waters not connected to the mainland is not in accordance with UNCLOS.

LOS No. 83, at 14-18 (2013).

14. *In a diplomatic note delivered in June 1991, the United States protested a new **Egyptian** presidential decree promulgating straight baselines from which to measure the breadth of the Egyptian territorial sea in the Mediterranean, the Gulf of Aqaba, and the Red Sea.*

The substantive portions of the note, set forth below, were contained in a telegram of June 8, 1991, from the Department of State to the U.S. Embassy in Cairo.

* * * *

The United States . . . has the honor to refer to Presidential Decree No. 27 of 9 January 1990 entitled "Decree Concerning the Baselines of the Maritime Areas of the Arab Republic of Egypt, 9 January 1990." In this decree co-ordinates of latitude and longitude are listed which establish straight baselines from which the territorial sea of the Arab Republic of Egypt is to be measured. The United States believes that these baselines are not drawn in accordance with the customary rules of international law reflected in the 1982 United Nations Convention on the Law of the Sea (LOS Convention), which Egypt has ratified, for the following reasons.

In accordance with Article 5 of the LOS 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. Article 7 of the LOS Convention provides that, as an exception to the normal baseline, in localities in which the coastline is deeply indented and cut into, or where there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate basepoints may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

The United States observes that while the aforementioned decree establishes straight baselines along almost the entire coastline of the Arab Republic of Egypt in the Mediterranean, Gulf of Aqaba and Red Sea, the Egyptian coastline in all seas is generally smooth and gently undulating, and is neither deeply indented and cut into nor fringed with islands along its coast. Hence, in localities where neither criteria is met, the method of straight baselines may not be used; rather, in those areas the low water line, as depicted on official charts, must be used.

With regard to the coordinates referencing locations in the Gulf of Aqaba, Gulf of Suez and the Red Sea, the United States wishes to make the following observations.

The United States notes that the coastline in the vicinity of coordinates 1–32 located in the Gulf of Aqaba is neither masked by a fringe of islands nor is it deeply indented or cut into. The coastline in the vicinity of coordinates 32 and 33 also does not meet these criteria, nor does it constitute a juridical bay within the meaning of Article 10 of the LOS Convention. The United States observes that, whereas it would be possible to construct shorter baselines off the coast between coordinates 32 and 33 which could properly enclose juridical bays, such baselines were not drawn.

Baseline segments 33–36, from Ras Muhammed to the mainland northeast of Port Safaga also satisfy neither criterion.

Baseline segments 36–56 in the Red Sea fail to meet the criteria of areas in which the coastline in the vicinity is deeply indented and cut into, or in which there exists a fringe of islands along the coast. The coastline in this vicinity is in fact practically void of islands and is relatively free from indentations. Accordingly, the normal baseline—the low water line—must be used in this vicinity.

With regard to straight baseline segments located in the Mediterranean Sea, the United States wishes to make the following observations.

The Mediterranean Coastline in the vicinity of baseline segments 1–25 is clearly neither deeply indented and cut into, nor is it fringed with islands along the coast. However, segments 25–28 enclose Abu Kir Bay, a juridical bay. The Mediterranean coastline in the vicinity of segments 28–39 is also neither deeply indented and cut into nor fringed with islands in its immediate vicinity. Baseline segments 39–41 are invalid for the same reason.

Whereas the waters behind the barrier spit between baseline segments 41 and 49 could properly be constituted as internal waters, such can be accomplished by the barrier spit itself, joining by short baseline segments the barrier segments in those few areas in which it is not continuous.

Baseline segments 49–55 are invalid since the coastline in that vicinity is also neither deeply indented and cut into nor fringed with islands.

For the above reasons, the United States cannot accept the validity in international law of the straight baselines mentioned above as constituting the baseline from which the territorial sea of the Arab Republic of Egypt is to be measured, and reserves its rights and those of its nationals in this regard.

The United States looks forward to the views of the Government of the Arab Republic of Egypt in response to the points raised above.

II 1991-1999 Digest 1580-1582. See also LIS 116.

15. In 1964, **Guinea** issued a *Presidential Decree defining the baseline along its coast by a 120-mile straight line “passing southwest of the island of Sene in the Tristao group and southward, by the southwestern tip of the Island of Tamara, at the low watermark.”*

The Geographer described this system as “unique in the world practice of states”:

One straight line has been drawn connecting the northernmost Guinean island to the most-seaward southern island.... The coastline of Guinea, in addition, can scarcely be defined as “deeply indented and cut into” or “fringed with islands”. The straight baseline, however, does mark the limit of shoal waters for its entire length with the exception of a bay-like indentation opposite Taboria

(9°56'N.; 13°56'W.). In the vicinity of Taboria, the straight baseline is 14 nautical miles from shoal water.

The system does not otherwise meet the general standards for straight baselines which have been used to evaluate the previous studies of this series.

The United States protested in a note which, in part, said “the proclaimed straight baseline seems unjustified under the criteria set forth in Article 4 of the Convention on the Territorial Sea and the Contiguous Zone adopted at Geneva in 1958 which the United States Government regards as expressive of international law on the subject.”

In 1980, Guinea issued a new decree restoring the low-water line as the baseline.

Roach & Smith 3rd ed. 94.

16. The Permanent Mission of the Republic of Senegal to the United Nations [...] with reference to the latter's note No. LOS/5/86 of 6 January 1986 concerning the dissemination of a communication dated 4 December 1985 from the Republic of **Guinea-Bissau** relating to the delimitation of its territorial waters, has the honour to inform it of the following:

The Government of the Republic of Senegal raises a formal protest against Act No 2 of 17 May 1985 of the Republic of Guinea-Bissau, article 1 and 2 of which are manifestly contrary to international law.

The Permanent Mission of the Republic of Senegal requests the Secretariat to see to it that this protest is circulated among all member States ...

LOS No. 8, at 24 (1986).

The Permanent Mission of **Guinea-Bissau** to the United Nations [...] with reference to the latter's note No. LOS/8/86 concerning the dissemination of a protest by the Republic of Senegal against Act No. 2 of May 1985, by which the Republic of Guinea-Bissau modified the delimitation of its territorial waters, has the honour to inform it of the following:

Like all Government of Sovereign States, the Government of the Republic of Guinea-Bissau is justified in exercising its right to establish by an act of its domestic legislation the delimitation of its territorial waters in accordance with a system of straight baselines;

In the instance in question, the straight baselines established by the Guinean Act of 17 May 1985 are in no way in contravention of the rules of international law contained in article 7 of the United Nations Convention on the Law of the Sea;

They are, moreover, landward of the baselines established under previous legislation; it will be for the arbitral tribunal assigned by the agreement between the Governments of Guinea-Bissau and Senegal the task of delimiting the maritime frontier between them, the work of which began in Geneva on 6 June 1986, to ascertain whether the baselines of the two States are indeed in conformity with the rules of international law.

The Permanent Mission of Guinea-Bissau to the United Nations requests the Secretariat to see to it that this note is circulated to all Member States [...]

LOS No. 8, at 23 (1986). Note: the arbitral award did not address the baselines.

17. *In connection with the adoption by Honduras of the Decree No. 172-99 of 30 October 1999 and the issuance of Executive Decree No. PCM 007-2000 of 21 March 2000, as well as the deposit by Honduras of the list of geographical coordinates of points for the drawing of straight baselines, established by that Executive Decree, the Secretary-General received the following communications:*

- Letters from the Permanent Representative of Guatemala to the United Nations No. NU/13/546 and NU/13/773 dated 15 June and 23 August 2000, respectively, transmitting a copy of a letter dated 2 June 2000, from the Minister for Foreign Affairs of Guatemala to the Minister for Foreign Affairs of Honduras. The letter expresses, *inter alia*, a reservation with respect to the establishment by Honduras of the straight baselines as contained in Executive Decree PCM 007-2000, since “they are prejudicial to sovereign interests of Guatemala in the Caribbean Sea”;
- Note verbale MN-NU-051-00 from the Permanent Mission of Nicaragua dated 20 June 2000, transmitting a copy of a letter dated 12 May 2000, from the Vice-Minister for Foreign Affairs of Nicaragua to the Minister for Foreign Affairs of Honduras. The letter, *inter alia*, protests against article 3, paragraph 2, of Decree 172-99 which establishes the straight baselines “in the territorial sea of Nicaragua;
- Letter from the Permanent Representative of El Salvador to the United Nations No. SNU-0029, A.550.MAR dated 21 June 2000, transmitting a copy of note No. DM/No. E-05 dated 27 April 2000, from the Minister for Foreign Affairs of El Salvador to the Minister for Foreign Affairs of Honduras. The note rejects the content of the Executive Decree PCM 007-2000 in the Pacific Ocean since “it affects the sovereign territorial rights of El Salvador”.

LOSIC No. 12, at 37 (2000).

Letter dated 1 September 2009 from the Minister for Foreign Affairs of Guatemala addressed to the Secretary-General of the United Nations communicating the position of the Republic of Guatemala with regard to the Treaty on Maritime Delimitation between the Government of the Republic of Honduras and the Government of the United Mexican States, signed in Tegucigalpa on 18 April 2005

Guatemala, 1 September 2009

I have the honour to communicate to you the position of the Republic of Guatemala with regard to the Treaty on Maritime Delimitation between the Government of the Republic of Honduras and the Government of the United Mexican States, signed in Tegucigalpa on 18 April 2005, as follows:

In conformity with the definition contained in the United Nations Convention on the Law of the Sea, the geographic context to which the Treaty refers is one of a "semi-enclosed sea", and because the State of Guatemala is partially located between the States Parties to the aforementioned Treaty, its legitimate rights as a coastal State are affected as a result.

The Treaty refers to maritime areas off the coasts of territories currently held by Belize, to which areas the State of Guatemala maintains an unresolved claim, and is therefore also prejudicial to Guatemalan interests.

In concluding the Treaty, the esteemed Governments of the Republic of Honduras and the United Mexican States did not take account of the rights of Guatemala and of the fact that Guatemala had objected to the Executive Decree number PCM 007-2000 issued by the Government of the Republic of Honduras on 21 March 2000 and to the Decree fixing the outer limits of the Economic Zone of Mexico issued by the Government of the United Mexican States on 7 June 1976.

Guatemala cannot accept the use in the Treaty of point HM1 as constituent of the Trifinio among Mexico, Honduras and Belize, because that point is located within the 200 nautical-mile Exclusive Economic Zone which belongs to Guatemala under the Treaty.

The intention, as manifested in the Treaty, of the Governments of the Republic of Honduras and the United Mexican States to undertake projects and finalize future bilateral agreements with regard to the zone defined in the aforementioned Treaty could affect the rights Guatemala also has in that zone.

Accordingly, the Government of Guatemala

(1) Reiterates the reservation it had entered in its note dated 15 July 1976 to the Government of the United Mexican States regarding the Decree fixing the outer limits of the Economic Zone of Mexico issued on 4 June 1976.

(2) Reiterates the reservation it had entered in its note dated 2 June 2000 to the Government of the Republic of Honduras regarding the unilateral setting of straight baselines in Executive Decree number PCM 007-2000 issued on 21 March 2000.

(3) Again expresses its disagreement and reiterates the reservation it had entered at the time, regarding the entire Treaty on Maritime Delimitation between the Government of the Republic of Honduras and the Government of the United Mexican States, signed in Tegucigalpa on 18 April 2005.

(signed)

Haroldo Rodas Melgar
Minister for Foreign Affairs

LOS B No. 71, at 46 (2010).

On March 28, 2003, the U.S. Embassy in Tegucigalpa delivered a diplomatic note protesting segments of straight baselines established by the Government of Honduras as not meeting international legal requirements. The full text of the note, excerpted below, is available at www.state.gov/s/l/c8183.htm.

* * * *

The United States notes that the rules for drawing baselines are contained in articles 5–14 of the 1982 convention. Article 5 states that “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.” Paragraph one of article 7 states that straight baselines may be drawn only in two specific geographic situations, that is “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 United States would like to remind the Government of Honduras of the statement made by the International Court of Justice in its judgment in the *Qatar v. Bahrain* case. In its decision, the Court stated,

“The Court 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 of 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 its immediate vicinity.”

(paragraph 212)

The United States wishes to recall that the purpose of authorizing straight baselines is to allow the coastal state, at its discretion, to enclose those waters which as a result of their close interrelationship with the land, have the character of internal waters, by using straight baselines. A state may also eliminate complex patterns, including enclaves, in its territorial sea, that would otherwise result. Properly drawn straight baselines do not result in extending the limits of the territorial sea significantly seaward from those that would result from the use of normal, low-water line baselines. Moreover, the use of straight baselines in a manner that prejudices international navigation, overflight, and communications runs counter to the balance of interests reflected in the 1982 Convention.

With regard to straight baselines justified on the basis of fringing islands along the coast in the immediate vicinity, the United States has taken the position that, under international law, such a fringe of islands must meet all of the following requirements:

- The most landward point of each island lies no more than 24 miles from the mainland coastline;
- each island to which a straight baseline is to be drawn is not more than 24 miles apart from the island from which the straight baseline is drawn; and
- the islands, as a whole, mask at least 50 percent of the mainland coastline in any given locality.
- straight baseline segments shall not depart from the general direction of the coastline and no individual segment shall ... exceed 24 miles in length.
- and, the drawing of straight baselines should result in sea areas situated landward of the straight baseline segments that are sufficiently closely linked to the land domain to be subject to the regime of internal waters.

The United States wishes to inform the Government of Honduras that after careful analysis of the straight baselines established by the Government of Honduras and careful review of the information provided by the Government of Honduras, the United States has concluded that many of the segments do not meet the international legal criteria set forth above.

Segment 1–2 begins at the terminus of the Honduras–Guatemala international border ... to the northern point of Punta Caballos. This stretch of Honduran coastline is smooth, with no fringing islands. A straight baseline segment is inappropriate in this area where there are neither fringing islands nor a coastline that is deeply indented and cut into. The territorial sea should be measured from the low-water mark.

Baseline segment 3–4, slightly more than 7 miles in length connects a point near Punta Ulua (just west of the Ulua River) to Punta Sal. The body of water enclosed by this line fails to meet either the article 10 bay closing line requirements or the straight baseline geographic requirements. The low-water mark should be used as the baseline in this area.

Baseline segments 4–13 enclose the offshore Islas de la Bahia.

Baseline segment 4–5 connects the inland coast at Punta Sal to the western end of Isla de Utila, more than 36 miles to the northeast. There are no intervening islands between Punta Sal and this island and the mainland coastline is quite smooth and is not “deeply indented or cut into.” The waters enclosed by this line segment are not “sufficiently closely linked to the land domain to be subject to the regime of internal waters.” Therefore, the appropriate baseline in this area would be the low-water mark.

Baseline segment 6–7 connects the north coast of Isla de Utila to a point on the west coast of Isla de Roatan, just north of Punta Oeste. Point 8, situated on the eastern end of Isla de Roatan’s north coast, is connected to point 9 on Isla Morat by a straight baseline segment of less than one mile. Segment 9–10 then connects Isla Morat to the central part of the north coast of Isla Barbareta; the straight baseline system continues as segment 10–11 [which] connects this island to the north coast of Isla de Guanaja. From point 12, situated at Black Rock Point on the eastern end of Isla de Guanaja a straight baseline segment almost 55 miles in length extends to the southeast to point 13 at Cabo Camarn on

the mainland. This straight baseline segment clearly exceeds the requirements of the 1982 Convention as neither geographic criteria is met—there are no fringing islands, nor is the mainland deeply indented or cut into.

The United States has considered whether any valid straight baseline system can be drawn in the vicinity of the three main islands of Isla de Utila, Isla de Roatan, and Isla de Guanaja. The islands are within 24 miles of the mainland and less than 24 miles from each other; however, there are parts of Isla de Roatan that are greater than 24 miles from the mainland and from other islands to the south, which creates a high seas pocket if the 12-mile territorial sea were drawn from the island's low-water mark. When testing for the fringing islands criterion, these islands mask about 61% of the mainland in this immediate area.

The issue remains whether the waters enclosed by these baselines are “sufficiently closely linked to the land domain to be subject to the regime of internal waters.” The water depths are rather deep, in many areas exceeding 1400 meters, and there is a pocket of high seas that would remain if the low-water line were used. However, in the two meetings that experts from our two governments have had on this matter, and in the Aide Memoire that the Government of Honduras provided to the Government of [the] United States on September 20, 2001, it has been shown that the waters between Islas de la Bahia and the mainland appear to be “sufficiently closely linked to the land domain to be subject to the regime of internal waters.”

However, the United States notes that if straight baselines were to be drawn along these islands in a manner consistent with international law, the line segments connecting the islands to the mainland would properly extend due south from the respective ends of the eastern and western islands to the mainland. Thus, the United States does not agree that segments 4–5 and 12–13, as presently drawn meet the requirements of international law.

From point 13, four straight baseline segments (13–14, 14–15, 15–16, and 16–17) incorporate the remaining Caribbean-facing coastline to the mouth of the Rio Coco and its international boundary terminus with Nicaragua. With the exception of segment 15–16, which is a valid river closing line, these segments exceed the requirements of the 1982 Convention. The Honduran coastline along this stretch is quite smooth, with no deep indentations, and there are no fringing islands. Further, two of the baseline segments, 13–14 and 14–15, are quite long, being approximately 43 and 63 miles, respectively, in length. The low-water mark should be used in these areas as the baseline.

The embassy also wishes to recall Executive Decree No. PCM 017-2000 published October 7, 2000. Article 1 of Decree No. PCM 017-2000 states that Decree No. PCM 007-2000 “does not establish any unilateral maritime claims, or any restriction to international navigation.” The embassy would point out that, as article 1(a) of Decree No. PCM 007-2000 establishes straight baselines for the delimitation of Honduras' maritime spaces, the effect of straight baselines is to convert the legal status of waters landward of the line to areas in which the international community's navigation rights are diminished. Such unilateral claims restrict international navigation.

Article 1 further provides that Decree No. PCM 007-2000 “shall be interpreted in accordance with international law.” The United States views the segments noted above as inconsistent with international law.

The embassy further notes that the preamble of Decree No. PCM 017-2000 states in part that “the straight baselines established in the Honduran law are simply one factor to be taken into account in any negotiating process with neighboring states” to delimit maritime boundaries.

Although it may be true that baselines may be considered given by states in determining the course of a maritime boundary, potential boundary negotiations may not, consistent with international law, be a criterion for the establishment of straight baselines. It is the presence of the specified geographic

conditions that, under international law, might warrant the establishment of straight baselines under appropriate circumstances.

In that connection, it is noted there are a number of off-shore islands located seaward of the northeast coast of Honduras that might be taken into account in the course of maritime boundary negotiations.

The United States Government requests that the Government of Honduras reexamine the aforementioned baselines and bring them into conformity with international law.

Accordingly, the United States reserves its rights and the rights of its nationals in this regard.

2004 Digest 705-710.

18. *Note verbale dated 6 December 2011 addressed to the Secretary-General of the United Nations in respect of India's Notifications specifying list of geographical coordinates of base points defining Baseline System of **India** to measure its maritime boundaries*

No. SixtWLS/7/20 1

6 December 2011

The Permanent Mission of the Islamic Republic of Pakistan to the United Nations [...] with reference to Government of India's Notifications No. S.O.1197I dated 11 May 2009 and S.O.2962I dated 20 November 2009, specifying list of geographical coordinates of base points defining Baseline System of India to measure its maritime boundaries, posted on the website of Division for Ocean Affairs and the Law of the Sea (UN circular No. M.Z.N.76.2010.LOS of 17 February 2010) and published in Law of the Sea Bulletins No. 71 & 72 has the honour to state the following:-

a. The Government of Pakistan is of the view that the following sections of the baseline points notified by India are inconsistent with international law, including the relevant provisions of 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Government of Pakistan therefore, reserves its rights and those of its nationals in this regard.

b. India's Base Points 1 to 3 of Schedule-I of India Notification (coordinates mentioned below), impinge upon Pakistan's territorial limits in Sir Greek area and encroach upon its territorial waters, which are within its sovereign jurisdiction. This encroachment by India in Pakistan's limits is a grave violation of international principles and established practices and clear violation of UNCLOS-82 Article 7(6) which states that system of straight baseline 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.

| | | | |
|------|-----------------|---|-------------------------------------|
| i) | Sir Mouth N. | - | 23° 40' 20.80" N, 68 ° 04' 31.20" E |
| ii) | Sir Mouth S. | - | 23° 36' 30.30" N, 68 ° 07' 00.90" E |
| iii) | Pir Sanai Creek | - | 23° 36' 15.20" N, 68 ° 07' 28.50" E |

c. The Government of Pakistan notes that disregarding the provisions of UNCLOS 82 Article 5, straight baseline segments joining base points No.24-25, 27-28, & 18-19 have been drawn by India on relatively smooth coast which is not indented or fringed by islands. India should have used normal baseline, the low water line, as required by UNCLOS 82. Pakistan is of the view that this creeping appropriation of sea due to excessive baselines have infringed the rights of international community as a whole being part of res communis in international Seabed Area and Pakistan in particular being adjacent Coastal State.

d. The Government of Pakistan further notes that straight baselines have been drawn by India to and from low-tide elevations in West/East Coast of India, which do not have lighthouses or similar installations on them or any international recognition, contravening Article 7(4) of UNCLOS-82.

e. Coordinates of normal baseline segments have not been given in the Notification.

f. Lengthy segments of straight baseline, which is against the spirit and practices of UNCLOS have been used to maximize the area of internal waters.

In view of the above, the Government of Pakistan does not recognize the Baseline System promulgated by India. While the Government of Pakistan reserves its right to seek suitable revision of this notification, any claim India makes on the basis of above cited Indian Notification to extend its sovereignty/jurisdiction on Pakistani waters or extend its internal waters, territorial sea, Exclusive Economic Zone and Continental Shelf is therefore, not acceptable to Pakistan being in contravention to the provisions of UNCLOS 1982.

[...]

LOS No. 78, at 33 (2012).

19. *United States Note to the United Nations January 11, 1994 (USUN 3509/437):*

The Permanent Mission of the United States of America to the United Nations [...] advise that the Government of the United States of America has studied carefully the legislative acts of **Iran** setting forth Iran's maritime claims, including the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and Oman Sea of May 2, 1993, and Decree-Law No. 2/250-67, 31 Tir 1352 [July 22, 1973] of the Council of Ministers, taking into account the relevant provisions of international law as reflected in the 1982 United Nations Convention on the Law of the Sea, which will enter into force on November 16, 1994.

The United States is of the view that certain provisions of these acts are inconsistent with international law, and the United States reserves its rights and the rights of its nationals in that regard.

The United States wishes to recall that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, except where otherwise provided in the 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. Only 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, may the coastal state elect to use the method of straight baselines joining appropriate points in drawing the baseline from which the breadth of the territorial sea is measured.

The United States notes that, notwithstanding the fact that the Iranian coastline is rarely deeply indented or fringed by islands, Iran has employed straight baselines along most of its coastline and that, in the vicinity of most segments, the Iranian coastline is quite smooth. Consequently, the appropriate baseline for virtually all of the Iranian coast in the Persian Gulf and the Gulf of Oman is the normal baseline, the low-water line. While the Convention does not set a maximum length for baseline segments, many of the segments set out in Iranian law are excessively long. In fact, eleven of the 21 segments are between 30 and 120 miles long. The United States believes that the maximum length of an appropriately drawn straight baseline segment normally should not exceed 24 nautical miles.

The United States also wishes to recall that islands may not be used to define internal waters, except for situations where the islands are part of a valid straight baseline system, or of a closing line for a juridical bay. Article 3 of the 1993 Marine Areas Act of Iran asserts that the waters between islands belonging to Iran where the distance of such islands does not exceed 24 nautical miles form part of the internal waters of Iran. This claim has no basis in international law. . . .

....

The Government of the United States wishes to assure the Government of the Islamic Republic of Iran that its objections to these claims should not be viewed as singling out the Islamic Republic of Iran for criticism, but is part of its worldwide effort to preserve the internationally recognized rights and freedoms of the international community in navigation and overflight and other related high seas uses, and thereby maintain the balance of interests reflected in the Convention.

This is only of a number of U.S. protests of those claims by coastal states which are not consistent with international law as reflected in the 1982 United Nations Convention on the Law of the Sea.

The Government of the United States requests that this Note be circulated by the United Nations as part of the next Law of the Sea Bulletin.

[...]

LIS No. 114 Annex 3.

*Comments from the Islamic Republic of Iran concerning the viewpoints
of the Government of the United States of America regarding the
Act on Marine Area of the Islamic Republic of Iran
in the Persian Gulf and the Oman Sea of 2 May 1993¹*

The Government of the Islamic Republic of Iran took careful note of the viewpoints of the Government of the United States of America regarding the Act on the Marine Areas of the Islamic Republic of Iran of 2 May 1993 as expressed in the latter's note of 11 January 1994 and would like to make, in this respect, the following comments:

[...]

Decree No. 2/250-67, dated 3 Tir 1352 (22 July 1973) is amongst such regulations and was approved and put into force nearly 20 years ago. Usage of straight baselines is in no way considered as an unusual measure, as other States, too, use the same method under similar circumstances. The reason for further emphasis in the Decree of 1973 was that since its enforcement and in spite of its international circulation in the collections circulated by the United Nations Secretariat, so far no objections have been received thereto. The Islamic Republic of Iran, therefore, considers this is a recognition of its content by the international community.

As mentioned in the United States' note, there is no criterion in international law to determine the maximum length of parts of the straight baselines; thus the reference made by the United States to 24 nautical miles lacks legal foundation. Instead, in drawing the line, effort has been made to employ those criteria which have been internationally important and were later mentioned in the Convention. Among them is the drawing of straight baselines in a way that they do not depart in any appreciable extent from the general direction of the coast (article 7, para. 3), and it has also been taken into account that in determining the straight baselines the coastal State may consider the economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by long usage.

As for declaration of waters between islands whose distance is less than 24 nautical miles as internal waters, it is noteworthy to recall the Act on Territorial Waters and the Contiguous Zone of Iran dated 24 Tir 1313 (15 July 1934), and its amendment of 22 Farvardin 1338 (12 April 1959), according to which similar rules have been provided in connection with islands belonging to the Islamic Republic of Iran, and in the recent Act the criterion for the distance between islands has been changed in conformity with the extension of the breadth of the territorial sea. [...]

[...]

¹ Communicated by the Permanent Mission of the Islamic Republic of Iran to the United Nations in a note verbale No. 224 of 24 May 1994.

LOS No. 26, at 35-38 (1994).

Démarche of 14 December 1994 by the German Embassy in Tehran concerning provisions of Iranian national law not compatible with international law of the sea¹

The Embassy of the Federal Republic of Germany in Tehran [...] and, on behalf of the European Union, has the honour to invite its attention to the following:

The European Union has examined the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and in the Oman Sea adopted by the Islamic Republic of Iran on 2 May 1993. The Act refers, in the matter of baselines, to Decree No. 2/250-67 dated 31 Tir 1352 (22 July 1973) of the Council of Ministers.

The European Union notes that the Islamic Republic of Iran has employed the method of straight baselines along practically the entire coastline, even where it is not deeply indented and cut into and there is no fringe of islands along the coast in its immediate vicinity.

The European Union considers that although the United Nations Convention on the Law of the Sea, which entered into force on 16 November 1994, does not stipulate any maximum length for baseline segments, several of the segments where the straight baseline method has been employed by the Islamic Republic of Iran are excessively long.

The European Union would further recall that the islands may only be used in defining internal waters where they form part of genuine system of straight baselines or where they constitute the line which delimits a bay.

[...]

The European Union considers that the aforementioned provision of the act of 2 May 1993 are not in conformity with the rules of international law, in particular articles 5, 7, 19, 56, 58 and 78 of the United Nations Convention on the Law of the Sea. Consequently, the States members of the Union reserve their position and their rights in respect of these provisions.

The acceding States, namely Austria, Finland and Sweden, endorse this demarche.

¹ Text communicated by the Permanent Mission of Germany to the United Nations in a note verbale dated 11 September 1985.

LOS No. 30, at 60-61 (1996).

Note No. 641/1206 dated 3 May 1995 addressed to the Embassy of the French Republic in Tehran, in response to the protest filed by Germany on behalf of the European Union concerning the Act of 2 May 1993 on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and in the Sea of Oman¹

The Ministry of Foreign Affairs of the Islamic Republic of Iran [...] Referring to note No. 961 (94 c), dated 14 December 1994, filed by the Embassy of the Federal Republic of Germany in Tehran on behalf of the European Union, the Ministry has the honour to make the following statement.

While every State unquestionably possesses the right to formulate laws and regulations with a view to determining how it shall exercise its sovereignty and jurisdiction over its territory and the adjacent waters, the Ministry of Foreign Affairs none the less deems it necessary, for purposes of removing some ambiguities raised by the European Union, to clarify a number of points.

[...]

One of these statutes was Decree No. 2/250-67 of 22 July 1973, which was adopted and put into force over 20 years ago. The method of straight baselines, as described in that Decree, cannot be regarded as in any way unusual, inasmuch other States have also used the same method under comparable circumstances. Consequently, the provisions of the 1973 Decree were incorporated unchanged into the 1983 Act.

It is noteworthy that the text of the above-mentioned Decree, which was published internationally, notably in the United Nations Legislative Series, National Legislation and Treaties relating to the Law of the Sea (ST/LEG/SER.B/19, p. 55), did not elicit any protests during that entire period that elapsed between its promulgation and the adopted of the recent Act.

Furthermore, as the *demarche* by the German Embassy itself states, the Convention on the Law of the Sea does not stipulate any maximum length for baseline segments. Consequently, it is the view of the Islamic Republic of Iran that there are no legal grounds for regarding those baselines as excessively long.

As regards the use of straight baselines to connect islands less than 24 nautical miles apart and the designation of the marine areas separating them as internal waters, we note that there is nothing in international law to prohibit the use of that method, and we invite the Embassy's attention to the fact that the same method was used in the Act establishing the limits of the territorial sea and the exclusive zone of Iran, dated 18 July 1934 (ST/LEG/SER.B/6, p. 24) and the Act amending that Act, dated 11 April 1959 (ST/LEG/SER.B/15, p. 88). In the new Act, the criterion of the distance between islands has been adjusted to take account of the extension of the territorial sea.

[...]

¹ Communicated by the Permanent Mission of the Islamic Republic of Iran to the United Nations in a note verbale dated 13 March 1966.

LOS B No. 31, at 37-38 (1996).

Note verbale dated 25 July 1996 from the Permanent Mission of Saudi Arabia to the United Nations addressed to the Secretariat

The Permanent Mission of Saudi Arabia to the United Nations [...] refers to the law entitled "Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea", which was promulgated on 20 April 1993 and has been communicated to the United Nations Secretariat.

The Government of Saudi Arabia wishes to place on record that it objects to and does not recognize those provisions of the aforesaid Iranian Act on Marine Areas that purport to give the Islamic Republic of Iran powers and jurisdiction that violate or conflict with the consensus of international law and international practice with regard to the legal regime governing seas and straits used in international navigation.

Accordingly, Saudi Arabia declares that it does not recognize or acknowledge any jurisdiction, powers or practices that are assumed or exercised pursuant to the aforesaid Act on the Marine Areas

of the Islamic Republic of Iran in such a way as to violate the provisions of international law and international practice and that it does not recognize any restrictions or impositions that may be placed on international navigation in the Gulf and in the Sea of Oman, including passage through the Strait of Hormuz, pursuant to the Iranian law in question.

The Government of Saudi Arabia affirms its legitimate rights *vis-à-vis* the application of those provisions of the Iranian law in question that are in conflict with or violate the international law of the sea and international practice.

[...]

General Assembly doc. A/50/1028 Annex, 28 August 1996; LOSB No. 32, at 90 (1996).

Letter dated 18 October 1996 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

I wish to refer to the note verbale dated 25 July 1996 from the Permanent Mission of Saudi Arabia to the United Nations addressed to the Secretariat (A/50/1028, annex), regarding objections of Saudi Arabia to certain provisions of the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Sea of Oman, 1993 (“Marine Areas Act”), and make the following clarifications:

1. Even before the enactment of the said Act, there existed a few acts and decrees pertaining to the Islamic Republic of Iran’s rights and jurisdiction over its maritime areas, each of which dealt with one or more issues involving the law of the sea. The Marine Areas Act was drafted to consolidate and supplement all previous relevant legislative provisions into a single statutory instrument, taking into account the progressive development of the law of the sea, including the extension of the jurisdiction of coastal States.
2. It should be noted that the international law of the sea comprises various rules and provisions that were codified and/or developed in the 1958 and 1982 Conventions on the Law of the Sea. Therefore, it is hard to believe that there is an international consensus on various rules and practices pertaining to this body of law.
3. There is no provision in the Marine Areas Act to impede navigation in the Persian Gulf and the Sea of Oman. The Islamic Republic of Iran does not object to the freedom of navigation, provided that such freedom is not prejudicial to the peace, good order or security of the coastal States, in conformity with international law.

I should be grateful if you would have the text of the present letter circulated as an official document of the General Assembly, under agenda items 7, 10 and 24.

(Signed) Kamal KHARRAZI
Ambassador
Permanent Representative

General Assembly doc. A/51/545, 23 October 1996; LOSB No. 33, at 86-87 (1997).

Note verbale dated 20 August 1996 from the Permanent Mission of Qatar to the United Nations addressed to the Secretariat

The Permanent Mission of the State of Qatar to the United Nations [...] has the honour to inform it that Qatar, after careful consideration of the Act on the Marine Areas of the Islamic Republic of **Iran** in the Persian Gulf and the Oman Sea, 1993, is of the opinion that some articles of the aforementioned

Act are inconsistent with the provisions of international law. Qatar therefore reserves its rights and the rights of its citizens in this regard.

Qatar would like to draw attention to the fact that the use by the Islamic Republic of Iran of the baseline to measure its territorial sea, in accordance with the above-mentioned Act, contravenes the customary law enshrined in international law and the 1982 United Nations Convention on the Law of the Sea. This is because there are no geographical phenomena other than natural ones on the Iranian coast to justify using such lines.

Further, the above-mentioned Act states that the waters between islands belonging to the Islamic Republic of Iran, where the distance of such islands does not exceed 24 nautical miles, form part of the internal waters of the Islamic Republic of Iran. This clearly contravenes the provisions of the law of the sea: the waters between the islands cannot be considered internal waters of the Islamic Republic of Iran except under certain conditions, which do not obtain on the Iranian coastline.

[...]

Qatar would like to emphasize that these objections are not intended as criticism of the Islamic Republic of Iran, but merely to clarify the position of the State with respect to the international provisions and principles of the law of the sea as laid down in international customary law, treaties and practices.

General Assembly doc. A/50/1034 Annex, 5 September 1996; LOSB No. 32, at 89-90 (1996).

Letter dated 18 October 1996 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

I wish to refer to the note verbale dated 20 August 1996 from the Permanent Mission of Qatar to the United Nations addressed to the Secretariat (A/50/1034, annex) regarding objections of the State of Qatar to certain provisions of the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Sea of Oman, 1993 ("Marine Areas Act") and make the following clarifications:

1. Even before the enactment of the said Act, there existed a few acts and decrees pertaining to the Islamic Republic of Iran's rights and jurisdiction over its maritime areas, each of which dealt with one or more issues involving the law of the sea. The Marine Areas Act was drafted to consolidate and supplement all previous relevant legislative provisions into a single statutory instrument, taking into account the progressive development of the law of the sea, including the extension of the jurisdiction of coastal States.

2. The Islamic Republic of Iran does not consider that the United Nations Convention on the Law of the Sea (the "Convention") has merely codified customary rules of international law of the sea, as the President of the Third United Nations Conference on the Law of the Sea stated on 10 December 1982:

"The argument that, except for Part XI, the Convention codifies customary law or reflects existing international practice is factually incorrect and legally insupportable. The regime of transit passage through straits used for international navigation and the regime of archipelagic sea lane's passage are only two examples of the many new concepts in the Convention."¹

The recent adoption by various States of laws and regulations similar to the Marine Areas Act concerning their rights and jurisdiction in maritime areas that are not fully compatible with the Convention is further evidence that supports this argument.

3. It should be noted that the Islamic Republic of Iran has not as yet ratified the Convention. Nevertheless, as a signatory State, it has not defeated the object and purpose of the Convention.

4. The drawing of straight baselines by the Islamic Republic of Iran should not be considered unusual, as the same method has been used by other States under similar circumstances. Moreover, it was based on several recognized criteria, among them the drawing of a baseline in a way not to depart to any appreciable extent, from the direction of the coast, and also the coastal State's right to consider the economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by long usage. Decree No. 2/250-67 dated 31 Tir 1352 (22 July 1973) was approved and entered into force nearly 25 years ago, and was circulated in the United Nations Legislative Series² but so far no objections have been raised by Qatar to the said Decree.

5. As regards waters between islands within a distance of less than 24 nautical miles, we note that there is no rule in international law prohibiting use of that method. Furthermore, the same method was used in the Act on the Territorial Waters and the Contiguous Zone of Iran dated 24 Tir 1313 (15 July 1934)³ and the Act amending the Act on the Territorial Waters and the Contiguous Zone of Iran dated 22 Farvardin 1338 (12 April 1959).⁴ In the Marine Areas Act the same method has been employed, while taking into account the extension of the breadth of the territorial sea.

[...]

I should be grateful if you would have the text of the present letter circulated as an official document of the General Assembly, under agenda items 24 and 77.

(Signed) Kamal KHARRAZI
Ambassador
Permanent Representative

¹ *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII, (United Nations publication, Sales No. E.84.V.3), Verbatim records of meetings, 193rd meeting, para. 48.

² ST/LEG/SER.B/19, pp. 55-56.

³ ST/LEG/SER.B/6, p. 24.

⁴ ST/LEG/SER.B/15, p. 88.

General Assembly doc. A/51/546, 23 October 1996; LOS No. 33, at 87-88 (1997).

*Letter dated 26 August 1996 from the Permanent Representative of
Kuwait to the United Nations addressed to the Secretary-General*

On instructions from my Government, I have the honour to transmit herewith the text of the statement issued by the Government of the State of Kuwait on the act promulgated by the Islamic Republic of Iran on 27 May 1993 concerning the delimitation of its marine areas:

“On 27 May 1993 the Islamic Republic of Iran promulgated an act concerning the delimitation of its marine areas. The State of Kuwait does not contest in any way the right of the Islamic Republic of Iran to delimit its marine areas, but;

“Considering that the law contains provisions which run counter to the principles of international maritime law, in particular the 1982 United Nations Convention on the Law of the Sea, which requires States to fulfil in good faith the obligations assumed under the Convention and to exercise the rights, jurisdiction and freedoms recognized in the Convention in a manner which will not constitute an abuse of right; and

“Considering further that the principles of international law require any State signatory to an international convention or bound by it to refrain from any act running counter to the object or purpose of the Convention;

“The State of Kuwait does not consider itself bound by any law running counter to the provisions of the 1982 United Nations Convention on the Law of the Sea.”

I should be grateful if you would have the text of this letter circulated as a document of the General Assembly under agenda items 7, 10 and 39.

(Signed) Mohammad A. ABULHASAN
Permanent Representative

General Assembly doc. A/50/1029, 29 August 1996; LOSB No. 32, at 88 (1996).

Letter dated 18 October 1996 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

I wish to refer to the letter dated 26 August 1996 from the Permanent Representative of Kuwait to the United Nations (A/50/1029), containing the statement of the Government of Kuwait relating to certain provisions of the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Sea of Oman, 1993 (“Marine Areas Act”), and make the following clarifications:

1. Even before the enactment of the said Act, there existed a few acts and decrees pertaining to the Islamic Republic of Iran’s rights and jurisdiction over its maritime areas, each of which dealt with one or more issues involving the law of the sea. The Marine Areas Act was drafted to consolidate and supplement all previous relevant legislative provisions into a single statutory instrument, taking into account the progressive development of the law of the sea, including the extension of the jurisdiction of coastal States.
2. It should be noted that the Islamic Republic of Iran has not as yet ratified the United Nations Convention on the Law of the Sea. Nevertheless, as a signatory State, the Islamic Republic has not defeated the object and purpose of the Convention.

I should be grateful if you would have the text of the present letter circulated as an official document of the General Assembly, under agenda items 7, 10 and 24.

(Signed) Kamal KHARRAZI
Ambassador
Permanent Representative

General Assembly doc. A/51/544, 23 October 1996; LOSB No. 33, at 86 (1997).

Letter dated 26 August 1996 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to inform you that the United Arab Emirates wishes to register its objections to certain provisions of the Islamic Republic of **Iran**’s Act on the Marine Areas of 1993, inasmuch as the provisions in question are inconsistent with international law and would impede navigation in the Gulf, including transit through the Strait of Hormuz.

The United Arab Emirates also declines to recognize any provisions of the above-mentioned Act that call into question its sovereignty over the three islands of Greater Tunb, Lesser Tunb and Abu Musa and their territorial waters.

I should be grateful if you would have this letter circulated as an official document of the General Assembly under agenda items 39, 76 and 81.

[...]

(Signed) Mohammad J. SAMHAN
Ambassador
Permanent Representative

General Assembly doc. A/50/1033, 3 September 1996; LOSB No. 32, at 91 (1996).

Letter dated 18 October 1996 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

I wish to refer to the letter dated 26 August 1996 from the Permanent Representative of the United Arab Emirates to the United Nations, which has been circulated as document addressed to you (A/50/1033), regarding objections of the United Arab Emirates to certain provisions of the Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Sea of Oman, 1993 ("Marine Areas Act"), and make the following clarifications:

1. Even before the enactment of the said Act, there existed a few acts and decrees pertaining to the Islamic Republic of Iran's rights and jurisdiction over its maritime areas, each of which dealt with one or more issues involving the law of the sea. The Marine Areas Act was drafted to consolidate and supplement all previous relevant legislative provisions into a single statutory instrument, taking into account the progressive development of the law of the sea, including the extension of the jurisdiction of coastal States.
2. There is no provision in the Marine Areas Act to impede navigation in the Persian Gulf and the Sea of Oman. The Islamic Republic of Iran does not object to the freedom of navigation, provided that such freedom is not prejudicial to the peace, good order or security of the coastal States, in conformity with international law.
3. Although paragraph 2 of the letter from the United Arab Emirates is irrelevant to the subject matter in question, I wish to refer to my previous letter dated 1 October 1996 addressed to you in this regard (S/1996/818).
4. The Islamic Republic of Iran reserves its right to make comments as regards certain provisions of the Federal Law No. 19 of 1993 in respect of the delimitation of the maritime zones of the United Arab Emirates of 17 October 1993 that contravene the relevant rules and provisions of the international law of the sea.

I should be grateful if you would have the text of the present letter circulated as an official document of the General Assembly, under agenda items 24 and 77.

(Signed) Kamal KHARRAZI
Ambassador
Permanent Representative

General Assembly doc. No. A/51/547, 23 October 1996; LOSB No. 33, at 89 (1997)

Note verbale dated 6 April 2000 from the United States Mission to the United Nations

Addressed to the United Nations Secretariat

The Permanent Mission of the United States of America to the United Nations [...] has the honour to advise that the Government of the United States of America has studied carefully the note verbale dated 30 November 1999 from the Interest Section of the Islamic Republic of Iran, which was, at the request of the Permanent Representative of the Government of Pakistan, circulated as document of the United Nation Security Council on 22 December 1999 [S/1999/1274, LOSB No. 43, at 101].

In its note verbale, the Islamic Republic of Iran protested “the entrance of a United States warship into the territorial waters of the Islamic Republic of Iran ... in clear violation of the principles of international law.”

[...]

With regard to the position of the United States warship at the time the Belize-flagged merchant vessel was intercepted, the United States wishes to recall that customary and convention international law, as reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), permits a coastal State to claim a territorial sea up to 12 nautical miles in breadth from a baseline drawn in accordance with international law. Beyond this limit, all vessels, including warships, operate in international waters exercising the internationally recognized high seas freedom of navigation.

The United States also wishes to recall that under customary and conventional international law as reflected in article 7(1) of UNCLOS, there are only two specific geographic circumstances in which a costal State may elect to use the method of straight baselines joining appropriate points in drawing the baseline from which the breadth of the territorial sea is measured: in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in the immediate vicinity of the coast. The Iranian coastline does not satisfy either of these two geographic prerequisites. The vast majority of the Iranian coastline is quite smooth and it is rarely deeply indented or fringed by islands.

Therefore, under customary and conventional international law as reflected in article 5 of UNCLOS, the appropriate baseline for virtually the entire Iranian coast in the Persian Gulf and the Gulf of Oman, including that portion closest to the position at which the United States warship intercepted the Belize-flagged merchant vessel on 19 September 1999, is the normal baseline, the low-water line along the coast.

The United State further recalls that the Government of the Islamic Republic of Iran, in a 22 May 1994 note verbale to the United Nations (published in *Law of the Sea Bulletin* No. 26, pp. 35-38, October 1994), justified the use of straight baselines by stating that their straight baselines has been drawn “in a way that they do not depart in any appreciable extent from the general direction of the coast.”

The Government of the Islamic Republic of Iran also claimed that in determining their straight baselines they were entitled to consider “the economic interests peculiar to the region concerned.” However, the United States wishes to point out that unless the specific geographic prerequisites set forth in article 7(1) of UNCLOS are first satisfied, these additional criteria for drawing straight baselines are not applicable. Therefore, the United States considers that Iran’s claimed justification for its use of straight baselines has no basis in international law, and that the proper baselines for virtually the entire Iranian coast in the Persian Gulf and the Gulf of Oman (including that portion closest to the actual intercept position in this case) is the normal baseline, the low-water line along the coast.

The United States warship’s position on 19 September 1999, a described by the Government of the Islamic Republic of Iran (29-47N/049-47E), is located in international waters approximately 5.6 miles outside of Iran’s 12-nautical-mile territorial sea measured for the normal baseline (low-water line). The position at which the United States warship actually intercepted the Belize-flagged merchant

vessel (29-49.8N/049-50.0E) is located in international waters approximately 3.5 miles outside of Iran's 12-nautical-mile territorial sea measured for the normal baseline (low-water line). Accordingly, the United States considers that on 19 September 1999, its warship was lawfully conducting Multinational Interception Force operations, was exercising the internationally recognized freedom of navigation in international waters and did not enter Iran's territorial or internal waters.

.... The United States also reaffirms its right to exercise internationally recognized navigational freedoms. Therefore, regular operations by United States warships in this area can be expected to continue. The United States renews its protests made in 1994 (published in *Law of the Sea Bulletin* No. 25 pp. 101-103, June 1994) with respect to excessive maritime claims by the Government of the Islamic Republic of Iran and will continue to exercise its navigational freedoms consistent with international law.

The Government of the United States of America request that this note be circulated by the United Nations as part of the next *Law of the Sea Bulletin*.

LOS No. 43, at 105-106 (2000)

On October 23, 2006, the Ministry of Foreign Affairs of the Islamic Republic of **Iran** delivered a note to the U.S. Interests Section with the Embassy of Switzerland in Tehran protesting alleged flights of American planes. The note stated that "American planes have on five occasions passed the FIR of the Islamic Republic of Iran and flown over its territorial waters . . . contradict[ing] international law and the 1982 Convention on sea laws. . . . A second note of the same date alleged that "a small American battleship has embarked on inspecting an Iranian fishing boat . . . at 25/39 north and 53/56 east of the Persian Gulf waters." Iran protested this "illegal measure which contradicts international regulations and free shipping, and calls for preventing the repetition of such accidents."

The United States responded to both notes on March 12, 2007, asserting the lawfulness of its flights and disputing the boarding incident, as set forth below.

In reference to your diplomatic notes No. 642/1630 and 642/1632 of October 23, 2006, concerning U.S. military operations in the Persian Gulf on June 21 and 24, and July 3 and 28, 2006, we have carefully reviewed each allegation and found that all flight and naval operations were conducted in international airspace and waters and in accordance with international law. Specifically:

With respect to your Note No. 642/1630, aircraft were operating more than 12 nautical miles from low water line of Iran, consistent with the baseline provisions of the UN Convention on the Law of the Sea (1982). The International Court of Justice, in paragraph 212 of its judgment on the merits of the Case Concerning Delimitation and Territorial Questions between Qatar and Bahrain, 16 March 2001, . . . observed 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 of 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 its immediate vicinity." Iran's straight baselines are not drawn in accordance with those conditions. The United States Government has a long-standing position to support the customary international law norms and other provisions embodied in the Law of the Sea Convention. All U.S. operations mentioned by Iran were conducted consistent with the Convention and the international law supporting OPERATION IRAQI FREEDOM operations to protect Iraq's equities in the Northern Arabian Gulf.

.....

2007 Digest 637-638.

20. In 1977, the Government of **Italy** claimed a system of straight baselines which included several segments that were not consistent with international law. The United States, in a note of which the following is an excerpt, protested as follows:

Customary international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, provides that straight baselines may only be employed 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. Baselines established by a coastal state must not depart to any appreciable extent from the general direction of the coast.... It is the view of the Government of the United States that various straight baseline segments drawn by the Government of Italy do not meet these criteria and, therefore, that they have no basis in international law. In the view of the foregoing, the Government of the United States reserves its rights and those of its nationals in this regard.

Additional analysis provided to American Embassy Rome included the following:

As the note makes clear, USG believes that a number of elements of the straight baseline claim contravene longstanding principles of international law reflected both in 1958 Convention on the Territorial Sea and the Contiguous Zone and in the 1982 LOS Convention. For instance, lines connect offshore islands between the mouth of the Arno and Civitavecchia, where those islands cannot be said to be coastal fringing islands in a legal sense. Nor is the coast between the French border and the mouth of the Arno deeply indented as that term is understood in international law.

Roach & Smith 3rd ed. 100.

21. On 20 July 1996, **Japan** amended its Law on the Territorial Sea and the Contiguous Zone to provide for the prescription of straight baselines "in accordance with article 7 of the United Nations Convention on the Law of the Sea." These baselines were subsequently published by Cabinet Order. Analysis of these baselines by the United States Department of State determined that many of the segments were not drawn in accordance with Article 7 of the Law of the Sea Convention (see LIS No. 120). On 17 December 1998, the United States protested these segments:

While the 1982 Convention does not place a specific distance limit on the length of a straight baseline, the United States notes that Japan's coastline in many locations is relatively smooth without deep indentations or fringing islands and thus does not meet either of the two geographic conditions specified in article 7(1) of the 1982 Convention required for applying straight baselines, and that in some of those locations the normal baseline is used. However, the localities between many of the basepoints identified in the annexed Schedule 1 of Cabinet Order No. 206 are neither deeply indented or cut into, nor are they fringed with islands along the coast in the immediate vicinity. Many of the segments are located off Japan's coast in the Sea of Japan and the South China Sea.

Furthermore, for the most part, the waters enclosed by the new straight baseline segments do not have a close relationship with the land, but rather reflect the characteristics of high seas or territorial sea. This is particularly evident with regard to some of the segments in the Korea Strait. Further, in some locations, for example, Koshikuima-Retto, the straight baselines depart to an appreciable extent from the general direction of the coast.

In all these areas, the United States believes use of the normal baseline, the low-water line, is also required by international law.

Bays

The United States notes that, while in several situations bay closing lines are drawn in accordance with article 10 of the 1982 Convention, there are other locations where bay closing lines not exceeding 24 nautical miles in length could also be drawn in lieu of the straight baselines. These

include Sagami, Suruga, Ise, Toyama and Mutsu Bays (Honshu), Ariake and Kagoshima Bays (Kyushu), and Uchiura, Hakodate and Ishikari Bays (Hokkaido).

Length of baseline segments

The Cabinet Order No. 206 of 1996 identifies 162 straight baseline segments in 15 groups. About 72 per cent of these segments are less than 24 nautical miles in length. The United States notes with concern however that each of the remaining 46 segments exceeds 24 nautical miles in length, and 15 of these segments are each more than 48 nautical miles long, the longest being more than 65 nautical miles in length. These are located off Iwata and Nara prefecture and the coast of Honshu and Hokkaido on the Sea of Japan, Tosa Bay (Shikoku), and around Kyushu. The United States believes that as a general rule baseline segments should not exceed 24 nautical miles. This limit is implied from a close reading of the relevant provision of the 1982 Convention.

Article 7(1) of the 1982 Convention speaks of the “immediate vicinity” of the coast. Article 7(3) of the 1982 Convention (and article 4(2) of the 1958 Convention) states that “sea areas lying within the line must be sufficiently closely linked to the land domain to be subject to the regime of internal waters”. In both of these descriptions, the implication is strong that the waters to be internalized would otherwise be part of the territorial sea. Japan’s coastline does not present any unusual situation where international waters (beyond 12 nautical miles from the appropriate low-water line) could be somehow sufficiently closely linked” as to be subject to conversion to internal waters.

On 16 March 1999, Japan replied that its straight baselines were drawn in complete conformity with international law and State practice.

Roach & Smith, *Straight Baselines* 64-65. See also LIS 120.

22. *Somalia’s Application Instituting Proceedings over maritime delimitation in the Indian Ocean against Kenya, stated in part:*

12. For its part, Kenya claims a 12 M territorial sea pursuant to its 1972 Territorial Waters Act, as revised. Under its 1989 Maritime Zones Act and a Presidential Proclamation dated 9 June 2005, Kenya also claims a 200 M EEZ.

13. Kenya measures the breadth of its territorial sea and EEZ from a series of straight baselines covering the full length of its coast. These baselines were first declared in 1972 Territorial Waters Act and have been amended from time to time. Somalia considers that Kenya’s straight baselines do not conform to the requirements of UNCLOS Article 7.

Application dated 28 August 2014, <http://www.icj-cij.org/docket/files/161/18362.pdf>.

23. *On October 11, 1973, the Embassy of the Libyan Arab Republic in Washington sent a note to the Department of State asserting a claim to the Gulf of Sirte as internal or territorial waters. The Department of State sent a reply, dated February 1, 1974, which characterized the Libyan claim as “unacceptable as a violation of international law.” The U.S. note said further:*

* * *

. . . The Libyan action purports to extend the boundary of Libyan waters in the Gulf of Sirte northward to a line approximately 300 miles long at a latitude of 32 degrees, 30 minutes, and to require prior permission for foreign vessels to enter that area. Under international law, as codified in the 1958 Convention on the Territorial Sea and [the] Contiguous Zone, the body of water enclosed by this line cannot be regarded as the juridical internal or territorial waters of the Libyan Arab Republic. Nor does the Gulf of Sirte meet the international law standards of past open, notorious and effective

exercise of authority, continuous exercise of authority, an acquiescence of foreign nations necessary to be regarded historically as Libyan internal or territorial waters. The United States Government views the Libyan action as an attempt to appropriate a large area of the high seas by unilateral action, thereby encroaching upon the long-established principle of freedom of the seas. This action is particularly unfortunate when the international community is engaged in intensive efforts to obtain broad international agreement on law of the sea issues, including the nature and extend of coastal state jurisdiction, Unilateral actions of this type can only hinder the process of achieving an accommodation of the interests of all national at the Law of the Sea Conference.

In accordance with the positions stated above, the United States Government reserves its rights and the rights of its nationals in the area of the Gulf of Sirte affected by the action of the Government of Libya.

1974 Digest 293-294.

*Communication Transmitted to the Permanent Missions of the States Members
of the United Nation at the request of the Permanent Representative of the United States
to the United Nations 10 July 1985 (reference NV/85/11)*

The Permanent Representative of the United States to the United Nations [...] has the honor to refer to the notice to mariners issued by the Government of the Libyan Arab Jamahiriya regarding navigational regulations effective June 1, 1985 in waters off the coast of Libya.

[...]

...The United States reiterates its rejection of the Libyan claim that the Gulf of Sidra constitutes the internal waters to the latitude of 32° 30' North, and, accordingly, the United States rejects as an unlawful interference with the freedoms of navigation and overflight and related high seas freedoms, the Libyan claim to prohibit navigation in Zone C or elsewhere in the Gulf of Sidra.

[...]

LOS No. 6, at 40 (1985).

24. In 1988, **Mauritania** adopted an ordinance which sought to establish a straight baseline linking Cap Blanc and Cap Timiris in the vicinity of the Banc d'Arguin. In August 1989 the United States protested this claim in a note which stated in part:

The coast in the vicinity of Banc d'Arguin is neither deeply indented nor bounded by a fringe of islands. Furthermore, the enclosed waters along the Banc d'Arguin do not meet the requirement of a juridical bay; the closing line is almost 90 nautical miles in length.

The protest concluded that the "straight baseline drawn by the Government of Mauritania does not meet the criteria for a straight baseline as is recognized in customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea."

1989-1990 Digest 461, Roach & Smith 3rd ed. 130.

25. In 1968, **Mexico** decreed straight baselines along portions of the coast of the Gulf of California. The State Department's Geographer's analysis of those baselines noted that "the northern quarter of the Gulf is virtually devoid of islands ... and the coast is relatively smooth, although a few bay-like

indentations exist.” The Geographer also noted that in four instances the straight baselines do not conform to the general trend of the coast since the lines enclosing the islands of Las Animas, San Idelfonso, Tortuga and San Pedro Nolasco all diverged from the coast at angles greater than 40 degrees. These angles are maintained over both the local and general trends of the coast.

The United States protested the claim in a note from the American Ambassador Mexico City on August 5, 1969. The protest noted the requirement that the sea areas lying within the baselines be sufficiently closely linked to the land domain to be subject to the regime of internal waters was “quite clearly not met with regard to the large body of water north of the lines extending to San Esteban Island.”

Roach & Smith 3rd ed. 105-106, 116, 118.

26. *In 1977, the Government of **Burma** enacted a statute establishing a system of straight baselines. The straight baseline coordinates from the 1968 legislation were not significantly modified in the 1977 Territorial Sea and Maritime Zones Law. The most egregious segment is the line segment enclosing the Gulf of Martaban, over 222 miles long, one of the longest claimed in the world. The eastern two-thirds of this segment deviates 60° from the trend of the delta. At one point on this segment the nearest land is 75 miles away and the mouth of the Sittang River is over 120 miles distant. The United States Government protested as follows:*

As to the system of straight baselines adopted by the Government of Burma in the Territorial Sea and Maritime Zones Law, 1977, it is the view of the Government of the United States that the baselines of such system have not been drawn in accordance with international law. It is a well-recognized principle of international law that straight baselines must not depart to any appreciable extent from the general direction of the coast. It is the view of the Government of the United States that straight baselines of the system adopted by the Government of Burma depart to an appreciable extent from the general direction of the coast of Burma and that, therefore, the system does not comport with international law.

Roach & Smith 3rd ed. 116-117. The United Kingdom also protested in 1993.

Note verbale dated 6 July 2009 concerning the baselines of Myanmar declared under "The Law Amending the Territorial Sea and Maritime Zones Law 2008 (The State Peace and Development Council Law no. 8/2008)"⁴

The Permanent Mission of Bangladesh [...] [refers] to the baselines of **Myanmar** declared under “The Law Amending the Territorial Sea and Maritime Zones Law 2008 (The State Peace and Development Council Law no. 8/2008), the 8th Waxing of Nadaw 1370 M.E. of 5th December 2008 concerning list of geographical coordinates of points defining straight baselines for Co Co Islands and Preparis Islands” and the “Territorial Sea and Maritime Zones Law 1977”, Pyithu Hmttaw Law no 3 of 9 April 1977 concerning the coordinates of straight baseline and territorial sea and low water baselines along the coasts of Arakan, Co Co Islands and Preparis Islands.

The Government of Bangladesh notes with deep concern the fundamental changes introduced in these two gazette notifications of the Government of Myanmar and issued at a gap of more than thirty ears, namely, that of changing the baselines from the low water line to the straight lines.

The Government of Bangladesh is of the view that both the notifications specifying coordinates of the straight baselines to measure Myanmar's territorial sea, contiguous zone, exclusive economic zone and continental shelf in the Bay of Bengal do not conform to the established rules of international law

applicable to the matter, as reflected in Article 4 of the Geneva Convention on the Territorial Sea and Contiguous Zone 1958 and Article 7 of the United Nations Convention on Law of the Sea 1982 (the Convention). While the Government of Bangladesh is in the process of analyzing the possible ramifications of baselines as notified by Myanmar on the Convention itself and upon Bangladesh maritime jurisdiction, it wishes to inform the Secretariat of United Nations that the straight baselines legislations of Myanmar clearly affects the rights and interests of Bangladesh in relation to the delimitation of its maritime zones. Bangladesh considers that the issue of drawing baselines will have serious impacts in delimitation of maritime boundary which has to be effected in accordance with equitable principles ignoring any weightage for minor features like Preparis, Coco and Oyster Islands.

Although the baselines claimed by the Government of Myanmar for the Preparis Islands and Coco Islands have the appearance of archipelagic straight baselines, it gives the distinct impression that the Union of Myanmar through use of such archipelagic baselines is positioning its subsequent claims on extended maritime zones and their delimitation.

Bangladesh wishes to state that it will not acquiesce in any claim in this respect that might affect it of existing rights and interests through Myanmar's unprecedented act of changing low water baselines of Coco and Preparis Islands declared in 1977 to straight baselines in December 2008 which would mean gaining of additional territory by saying that the same coastline fits the criteria for the use of straight baseline system now which has been known and sanctioned over three decades of such legislations of Myanmar and the Convention.

The Government of Bangladesh is therefore of the view that the promulgation of straight baselines with new base points in Preparis and Co Co Islands as well as the delineation of straight baseline along the coast of Myanmar up to Oyster Island are contrary to both customary international law and the relevant provisions of "UNCLOS" 1982 and it may also lead to future anomalies and complexities in international navigation.

The Government of Bangladesh reserves its rights and those of its nationals in regard to the straight baselines that do not conform to established principles of international law and intends to preserve its rights to not to take those base points into consideration, which have significant effects in bilateral maritime boundary delimitation during the negotiation process and to the international shipping / navigation as mentioned before.

⁴ The Myanmar's Law amending the Territorial Sea and Maritime Zone Law (The State Peace and Development Council Law No.8/2008), of 5 December 2008, was published in the *Law of the Sea Bulletin* No. 69, page 69.

LOS No. 70, at 61 (2009).

27. *Letter dated 23 October 2013 from the Permanent Representative of Costa Rica to the United Nations addressed to the Secretary-General:*

I have the honour to address you with respect to the list of geographical coordinates defining **Nicaragua's** straight baselines set forth in Nicaragua's Decree No. 33-2013 of 19 August 2013, deposited with the Secretary-General on 26 September 2013 and notified by M.Z.N.99.2013.LOS on 11 October 2013.

In this regard, Costa Rica would like to recall that, as reflected in the 1982 United Nations Convention on the Law of the Sea, which in this respect codifies customary international law, unless exceptional circumstances exist, baselines are to conform to the low-water line along the coast as marked on a State's official largescale charts. Pursuant to article 7 of the Convention, straight baselines may be employed only in localities where the coastline is deeply indented and cut into, or where there is a fringe of islands along the immediate vicinity of the coast. Additionally, 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. These exceptions are not applicable, inter alia, to the southernmost segment of Nicaragua's straight baseline connecting Great Corn Island (point 8) to Harbour Head (point 9) (segment 8-9). Segment 8-9 is inconsistent with the Convention and therefore invalid.

In particular, segment 8-9 would transform waters considered to be Costa Rican territorial sea and exclusive economic zone into Nicaraguan internal waters. Nicaragua's straight baseline claim would detract from the rights of other States, notably Costa Rica, to use the oceans. Furthermore, the coastline of the Costa Rican territory of Isla Portillos and other territorial rights mean that maritime zones generated therefrom are entirely subsumed within Nicaragua's unlawful internal waters claim, thus denying to Costa Rica its maritime entitlements derived from this coastal territory. On these grounds, the claim to a baseline joining points 8 and 9 is a violation of Costa Rica's sovereignty, sovereign rights and jurisdiction claimed pursuant to Costa Rica's Constitution in conformity with international law.

The Government of Costa Rica therefore objects to the claim described above as made by Nicaragua's Decree No. 33-2013 of 19 August 2013, which is not valid in international law, and reserves its rights in this regard.

In that regard, I would be grateful if the present letter could be circulated as a document of the General Assembly, under agenda items 76 (a) and 85. Upon instructions from my Government, I also request that this letter be sent to all relevant organs, bodies and entities of the United Nations, be posted on the website of the Division for Ocean Affairs and the Law of the Sea and be included in the next Law of the Sea Bulletin.

General Assembly doc. A/68/548, 25 October 2013.

*Letter from the Minister of Foreign Affairs of Colombia dated 1 November 2013
to the Secretary-General:*

S-GACIL-13-044275 Bogota, D.C. 1st November 2013

[...]

I have the honour to refer to document M.Z.N.99.2013.LOS (Maritime Zone Notification) dated 11 October 2013 under the title "Circular Communications from the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs".

In the aforementioned document, the Secretary-General of the United Nations communicated that on 26 September 2013, pursuant to Article 16, paragraph 2, of the United Nations Convention on the Law of the Sea, the Republic of **Nicaragua** deposited a list of geographical coordinates of points defining the straight baselines from which the breadth of the territorial sea of Nicaragua in the Caribbean Sea is measured, as contained in Decree No. 33-2013 of 19 August 2013.

The Republic of Colombia is not a Party to the United Nations Convention on the Law of the Sea. Accordingly, the information submitted by Nicaragua pursuant to the Convention, and any other provision or procedure invoked under the Convention, are not opposable to Colombia.

The Republic of Colombia wishes to advise the United Nations and its Member States that the straight baselines now claimed by Nicaragua are wholly contrary to international law.

The straight baselines notified by Nicaragua do not relate to a coastline that is deeply indented and cut into or to a fringe of islands along the coast; they depart from the general direction of the coastline; and the sea areas lying within the lines are not sufficiently linked to the land domain to be subject to the regime of internal water. They therefore lack[] any legal basis, and they cannot be deemed to be

valid baselines from which the breadth of Nicaragua's marine and submarine areas can be measured under international law.

Colombia will continue to exercise its rights in the Caribbean in conformity with international law. However, it does not recognize the legality or legal value of any unilateral measures adopted by Nicaragua that are not in accordance with international law or that are inconsistent with Nicaragua's previously expressed positions.

[...]

(signed) Maria Angela Holguin Cuellar
Minister of Foreign Affairs

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communication_sredeposit/mzn99_2013_col.pdf.

On March 7, 2014, the Embassy of the United States of America in Nicaragua delivered a diplomatic note to the Ministry of Foreign Affairs of the Republic of Nicaragua regarding Nicaragua's excessive straight baseline and exclusive economic zone ("EEZ") claims. The claims were made in the August 19, 2013 Decree No. 33-2013 issued by Nicaraguan President Ortega concerning "Baselines of the Marine Areas of the Republic of Nicaragua in the Caribbean Sea." Excerpts from the U.S. diplomatic note delivered on March 7, 2014 appear below.

* * * *

The Embassy of the United States of America [...] refer to Decree No. 33-2013 concerning Baselines of the Marine Areas of the Republic of Nicaragua in the Caribbean Sea issued by the President of Nicaragua on August 19, 2013.

The United States recalls that, as recognized in customary international law and as reflected in Part II of the 1982 United Nations Convention on the Law of the Sea (LOS Convention), unless exceptional circumstances exist, baselines are to conform to the low-water line along the coast as marked on a State's official large-scale charts. As reflected in Article 7 of the LOS Convention, straight baselines may only be employed in localities where the coastline is deeply indented and cut into, or where there is a fringe of islands along the immediate vicinity of the coast. Additionally, 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.

The Government of the United States notes that Decree No. 33-2013 lists nine baseline points that connect to create a straight baseline system extending the entire length of Nicaragua's approximately 500 kilometer-long coast facing the Caribbean Sea. The United States observes further that the coastline of Nicaragua is smooth and not indented, with only a few exceptions. Furthermore, although the Corn Islands and other islands lie off the mainland coast of Nicaragua, these islands do not constitute "a fringe of islands along the immediate vicinity of the coast." Rather, some of the islands that are used as baseline points in Nicaragua's straight baseline system are individual islands that are not close to other islands and are a significant distance from the coast. Edinburgh Cay and the Little and Great Corn Islands, for instance, are all more than 25 nautical miles from the closest point on Nicaragua's mainland coast. Additionally, some of the straight baseline segments are exceptionally long; for instance, the segments between baseline points 4 and 5 and between baseline points 8 and 9 are 72 and 83 nautical miles, respectively. Finally, many of the baseline segments depart from the general direction of the coast. Taken in its entirety, Nicaragua's system of straight baselines purports to enclose significant areas of territorial sea and exclusive economic zone (EEZ) as internal waters. In the view of the United States, such waters are not sufficiently closely linked to the land domain to be subject to the regime of internal waters.

Accordingly, with regard to the Decree and baselines set forth therein, the United States is obliged to reserve its rights and those of its nationals. These baselines, as asserted, impinge on the rights, freedoms, and uses of the sea by all nations by expanding the seaward limit of maritime zones and enclosing as internal waters areas that were previously territorial sea and EEZ.

The United States requests that the Government of Nicaragua review its current practice on baselines and make appropriate modifications to its baselines to bring them into conformity with international law, as reflected in the LOS Convention. The United States would be pleased to discuss further this and other related issues with Nicaragua.

2014 Digest chapter 12, at 30-31.

28. *The Permanent Mission of the Islamic Republic of Iran to the United Nations sent to the Secretary-General of the United Nations a Note dated 4 February 1983, which reads as follows:*

The Permanent Representative of the Islamic Republic of Iran to the United Nations [...] with reference to the note No. MO/264/82 dated 31 August 1982 of the Permanent Mission of **Oman** to the United Nations, circulated with the Secretariat's communication No. LE 113(3-3) dated 23 November 1982, has the honour to inform that the Government of the Islamic Republic of Iran considers [the] notification of 1st June 1982, attached to the Note No. MO/262/82, August 31, 1982 of the Permanent Mission of Oman, as the unilateral extension of the internal waters of the territorial sea of Oman.

Therefore, the Government of the Islamic Republic of Iran, under provisions of International Law, including Articles 4 and 5 of the Convention on the Territorial Sea and the Contiguous Zone of 1958, as well as, Article 8 of the United Nations Convention on the Law of the Sea, adopted on 30 April 1982, presumes that this notification shall not alter the legal nature of this area in connection with the passage right of third countries' ships, that they have exercised traditionally and historically.

[....]

LOS No. 1, at 38 (1983).

*Diplomatic Note 606 Presented by the United States to
the Government of Oman August 12, 1991*

[Complimentary opening] ... and refers to Oman's Declarations of 17 August 1989 accompanying the deposit of its ratification of the 1982 United Nations Convention on the Law of the Sea, confirming Oman's Notice of June 1, 1982, establishing straight baselines along portions of Oman's coast, pursuant to Article 2 (C) of Royal Decree No. 15/81, and also purporting to require prior permission for the exercise by warships of the right of innocent passage through Oman's territorial sea.

The Government of the United States wishes to recall to the Government of Oman that, as recognized in customary international law and as reflected in the 1982 United Nations Convention on the Law of the Sea, unless exceptional circumstances exist, baselines are to conform to the low-water line along the coast as marked on a state's official large-scale charts. Straight baselines may only be employed in localities where the coastline is deeply indented and cut into, or where there is a fringe of islands along the immediate vicinity of the coast. Where employed, straight baselines must not depart to any appreciable extent from the general direction of the coast. The coast of Oman does not meet any of these criteria. For example, the coastline is too smooth landward of points 1-5, 14-16, and 38-43; and too few islands mask Oman's coastline at points 6-7 and 38-43. On the other hand, the line connecting points 36 and 37 encloses a juridical bay, and while point 6 is situated on an island, instead of the mainland, segment 5-6 essentially encloses juridical bays.

.....

The Government of the United States therefore objects to the claims described above and made by Oman in ratifying the 1982 United Nations Convention on the Law of the Sea, which are not valid in international law, and reserves its rights and those of its nationals in this regard.

LIS No. 113 Annex 5 (1992).

29. *Note verbale dated 24 February 1997 from the Permanent Mission of India to the United Nations addressed to the Secretary-General:*

The Permanent Mission of India to the United Nations [...] has the honour to state that the attention of the Government of India has been drawn to press reports regarding **Pakistan's** notification¹ specifying baselines to measure Pakistan's territorial waters, the contiguous zone, the exclusive economic zone and continental shelf in the Arabian ea.

While the Government of India reserves its right to seek suitable revision of the baselines as notified by Pakistan insofar as they impinge upon India's sovereign jurisdiction, the Government of India unequivocally rejects as unacceptable by the coordinate point (k) 23 33.90 N....68 07.80 E referred to in the notification as it encroaches upon the territorial waters of India which are within its sovereign jurisdiction.

Note No. NY/PM/444/3/97 dated 24 February 1997, LOSB No. 34, at 46 (1997).

¹ Notification of the Ministry of Foreign Affairs published in the *Gazette* of Pakistan on 29 August 1996, LOSB No. 34, at 45.

Statement by India

The Permanent Mission of India to the United Nations ..., in continuation of its note No. NY/PM/444/3/97 dated 24 February 1997 on Pakistan's notification specifying baselines, has the honour to state the following:

1. The Government of India is of the view that certain basepoints notified by the Government of the Islamic Republic of Pakistan are inconsistent with international law and the relevant provisions of the United Nations Convention on the Law of the Sea (UNCLOS), 1982. The Government of India reserves its rights and rights of its nationals in that regard.
2. The Government of India wishes to recall that, according to article 5 of UNCLOS, except where otherwise provided in the 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[.]. Only 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, may the coastal State elect to use the method of straight baselines joining appropriate points in drawing the baseline from which the breadth of the territorial sea is measured.
3. The Government of India notes that, notwithstanding the fact that the Pakistani coastline is quite smooth, is rarely deeply indented or fringed by islands, Pakistan has employed straight baselines along its entire coastline. The appropriate baseline for all of Pakistan's coast should be the normal baseline, i.e., the low-water line.
4. Further, under UNCLOS, rocks which cannot sustain human habitation or economic life of their own cannot have a territorial sea [sic], exclusive economic zone or continental shelf. Sail Rock, which forms basepoint (d) 25 06.30N, 63 51.01E of Pakistan's notification, cannot thus be a part of any baseline system as contemplated under UNCLOS.

5. The Government of India also wishes to note that the basepoint (a) 25 02.20N, 61 35.50E is violative of international law. As per international law, the basepoint (a) should have been the terminal point of [the] land boundary inside the Gwatar Bay.

6. In view of the above, the Government of India does not recognize the arbitrary method of drawing straight baselines. Any claim Pakistan makes on the basis of this notification to extend its sovereignty/jurisdiction on Indian waters or extend its internal waters, territorial sea, exclusive economic zone and continental shelf is rejected by India as the same does not have any sanction under international law.

22 May 2001

LOS B No. 46, at 90 (2001).

On 17 August 1997, the United States protested Pakistan's 1996 straight baseline system as inconsistent with established rules of international law:

The Government of the United States has given careful consideration to the referenced 1996 documents which announced a series of straight baselines from which the breadth of Pakistan's territorial sea shall be measured.

Basic Criteria for Use of Straight Baselines

... The United States notes that most of Pakistan's coastline does not meet either of the two geographic conditions specified in article 7(1) of the Law of the Sea Convention required for applying straight baselines. While there are several locations along the coast where river or bay closing lines may be drawn (i.e., along the many creeks of the Indus River system, and West Bay, Gwadar East Bay, and the bay near Ras Ormara), Pakistan's coastline itself is generally smooth and void of deep indentations; and there are no areas off the Pakistani coast that could be characterized as "fringed with islands". Further, the waters enclosed by the new straight baseline system do not have a close relationship with the land, but rather reflect the characteristic of high seas or territorial sea, and, in some locations, the straight baselines depart to an appreciable extent from the general direction of the coast. In all these areas, the United States believes the use of the normal baseline, the low-water line, is required by international law.

Length of Baseline Segments

The statutory notification of 29 August 1996 identifies nine continuous baseline segments connecting ten basepoints along the entire coastline of Pakistan for a total of 396 miles. The United States notes that only two of these segments are less than 24 nautical miles in length, while three of the other seven segments are each more than 50 nautical miles in length.

... Pakistan's coastline does not present any unusual situation where international waters (beyond 12 nautical miles from the appropriate low-water line) could be somehow "sufficiently linked" as to be subject to conversion to internal waters.

Roach & Smith, *Straight Baselines* 63-64. See also LIS 118.

30. In 1985, the Government of Portugal claimed a system of straight baselines along the mainland coast which was contrary to international law. The United States protested, in part, as follows:

The United States is unable to accept as valid the establishment by the Government of Portugal of many of the closing lines and straight baselines promulgated in the decree. It is the view of the United States that the lines in question do not comply with international law which in this case is reflected in the 1982 United Nations Convention on the Law of the Sea.... The segments connecting Cabo Mondego with Farilhoes and Berlenga Islands and thence to Cabo da Roca are also invalid as the

above islands in no way can be said to meet the legal requirement that they constitute a fringe of islands along a coast in its immediate vicinity.

Roach & Smith 3rd ed. 104-105.

*In 1985, the Government of **Portugal** claimed a system of straight baselines along the mainland coast and around the **Azores** group which was contrary to international law. The United States Government, in a note of which the following is an excerpt, protested as follows:*

The United States is unable to accept as valid the establishment by the Government of Portugal of many of the closing lines and straight baselines promulgated in the decree. It is the view of the United States that the lines in question do not comply with international law which in this case is reflected in the 1982 United Nations Convention on the Law of the Sea. With regard to the mainland, those segments which connect Ponta Carreiros with Barra de Aveiro, Cabo da Roca with Cabo Raso, Cabo Raso with Cabo Espichel, Cabo Espichel with Cabo Sines, Cabo Sines with Cabo de Sao Vicente and Ponta de Sagres with Cabo de Santa Maria, do not enclose juridical bays or lie in localities which meet the legal requirement that the coastline is deeply indented and cut into....

Certain of the baselines around the Madeira and the Azores Islands groupings are objectionable for the same reasons, i.e., they do not lie in localities where the coastlines are deeply indented and cut into nor do they connect a fringe of islands along a coast in its immediate vicinity. Moreover, insofar as concerns the Madeira and the Azores Island groupings, archipelagic baselines cannot be justified under customary international law as reflected in Part IV the 1982 Law of the Sea Convention as Portugal is not an “archipelagic state,” but in fact comprises a mainland continental state with island components.

Roach & Smith 3rd ed. 89, 92, 108.

31. *On 6 December 1995, the **Republic of Korea** amended its Territorial Sea and Contiguous Zone Act of 1977, and on 31 July 1996 the Republic of Korea modified its straight baseline system. On 23 December 1998, the United States protested the Korean baseline system with a lengthy note which read in part as follows:*

The Government of the United States notes that the second paragraph of article 2 of the Territorial Sea and Contiguous Zone Act states that “in the area of the sea where there are special geographic features, the straight line joining the points as provided in the presidential decree may be employed as the baseline.” On the other hand, article 7 of the 1982 United Nations Convention on the Law of the Sea, to which the Republic of Korea is a party and which the United States accepts as declarative of customary international law, provides in paragraph 1 that “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.” The United States would welcome clarification from the Republic of Korea that the straight baselines created in areas where there are “special geographical features” meet the geographical criteria described in article 7(1) of the 1982 Convention.

...

Application of the rules

The United States notes the Republic of Korea’s eastern coastline is relatively smooth without deep indentations or fringing islands and thus does not meet either of the two geographic conditions specified in article 7(1) of the 1982 Convention required for applying straight baselines, and that the normal baseline is used. However, the localities between basepoints 6 to 23 identified in Table 1 annexed to the enforcement decree are well off shore and thus neither deeply indented or cut into, nor are they fringed with islands along the coast in the immediate vicinity.

Further, for the most part, the waters enclosed by the straight baseline segments do not have a close relationship with the land, but rather reflect the characteristics of high seas or territorial sea. This is evident with regard to those segments longer than 24 nautical miles, particularly when the features being connected are isolated and quite small (in some cases no more than rocks).

Furthermore, points 5 and 23 are situated on isolated features without straight baseline segments attaching them to the mainland, thereby creating situations where it is unclear where internal waters ends and the territorial sea begins.

On the other hand, beginning at point 6, and continuing to and area landward of point 18, a valid straight baseline system could be established if the islands closer to the mainland were used. Furthermore, portions of the west coast to the north contain bays the mouths of which could be closed with straight lines no longer than 24 nautical miles in accordance with article 10 of the 1982 Convention. The normal baseline should be used along the remainder of the west coast.

Length of baseline segments

The Presidential Enforcement Decree identified 19 straight baseline segments along the south and west coasts in the Korea Strait, East China Sea and Yellow Sea. About 63 per cent of these segments are less than 24 nautical miles in length. The United States notes with concern however that each of the remaining 7 segments exceeds 24 nautical miles in length, and 2 of these segments are each more than 48 miles long, the longest being more than 60 nautical miles in length off the southwest coast.

On 11 August 1999, the Republic of Korea replied that its coastline qualifies for straight baselines under Article 7 of the 1982 United Nations Convention on the Law of the Sea and its straight baselines conform to the rules of international law as they do not depart to an appreciable extent from the general direction of the coastline.

Roach & Smith, *Straight Baselines* 61-62. See also LIS 121.

32. Communication from the Government of the United Arab Emirates dated 5 May 2010 concerning Saudi Arabia's straight baselines in the Red Sea, Gulf of Aqaba and the Arabian Gulf

United Arab Emirates
Ministry of Foreign Affairs

368-3/6/3
2010/5/5

The Ministry of Foreign Affairs of the United Arab Emirates [...] with reference to the Secretary-General's communication No. M.Z.N.77.2010.LOS of 25 March 2010 of lists of geographical coordinates of points defining the baseline of the Kingdom of **Saudi Arabia** in the Red Sea, the Gulf [of] Aqaba and the Arabian Gulf.

The Government of the United Arab Emirates reserves its position in general as to the validity under international law of the Saudi baselines, and in particular those set out in Table No. 3 attached to the Saudi Royal Decree No. M/4 f 12 January 2010.

In the view of the Government of the United Arab Emirates, the baselines set out in Table No. 3 do not comply with the requirements of customary international law reflected in the 1982 United Nations Convention on the Law of the Sea, including in particular Article 7. The baselines are not situated in a locality where the coastline is deeply indented and cut into or there is a fringe of islands. Moreover, the baselines set out in Table No. 3 depart appreciably from the general direction of the Saudi coast and are not drawn by reference to appropriate basepoints. One of the basepoints is located in open waters, whereas another is located on a formation which does not qualify as an appropriate basepoint under Article 7 of the 1982 United Nations Convention on the Law of the Sea.

The baselines set out in Table No. 3 also cut off areas of the territorial sea of the United Arab Emirates in a manner inconsistent, *inter alia*, with the requirements of customary international law reflected in Article 15 of the 1982 United Nations Convention on the Law of the Sea.

The Government of the United Arab Emirates considers this Note an official document and requests the Secretary-General of the United Nations to register, publish and circulate this Note in accordance with the usual UN practice.

[...]

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communication_sredeposit/mzn77_2010_are_eng.pdf.

*Note verbale dated 15 June 2011
from the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia¹*

The Ministry of Foreign Affairs of the Kingdom of Saudi Arabia [...] refer to the memorandum of the Ministry of Foreign Affairs of the United Arab Emirates 3/6/2 368 dated 5/5/2010, directed to the Secretariat of the United Nations (Office of the Secretary General) in New York concerning the baselines of the maritime zones of the Kingdom of Saudi Arabia which was deposited with the United Nations on 5/3/2010.

The Government of Saudi Arabia affirms that the Saudi baselines in the Red Sea, the Gulf of Aqabah and the Arabian Gulf, including the baselines of schedule 3 issued by the Saudi Council of Ministers' resolution No. 15 dated 25/1/143 1 Hijria corresponding to 11/1/2010; and ratified by Royal Decree No. M/4 dated 12/1/21010, is in strict conformity with International Law and states' practices. Therefore, the Kingdom of Saudi Arabia rejects the claims of the United Arab Emirates in this regard.

In addition, the Government of the Kingdom of Saudi Arabia informed the Government of the United Arab Emirates on many occasions, including-note No. 92/18/164063 dated 26/5/1432 Hijria directed to the Foreign Ministry of the United Arab Emirates, that the Kingdom of Saudi Arabia's maritime zone in this section of its coast extends to the middle of the Arabian Gulf in accordance with the provisions of article 5 of the Agreement on Delineation of the Land and Sea Borders between the two Countries dated 3rd of Shaaban 1394 Hijria corresponding to 21st of August 1974 AD in accordance with International Law. Consequently, the United Arab Emirates' claim that the straight baselines of the Kingdom of Saudi Arabia are encroaching on any part of the United Arab Emirates' territorial sea is rejected by the Kingdom of Saudi Arabia.

Moreover, the Government of Saudi Arabia previously called upon, and still does, the Government of the United Arab Emirates to implement the above-mentioned Article 5 of the Agreement on Delineation of the Land and Sea Borders between the two Countries.

The Government of the Kingdom of Saudi Arabia considers this note an official document; and requests from the Secretariat of the United Nations to register and circulate it to all members in accordance with the United Nations' procedures.

[...]

¹ Original: Arabic. Unofficial Translation provided by the Permanent Mission of Saudi Arabia to the United Nations.

*Declaration concerning the establishment by **Saudi Arabia** of the baselines for the Kingdom's maritime zones in the Red Sea, the Gulf of Aqaba and the Arabian Gulf*¹

Egypt
Ministry of Foreign Affairs
Office of the Minister for Foreign Affairs

Reference is made to United Nations Secretariat note verbale M.Z.N.LOS.2010.77 dated 25 March 2010, concerning the establishment by Saudi Arabia of the baselines for the Kingdom's maritime zones in the Red Sea, the Gulf of Aqaba and the Arabian Gulf, as set forth in Council of Ministers Resolution No. 15 of 11 January 2010 and Royal Decree No. M/4 of 12 January 2010.

The Arab Republic of Egypt declares that, with respect to the baselines set forth in table No. 1 annexed to Royal Decree No. M/4 of 12 January 2010 concerning the boundary line in the Red Sea opposite the Egyptian coast, north of latitude 22, which represents the southern border of Egypt, it will operate in a manner that does not impact on its position in the current negotiations with Saudi Arabia over the determination of the maritime borders between the two countries.

¹ Original: Arabic. Transmitted through a note verbale dated 15 September 2010 from the Permanent Mission of the Arab Republic of Egypt to the United Nations addressed to the Secretary-General of the United Nations.

LOSB No. 74, at 72 (2011).

Note verbale dated 14 August 2012 addressed to the Secretary-General of the United Nations concerning the deposit by the Kingdom of Saudi Arabia of the list of geographical coordinates of points in the Red Sea, Gulf of Aqaba and the Persian Gulf

The Permanent Mission of the Islamic Republic of Iran to the United Nations [...] reference to communication No. M.Z.N.77.2010.LOS dated 25 March 2010 regarding the deposit by the Kingdom of **Saudi Arabia** on 5 March 2010 of lists of geographical coordinates of points defining the baselines of the Kingdom of Saudi Arabia in the Red Sea, the Gulf of Aqaba and the Persian Gulf, and pursuant to the Note No. 1596 dated 22 December 2010 from the Permanent Mission of the Islamic Republic of Iran to the United Nations, has the honor to inform that the Islamic Republic of Iran has carefully studied the above-mentioned document and its annexes, and based of that examination, would like to state the following:

The Government of the Islamic Republic of Iran reserves its position as to the validity under customary international law of the Saudi baselines set out in the above-mentioned document. Under relevant customary international law, as codified in the 1958 Convention on the Territorial Sea and the Contiguous Zone, and reaffirmed in the 1982 United Nations Convention on the Law of the Sea: “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 territorial sea is measured”. However, “The drawing of such 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”.

The Islamic Republic of Iran notes that a number of basepoints, particularly basepoints 3, 5, 6 and 8, identified by Saudi Arabia in defining the Saudi baselines in the Persian Gulf are located in open waters, and, therefore contravene the relevant rules of international law of the sea as mentioned above.

Hence the Islamic Republic of Iran underlines that the method used by Saudi Arabia to define its baselines in the Persian Gulf is not in conformity with international law of the sea and stresses that any consequences arising from it would not be acceptable.

The Permanent Mission of the Islamic Republic of Iran requests the Secretary-General of the United Nations to have this note issued as a document of the United Nations in accordance with established procedures of DOALOS.

[...]

LOS No. 80, at 36 (2013); Iran note verbale No. 692, 14 August 2012, General Assembly doc. A/67/762 Annex I, 20 February 2013.

The Ministry of Foreign Affairs of the Kingdom of Saudi Arabia [...] would like to refer to note No. 692 dated 14 August 2012, that was addressed to him by the Islamic Republic of Iran, concerning the maritime baselines of Saudi Arabia in the Red Sea, the Gulf of Aqaba and the Arabian Gulf which were deposited with the United Nations on 4 Rabi' II A.H. 1431 (25 March A.D. 2010) and referred to in its earlier note, No. 1596, dated 22 December 2010.

The Government of the Kingdom of Saudi Arabia emphasizes that the maritime baselines of Saudi Arabia in the Red Sea, the Gulf of Aqaba and the Arabian Gulf, which were determined by Saudi Council of Ministers decision No. 15 dated 25 Muharram A.H. 1431 (11 January A.D. 2010), and ratified by Royal Decree No. M/4 dated 26 Muharram A.H. 1431 (12 January A.D. 2010), are fully consistent with the rules of international law and State practice.

[...]

Saudi Arabia note verbale 14 March 2013, A/67/836 Annex, 12 April 2013.

The Ministry of Foreign Affairs of the Kingdom of Saudi Arabia wishes to refer to the note verbale of the Ministry of Foreign Affairs of the **United Arab Emirates**, Ref. No. WK confidential 3/6/1-181 dated 21 Dhu'lhijjah A.H. 1432 (17 November A.D. 2011), that was addressed to the Secretary-General of the United Nations. That note concerns the maritime baselines of the Kingdom of Saudi Arabia that were deposited with the United Nations on 5 March 2010.

The Government of the Kingdom of Saudi Arabia reaffirms what was stated in its note No. 92/18/217782 dated 13 Rajab A.H. 1432 (15 June A.D. 2011), addressed to the United Nations Secretariat, to the effect that the maritime baselines of the Kingdom of Saudi Arabia in the Red Sea, the Gulf of Aqaba and the Arabian Gulf, including the baselines set forth in table No. 3, that was issued by Decision No. 15 of the Council of Ministers of the Kingdom of Saudi Arabia dated 25 Muharram A.H. 1431 (11 January A.D. 2010), and approved by Royal Decree No. 4/m dated 26 Muharram A.H. 1431 (12 January A.D. 2010), accord exactly with the rules of international law and State practice, and the Government of the Kingdom of Saudi Arabia rejects the claims of the Government of the United Arab Emirates in that regard.

The Government of the Kingdom of Saudi Arabia further reaffirms what was stated in its note No. 92/18/164063 dated 26 Jumada I A.H. 1432 (30 April A.D. 2011), namely, that the agreement between the Kingdom of Saudi Arabia and the United Arab Emirates over the delimitation of their mutual land and maritime boundaries, which was signed on 3 Sha'ban A.H. 1394 (21 August A.D. 1974), is a binding international agreement that is in force and was deposited with the United Nations on 9 September 1993.

The Government of the Kingdom of Saudi Arabia reiterates its rejection of the claims of the United Arab Emirates with regard to the maritime baselines of the Kingdom of Saudi Arabia in the Red Sea, the Gulf of Aqaba and the Arabian Gulf, and demands that the United Arab Emirates should honour

all the provisions of the aforementioned 1974 agreement between the two countries over the delimitation of their mutual land and maritime boundaries. It asserts that the maritime region of the Kingdom of Saudi Arabia off its shore in Adid Governorate extends to the middle of the Arabian Gulf, as is set forth in article 5 of the agreement, and in accordance with international law. The Kingdom of Saudi Arabia has on several occasions asked for a meeting with the United Arab Emirates in order to complete implementation of the above-mentioned agreement, but has received no response. The Government of the Kingdom of Saudi Arabia has affirmed that in the notes that it addressed to the Government of the United Arab Emirates, Nos. 97/18/85941 dated 1 Jumada II A.H. 1424 (30 July A.D. 2003); 97/18/26145877 dated 3 Dhu'lhijjah A.H. 1426 (3 January A.D. 2006); and 7/2/1/51363 and 7/2/1/1344 dated 14 Safar A.H. 1426 (8 January A.D. 2012).

The Government of the Kingdom of Saudi Arabia considers the present note as an official document and requests the United Nations Secretariat to register, publish, and circulate it to all Members, in accordance with United Nations practice.

Saudi Arabia protest note 15 December 2012, A/67/684 Annex, 2 January 2013.

33. In 1972, **Senegal** issued a decree establishing straight baselines along much of its coastline in the eastern Atlantic. In a 1989 note to the Ministry of Foreign Affairs objecting to these baselines, the United States noted that “the coastline of Senegal is ... neither deeply indented and cut into, nor fringed with many islands.” The note also stated that “none of the minor undulations enclosed by the straight baseline constitute juridical bays as defined in international law.”

Roach & Smith 3rd ed. 92, 94.

34. *In June 1989 the United States protested those portions of paragraph 6(1) of Sudan’s Territorial Waters and Continental Shelf Act of 1970 that established straight baselines (a) from the mainland to the outer shores of islands which are not more than 12 nautical miles from the mainland, (b) from the mainland and along the outer shores of all islands forming a chain of islands where the island nearest the mainland is not more than 12 nautical miles from the mainland and where each island in the chain may be connected by baselines not more than 12 nautical miles long, and (c) from the mainland and along the outer shores of all islands forming a chain of islands where the island nearest the mainland is more than 12 nautical miles from the mainland and where each island in the chain may be connected by baselines not more than 12 nautical miles long.*

After stating the same general rules as to baselines made in the Djibouti protest, [No. 10] above, the United States continued:

— . . . Straight baselines must not depart to any appreciable extent from the general direction of the coast. In addition, baselines cannot be drawn to or from shoal waters which are not low tide elevations that have a lighthouse or similar installation, permanently above sea level, erected thereon;

— A closing line of not more than 24 nautical miles in length may be used to close a juridical bay and the water area of the resultant bay must be greater than that of a semicircle whose diameter is the length of the line drawn across the mouth of the bay;

— Archipelagic states do not include mainland states which possess non-coastal archipelagos. Therefore, baselines, including straight baselines, cannot be drawn around mainland nations’ coastal archipelagos.

Telegram from the Department of State to U.S. Embassy, Khartoum, June 2, 1989.

In addition, background points provided to the embassy stated:

— Excessive baselines are objectionable since baselines mark the demarcation between a nation's internal and territorial waters and serve as the line from which the breadth of a nation's territorial sea is measured. The United States does not itself utilize straight baselines, even in the exceptional circumstances in which they are permitted. Though the U.S. also has an island archipelago, it recognizes that, as a mainland nation, this archipelago is not eligible for archipelagic baseline treatment.

Id.

1989-1990 Digest 460-461, Roach & Smith 3rd ed. 110-111, 120, 130.

35. *Note verbale dated 23 December 1994 from the German Embassy in Bangkok (on behalf of the European Union) addressed to the Ministry of Foreign Affairs of Thailand:*

The Embassy of the Federal Republic of Germany in Bangkok [...] on behalf of the European Union has the honour to request its kind attention to the matter set out below.

The European Union has taken cognizance of the announcement by the Prime Minister's Cabinet on 17 August 1992 concerning Thailand's straight baselines and internal waters in area 4. [LOS No. 25, at 82]

The European Union wishes to point out that, in accordance with international law and in particular the United Nations Convention on the Law of the Sea, which entered into force on 16 November 1994, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast, as shown by the appropriate symbol on charts officially recognized by the coastal State, and that the coastal State may employ the method of straight baselines joining appropriate points only 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 European Union has observed that Thailand has used straight baselines along its entire coastline in area 4, even where the coastline is not deeply indented and cut into or if there is not a fringe of islands along the coast in its immediate vicinity.

The European Union considers that, even if the United Nations Convention on the Law of the Sea does not set a maximum length for baseline segments, the segments determined by Thailand are excessively long. They are in fact 81 miles long between points 1 and 2, 98 miles long between points 2 and 3 and 60 miles between points 3 and 4.

The European Union wishes finally to point out that islands may be used for defining internal waters only where they form part of a system of straight baselines or where they form the line delimiting a bay.

The acceding States, namely Austria, Finland and Sweden, endorse the present *demarche*.

LOS No. 28, at 31 (1995).

In a diplomatic note of August 28, 2000 the United States provided its views on the non-compliance of certain straight baselines drawn by Thailand along its coast (set forth in Department of State Telegram State 162460, August 24, 2000). [<http://www.state.gov/documents/organization/6843.doc>]:

* * * *

... [The United States] ... has the honor to refer the Government of Thailand to the announcements of the Office of the Prime Minister of June 12, 1970, August 11, 1992 and August 17, 1992 which

establish straight baselines in four areas off portions of the coast of Thailand in the Gulf of Thailand and near the Strait of Malacca and claim the waters landward of the baseline as internal waters.

The United States wishes to recall that both the United States and Thailand are party to the 1958 Convention on the Territorial Sea and the Contiguous Zone.

The United States additionally wishes to recall that, while the United States is not yet a party to the 1982 United Nations Convention on the Law of the Sea, as announced in the President's United States Ocean Policy Statement of March 10, 1983, the United States will exercise and assert its navigation and overflight rights in a manner that is consistent with the balance of interests reflected in the 1982 Convention and accepts the non-seabed mining provisions of the Convention as declarative of customary international law including the principles that underlie proper and legal establishment of baselines.

The United States notes that the rules for drawing baselines are contained in Articles 3-13 of the 1958 Convention. Article 3 states that "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." Paragraph one of Article 4 states that straight baselines may be drawn only in two specific geographic situations. That is "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." Articles 1-11 and 13-14 of the 1982 Convention reaffirm these rules.

The United States wishes to recall that the purpose of authorizing straight baselines is to allow the coastal state, at its discretion, to enclose those waters, which as a result of their interrelationship with the land, have the character of internal waters. By using straight baselines, a state may also eliminate complex patterns, including enclaves, in its territorial sea, that would otherwise result. Properly drawn straight baselines do not result in extending the limits of the territorial sea significantly seaward from those that would result from the use of normal, low-water line baselines. Moreover, the use of straight baselines in a manner that prejudices international navigation, overflight, and communications runs counter to the balance of interests reflected in the 1958 and 1982 Conventions.

With regard to straight baselines justified on the basis of fringing islands along the coast in the immediate vicinity, the United States has taken the position that such a fringe of islands must meet all of the following requirements:

- The most landward point of each island lies no more than 24 miles from the mainland coastline;
- Each island to which a straight baseline is to be drawn is not more than 24 miles apart from the island from which the straight baseline is drawn; and
- The islands as a whole, mark at least 50 percent of the mainland coastline in any given locality.

Additionally, the United States has taken the position that, to be consistent with the 1958 Convention's Article 4, paragraph 2 and Article 7(3) of the 1982 Convention, straight baseline segments must:

- Not depart to any appreciable extent from the general direction of the coastline, by reference to general direction lines which in each locality shall not exceed 60 miles in length;
- Not exceed 24 miles in length; and
- Result in sea areas situated landward of the straight baseline segments that are sufficiently closely linked to the land domain to be subject to the regime of internal waters.

The United States wishes to inform the Government of Thailand that after analyzing the four areas of straight baselines established by the Government of Thailand's 1970 and 1992 announcements, the United States has concluded that two of the areas do not meet the international legal criteria set forth above:

The United States believes that the straight baselines claimed in Area 1, which is situated along Thailand's southeast coast in the northeast part of the Gulf of Thailand near the Cambodia-Thailand land boundary, meet the international criteria. The straight baselines enclose Ko Chang and Ko Kut Islands and numerous smaller islands, and the water depths landward of the islands are relatively shallow. The seven straight baseline segments range in lengths from 3.2 to 20 miles. One baseline diverts from the general direction of the coast, but serves to bring the straight baseline system back to the coast. None of the islands is more than 24 miles from the coast and the island system can be considered as fringing the mainland coast. Thus, the straight baselines in Area 1 meet the geographic criteria in international law. Similarly, the United States believes that the baselines in Area 3, which is a 125-mile stretch of coastline facing the northern entrance to the Strait of Malacca, also meet the international criteria.

Area 2 is in the Western Gulf of Thailand. In this approximately 100-mile stretch, the coastline is relatively smooth with slight indentations and a sprinkle of offshore islets and rocks. At its southern extent, the coast creates an L shape with several medium sized islands. Only in this area might a few straight baseline segments be valid. The first five segments in Area 2 are connected to rocks and small islets and not a fringe of islands. Segment 6-7 is over 33 miles long and connects a small islet to Ko Tao, a small island about 40 miles from the mainland. From Ko Tao straight baselines are drawn to Hin Bao, a small islet also about 40 miles from the coast and then to Ko Phangan and to Ko Samui. In total, the United States believes that the Government of Thailand has claimed about 3,000 square nautical miles (10,290 square kilometers) in Area 2 as internal waters that should, under international law have the legal status as either high seas, exclusive economic zone or territorial sea.

Area 4 is a continuation of Area 2's baselines in the southeastern part of the Gulf of Thailand. Along this 230-mile stretch, Thailand's coastline is not deeply indented nor are there a fringe of islands in the immediate vicinity. The baseline segments range from 65.3 miles to close to 100 miles and only a few small islets situated between 20 and 30 miles from the coast serve as basepoints. In total, in Area 4, the United States believes that the Government of Thailand has claimed as internal waters an area approximately 8,400 square nautical miles (28,812 square kilometers) that should properly have the legal status of either territorial seas, exclusive economic zone or high seas.

In sum, it is the view of the United States that the various straight baseline segments noted above drawn by the government of Thailand do not meet the criteria contained in the 1958 and 1982 Conventions and, therefore, have no basis in international law. In view of the foregoing, the government of the United States reserves its rights and the rights of its nationals in this regard.

2000 Digest 703-706, LIS 122.

36. *Note verbale dated 9 August 2009 from the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia addressed to the Ministry of Foreign Affairs of the **United Arab Emirates***⁵:

[...]

The Government of the Kingdom of Saudi Arabia has examined the decision of the Council of Ministers of the United Arab Emirates No. (2009-5) which includes the straight baselines of parts of the coast of the United Arab Emirates.

The Government of the Kingdom of Saudi Arabia points out that it does not recognize any legal effect of this Decision which was taken unilaterally by the United Arab Emirates. Therefore, it does not affect the legal rights of the Kingdom of Saudi Arabia, in accordance with the Border Treaty which was signed between the two brotherly countries on 21 August 1974, which is obligatory to the two parties in accordance with international law.

The Government of the Kingdom of Saudi Arabia points out that international law allows the use of straight baselines only in special coastal conditions and only when certain criteria exist. One of these criteria is that the straight baselines do not deviate substantially from the general direction of the coastline.

It is obvious that a part of the straight baselines opposite the Saudi coast has no relation to the United Arab Emirates coast, and substantially deviate from the general direction of the coast of the United Arab Emirates.

Thus, this part of the straight baselines is illegal in accordance with international law. Therefore, the Kingdom of Saudi Arabia rejects it and objects to it. It reserves its full rights and interests in the region.

In addition, the territorial sea of the Kingdom of Saudi Arabia extends 12 nautical miles from the baselines of the coast of the Kingdom of Saudi Arabia, and the maritime boundaries should be delineated between the two countries by mutual agreement according to international law in order to reach a fair solution.

As for the rights of the islands belonging to the United Arab Emirates with maritime sovereignty, it is a matter that should be decided in the context of delineating the maritime boundaries between the Kingdom of Saudi Arabia and the United Arab Emirates in accordance with article 5 of the 1974 Agreement.

Accordingly, this part of the straight baselines violates the Agreement between the Kingdom of Saudi Arabia and the United Arab Emirates, and this decision has no effect on the coastline of the Kingdom of Saudi Arabia which extends to the middle of the Gulf. The Kingdom of Saudi Arabia objects to this violation of the agreement.

The Kingdom of Saudi Arabia would like to point out that article 5 of the 1974 Agreement stipulates that both brotherly countries must delineate the maritime boundaries between the territories of both countries and all the islands under their jurisdiction on the basis of fairness. The Agreement also stipulates that the area which connects the territorial sea with the rest of the sea is to have shared jurisdiction between the two countries.

The two brotherly countries have agreed in two letters exchanged on the date of the Agreement that the natural resources in the areas of shared jurisdiction is owned by the United Arab Emirates, whether they are on the surface or below the surface; the Kingdom of Saudi Arabia has adhered to that letter of understanding.

The Kingdom of Saudi Arabia points out that paragraph 2 of article 5 of the Agreement of 1974 stipulates that the Kingdom of Saudi Arabia is to build any general structure on the two islands of Al-Qafai and Makaseb, and that the United Arab Emirates is to take that into consideration.

The Kingdom of Saudi Arabia affirms that the procedures taken by the United Arab Emirates, like Decision 2009-5, has no legal standing on the rights and interests which are stipulated in the Agreement between the two countries. Once again, the Government of the Kingdom of Saudi Arabia calls upon the Government of the United Arab Emirates to implement article 5 of the Agreement of 1974.

[...]

⁵ Original: Arabic. Unofficial translation provided by the Permanent Mission of the Kingdom of Saudi Arabia to the United Nations.

Note verbale dated 7 November 2009 from the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia addressed to the Ministry of Foreign Affairs of the United Arab Emirates

Reference: 92/18/30057506

Dated 7th of November, 2009

The Ministry of Foreign Affairs of the Kingdom of Saudi Arabia [...] would like to refer to the memorandum of the Ministry of Foreign Affairs of the United Arab Emirates No. O.K. Classified 3/6/2-331 dated 19 Shaaban 1429 Hijri, corresponding to 20/8/2008 AD.

The Government of Saudi Arabia would like to confirm what was stated in its note No.97/18/28060394 dated 6/5/1428 Hijri corresponding to 23/5/2007 AD, and would also like to emphasize the rejection of all what was stated in the memorandum of the Ministry of Foreign Affairs of the United Arab Emirates.

Moreover, the Government of Saudi Arabia reminds its sister, the United Arab Emirates, that the Convention on the Delineation of Land and Sea Borders between Saudi Arabia and the United Arab Emirates, dated 3 August 1394 Hijri, corresponding to 21st of August, 1974, has delineated the borders between our two brotherly countries as final; and was accompanied by a map showing the location of land border points signed by both contracting parties; as well as the demarcation on the ground which resulted the drawing of maps under direct supervision of the joint technical committee appointed by the two countries. This Convention and all its provisions remain valid, in effect and binding to the two countries in accordance with international law.

Previously, the Government of Saudi Arabia already sent several memoranda of formal protests from the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia to the Ministry of Foreign Affairs of the United Arab Emirates calling upon the latter to compel the concerned authorities to publish their maps in accordance with what is stipulated in the Convention. This was also emphasized in several communications between the officials of both countries as outlined in the most recent communication between HRH the Second Deputy Prime Minister, the Minister of Interior No. 9/m dated 1/3/1430 Hijri to his brother His Highness Lieutenant General Sheikh/Saif bin Zayed Aal-Nahyan, Deputy Prime Minister, the Minister of Interior, Deputy Chairman of the Standing Committee on Borders of the United Arab Emirates.

The Government of Saudi Arabia reasserts to its sister the Government of the United Arab Emirates to compel the concerned authorities in the United Arab Emirates to publish their maps in accordance with the Convention on Land and Sea Borders between Saudi Arabia and the United Arab Emirates dated 3 Shaaban 1394 Hijri, corresponding to 21st of August, 1974.

Moreover, the Government of Saudi Arabia calls upon its sister the Government of the United Arab Emirates to adhere to all the articles of the Convention on the Delineation of Land and Maritime Boundaries between the two countries; and the Government of Saudi Arabia reserves its right to take all actions deemed necessary to protect all its rights in accordance with the provisions of the Convention and the provisions of international law.

[...]

LOS B No. 71, at 50.

Note verbale dated 12 November 2009 from the Ministry of Foreign Affairs of the United Arab Emirates addressed to the Secretary-General of the United Nations

[...]

With reference to the letter of the Permanent Mission of the Kingdom of Saudi Arabia to the United Nations, dated 13 August 2009, concerning the note of the Ministry of Foreign Affairs of the Kingdom of Saudi Arabia (KSA) of 9 August 2009 to the Ministry for Foreign Affairs of the UAE, this Ministry would like to state the following:

1. The UAE Ministry of Foreign Affairs confirms its previous notes in this respect, in particular those of 20/8/2008, 15/12/2008 and 3/11/2009, the contents of which it does not wish to repeat here.

2. The UAE Ministry of Foreign Affairs has previously confirmed to the KSA Ministry of Foreign Affairs that it does not recognize for the Kingdom any maritime zones or sovereign rights beyond the median line separating the territorial sea of UAE and the territorial sea of KSA opposite to Al Udaid Governorate.

3. The UAE Ministry of Foreign Affairs has also previously confirmed to the KSA Ministry of Foreign Affairs that it does not recognize the parts of the Joint Minutes between KSA and the Kingdom of Qatar of 5 July 2008 that are inconsistent with the exclusive sovereignty of UAE over its islands or its territorial sea in accordance with the 1969 Agreement signed with the State of Qatar. The UAE Ministry of Foreign Affairs would also like to stress that it does not recognize any parts of the Joint Minutes that conflict with the principles and rules of international law of the sea.

4. The UAE Ministry of Foreign Affairs takes note of the statement of the KSA that it is ready to enter into constructive negotiations with the Government of UAE. But the notes which the UAE received recently from KSA do not involve any change in KSA position in such a way that would lead to the settlement of all boundary matters between the two countries. Nevertheless to avoid the recurrence of the encroachments committed recently by KSA coastguard patrols in the area opposite to Al Udaid Governorate, the UAE Ministry of Foreign Affairs would welcome negotiations for the delimitation of the boundary of the territorial sea between the UAE and KSA opposite to Al Udaid Governorate

5. The Government of UAE confirms that the straight baselines system proclaimed by the Decision of the Council of Ministers No 5-9-2009 of 14/1/2009 is consistent with the criteria established by international law.

6. As for the plans for the economic development of the coastal zone of Al Udaid Governorate, this Ministry would like to confirm what had been stated in its Note of 25 July 2007 to the Ministry of Foreign Affairs of KSA. In particular, this Ministry would like to refer [to] the shallowness of the waters in the area and the environmental risks that may occur as a result of the increase of navigation therein.

7. As for the project of the Kingdom for the conducting of a hydrographic survey in the coastal zone of Al Udaid Governorate, this Ministry would like to confirm what had been stated in its Note of 11 September 2008 to the Ministry of Foreign Affairs of KSA. In particular, the UAE would like to state that in accordance with the principles of international law no survey works should be carried out beyond the median line which separates the territorial seas of the UAE and KSA.

8. With respect to the KSA's claim in its Note of 8 September 2009 that its coastguard patrol boat was engaged in normal duties in the internal waters of the KSA, this Ministry objects to this claim. This Ministry would like further to reiterate that, as stated in its Note of 23 July 2009, the area where the KSA coastguard patrol was found is on the UAE side of the median line and consequently lies in the territorial sea of the UAE.

The Government of the United Arab Emirates considers this note as an official document and requests the General Secretariat of the United Nations to register, publish and circulate this note in accordance with the usual [United Nations] practice.

[...]

LOS No. 71, at 50-51.

37. *In 1984 and 1985, the Government of the former **Union of Soviet Socialist Republics** claimed a system of straight baselines which was, in part, contrary to international law.*

The United States Government protested parts of the claimed system of baselines along the lines of the analyses which may be found in U.S. Department of State, *Limits in the Sea* No. 107 (1987) (Pacific Ocean, Sea of Japan, Sea of Okhotsk, Bering Sea) and No. 109 (1988) (Black Sea). Further, the USS *Arkansas* (CGN-41) challenged the Soviet straight baseline drawn across Avacha Bay, the entrance to Petropavlovsk, Kamchatka Peninsula, on May 17 and 21, 1987, and USS *Baton Rouge* (SSN-689) challenged the Russian straight baseline closing access to the Barents Sea port of Murmansk on February 11, 1992.

Roach & Smith 3rd ed. 97.

38. *In 1956, the President of **Venezuela** issued a decree establishing a 99-mile long straight baseline closing the delta of the Orinoco River, the eastern terminus of which lay 26 miles east of Punta Playa, the coastal terminus of the current Guyana-Venezuela boundary. While Venezuela has laid claim to this territory as far as the Essequibo River, Guyana has rejected this claim.*

This decree was issued pursuant to article 2 of the 1956 Venezuelan Law on Territorial Waters, the Continental Shelf, Conservation of Fisheries and Airspace, which permitted the drawing of straight baselines “when circumstances impose a special case due to the configuration of the coast line, to the existence of islands close to it, or when the particular interests of a determined region justify it.” This provision of the 1956 decree was protested by the United States in 1956.

Roach & Smith 3rd ed. 122-123.

39. *Statement dated 28 November 1982 by the spokesman of the Ministry of Foreign Affairs of the People’s Republic of China:*

* * * *

The Vietnamese Government’s “Declaration on base line of **Vietnam**’s territorial waters” [12 November 1982, A/37/697] has fully revealed the expansionist designs of the Vietnamese authorities to appropriate a vast sea area in the Beibu Gulf and to encroach upon China’s territory. . . .

LOS No. 1, at 76 (1983), A/37/682-S/15505, 30 November 1982.

*In a declaration issued November 12, 1982, the Government of **Vietnam** claimed a system of ten straight baseline segments which included several examples that exceed the norms of international practice. The United States Government, in an aide mémoire, of which the following is an excerpt, protested as follows:*

As to the claimed system of straight baselines, the Government of the United States of America wishes to remind the Government of the Socialist Republic of Vietnam that, under customary and conventional international law, a coastal state may employ the method of straight baselines only in localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. In so doing the baselines established by the coastal state must not depart to any appreciable extent from the general direction of the coast. It is the view of the Government of the United States of America that the baselines claimed by the Government of the Socialist Republic of Vietnam do not meet these criteria and that there is no basis in international law for the system of straight baselines provided in the declaration of November 12, 1982.

The claim included the yet-to-be-defined terminus of which in the Gulf of Thailand, point 0, is “located on the high sea and on a straight line linking the Tho Chu Archipelago to the Poulo Wai Island”. In analyzing the baseline claim, the Office of the Geographer of the Department of State commented:

The Vietnamese-proposed point 0 is neither a high-tide elevation nor a low-tide elevation with a permanent structure; therefore, a basepoint at point 0 appears to be in violation of [article 4 of the 1958 Territorial Sea and the Contiguous Zone Convention and article 7 of the 1982 Law of the Sea Convention].

Roach & Smith 3rd ed. 99, 120-121.

The Permanent Mission of France to the United Nations sent to the Secretary-General of the United Nations a Note dated 5 December 1983 which reads as follows:

The Permanent Representative of France to the United Nations [...] has the honour to refer to the Statement of 12 November 1982 by the Government of the Socialist Republic of Viet Nam concerning the straight baseline of Viet Nam’s territorial sea, which has been circulated as an official document of the General Assembly under the symbol A/37/697.

The French Government is of the view that the drawing of the baseline of Viet Nam’s territorial sea between points A1 and A7 is at variance with the well-established rules of international law applicable to the matter, as reflected in article 7 of the United Nations Convention on the Law of the Sea. Consequently, that segment of the baseline cannot be invoked *vis-à-vis* the French Government.

Moreover, the French Government is unaware of any title which would substantiate Viet Nam’s claim that the part of the Gulf of Bac Bo (Gulf of Tonkin) under Viet Nam’s jurisdiction constitutes historic waters.

[...]

LOS No. 3, at 16 (1984).

The Permanent Mission of Thailand to the United Nations sent to the Secretary-General of the United Nations a note dated 9 December 1985, which reads as follows:

Statement by the Ministry of Foreign Affairs of Thailand on the Vietnamese claims concerning the so-called historical waters and the drawing of baselines

The Ministry of Foreign Affairs of Thailand refers to the following transaction and statements:

(1) The so-called “Agreement of 7 July 1982 between the Government of the Socialist Republic of Viet Nam and the Government of the People’s Republic of Kampuchea on the historical

waters of Viet Nam and Kampuchea”, which was announced on 8 July 1982 through the Viet Nam News Agency in Hanoi;

(2) The statement of 12 November 1982 by the Government of the Socialist Republic of Viet Nam on the territorial sea baseline of Viet Nam, which was circulated as an official document of the General Assembly (A/37/697, dated 6 December 1982);

(3) The statement of 5 June 1984 by the Government of the Socialist Republic of Viet Nam on the airspace of Viet Nam, which was circulated as an official document of the General Assembly (A/39/309, dated 21 June 1984).

The Government of Thailand has carefully examined the claims thus asserted in the above-mentioned agreement and statements, and wishes to state its positions with respect thereto as follows:

Regarding the claims to the so-called “historical water”, which purport to appropriate and subject certain sea areas in the Gulf of Thailand and in the Gulf of Tonkin (Gulf of Bac Bo) to the regime of internal waters, the Government of Thailand is of the view that such claims cannot be justified on the basis of the applicable principle of international law.

Regarding the statement defining the baselines for measuring the breadth of the territorial sea and other maritime zones of Viet Nam, the Government of Thailand considers that the drawing of the baselines of Viet Nam’s territorial sea between points 0 and A7 is at variance with the well-established rules of international law, as codified in article 4 of the Convention on the Territorial Sea and Contiguous Zone of 29 April 1958, and confirmed once again in article 7 of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, to which Viet Nam is a signatory.

In so far as the Vietnamese statement on the airspace of Viet Nam seeks to assert Vietnamese sovereignty over the so-called “historical waters” both in the Gulf of Thailand and in the Gulf of Tonkin, as well as over the waters enclosed within the said baseline, the Government of Thailand, consistent with its positions stated above, feels bound to reject such claim as being contrary to international law.

Accordingly, the Government of Thailand reserves all its rights under international law in relation to the sea areas in question and the airspace above them.

Incidentally, in regard to the so-called agreement on historical waters of Viet Nam and Kampuchea, the Government of Thailand wishes to reiterate that the so-called Government of the People’s Republic of Kampuchea does not represent, and cannot be considered to represent, Kampuchea in any manner whatsoever, as only the Coalition Government of Democratic Kampuchea under the Presidency of Samdech Norodom Sihanouk, which is the sole legitimate Government of Kampuchea overwhelmingly recognized in the United Nations, can represent Kampuchea. Therefore, any agreement or declaration which purports to be concluded or made by the so-called Government of the People’s Republic of Kampuchea is utterly devoid of any legal effect.

LOS No. 7, at 111-112, General Assembly doc. A/40/1033, 12 December 1985.

Note dated 5 December 1986 setting out the position of the Government of the Republic of Singapore on the Vietnamese claims concerning the so-called historical waters and the drawing of baselines

The Permanent Mission of the Republic of Singapore to the United Nations [...] has the honour to refer to the following documents:

(a) The so-called “Agreement on the historical water of the Socialist Republic of Viet Nam and the People’s Republic of Kampuchea”, signed on 7 July 1982;

(b) The statement of 12 November 1982 by the Government of the Socialist Republic of Viet Nam on the territorial sea baseline of Viet Nam, which was circulated as an official document of the General Assembly (A/37/697, annex);

(c) The statement dated 5 June 1984 by the Government of the Socialist Republic of Viet Nam on its airspace, which was circulated as an official document of the General Assembly (A/39/309, annex).

The Government of Singapore is of the view that the baselines claimed by the Government of the Socialist Republic of Viet Nam in its statement of 12 November 1982 do not conform to the well-established rules of international law on the matter, as reflected in article 4 of the Geneva Convention on the Territorial Sea and the Contiguous Zone of 29 April 1958 and article 7 of the 1982 United Nations Convention on the Law of the Sea, of which Viet Nam is a signatory.

In so far as the statement of 5 June 1984 seeks to assert Vietnamese sovereignty over the airspace of the so-called “historical waters” in the Gulf of Thailand and over other waters on the basis of the baselines claimed in the statement of 12 November 1982, the Government of Singapore, consistent with its position on the baselines as stated above, feels compelled to reject such claim to airspace sovereignty as being contrary to international law.

The Government of the Republic of Singapore therefore protests the claims made by the Government of the Socialist Republic of Viet Nam in the statements of 12 November 1982 and 5 June 1984 and reserves its rights and those of its nationals in relation to the sea areas in question and the airspace above them.

Furthermore, in regard to the “Agreement on the historical waters of the Socialist Republic of Viet Nam and the People’s Republic of Kampuchea”, the Government of the Republic of Singapore wishes to state that the so-called Government of the People’s Republic of Kampuchea does not represent, and cannot be considered to represent, Kampuchea in any manner whatsoever, as only the Coalition Government of Democratic Kampuchea, which is the sole legitimate Government of Kampuchea, overwhelmingly recognized as such in the United Nations, can represent Kampuchea. Therefore, any agreement or declaration that purports to be concluded or made by the so-called Government of the People’s Republic of Kampuchea is devoid of any legal effect.

LOS No. 9, at 53-54 (1987), originally circulated as General Assembly doc. A/41/967 of 15 December 1986.

Statement dated 21 January 1986 issued by the Ministry of Foreign Affairs of the Socialist Republic of Viet Nam regarding the 22 November 1985 statement of Thailand concerning the historic waters and the baselines of Viet Nam

With regard to the position of the Government of Thailand as mentioned in the 22 November 1985 statement by the Ministry of Foreign Affairs of Thailand, the Government of the Socialist Republic of Viet Nam wishes to reaffirm the following:

1. The 12 November 1982 statement on the baselines to measure the breadth of the territorial sea of Viet Nam and the 5 June 1984 statement on the airspace of Viet Nam issued by the Government of the Socialist Republic of Viet Nam are based on the sovereignty and other legitimate interests of Viet Nam, in conformity with international law and practice.

2. The position of the Government of Thailand as expressed in the 22 November 1985 statement of the Ministry of Foreign Affairs of Thailand is utterly unjustified and, therefore, has no legal value. Viet Nam reaffirms its determination to defend, in accordance with international law, its sovereignty and interests *vis-à-vis* its maritime zones and airspace as mentioned in the aforesaid legal documents.

General Assembly doc. A/41/99, 22 January 1986 Annex.

On June 21, 2012, the Socialist Republic of Vietnam adopted the Law of the Sea of Vietnam, which took effect in January 2013. The United States has protested prior versions of Vietnam's maritime law as contrary to the international law of the sea. ... The new Law of the Sea of Vietnam addresses some past concerns conveyed by the United States, but other impermissible restrictions relating to the rights, freedoms, and lawful uses of the sea remain in the new law. Accordingly, the United States conveyed its ongoing concerns with Vietnam's maritime law in an October 7, 2013 diplomatic note, excerpted below.

* * * *

The United States compliments Vietnam's earnest efforts to harmonize its maritime law with international law as reflected in the U.N. Convention on the Law of the Sea ("Convention") and notes the many positive aspects of the Law in this regard. ...

The United States wishes to provide additional observations on the consistency of the Law with the Convention. Regrettably, the Law contains provisions that are not consistent with the Convention. To the extent that similar provisions in Vietnam law were the subject of previous communications, the United States wishes to remind Vietnam of those communications and restates them in the context of the Law.

In this regard, the United States notes in particular that Article 8 of the Law provides for the use of straight baselines from which to measure maritime zones; ... The United States recalls its previous communications with Vietnam on the establishment of baselines, ... and notes that the views stated in those communications apply to the same extent with respect to the Law.

....

The United States thus reserves its rights and those of its nationals with respect to those provisions of the Law that are not consistent with the Convention. The United States requests that the Government of Vietnam review these provisions of the Law and provide assurances that the Law will be implemented in a manner consistent with international law as reflected in the Convention.

2013 Digest chapter 12, 371-372.

Excerpts of River Closing Line Protests

On January 30, 1961, **Uruguay** and **Argentina** agreed to a joint Declaration for the purpose of establishing the exterior limits of the Rio de la Plata, and in this connection fixing the baseline from which to measure the territorial sea and contiguous zones. For this purpose they agreed upon an imaginary straight line (exceeding 2 miles in length) uniting Punta del Este in Uruguay with Punta Rasa on Cape San Antonio in Argentina. The Declaration stated that “Taking into consideration the provisions of Article 13” of the 1958 Convention on the Territorial Sea and the Contiguous Zone, they so declared.

The United Kingdom (on December 26, 1961), the United States (on January 23, 1963), and the Netherlands (on June 26, 1962) protested on the ground that the Declaration ran counter to international law and that article 13 of the Territorial Sea Convention [now article 9 of the LOS Convention, relating to river mouths] is inapplicable to the Rio de la Plata.

Thus, the United States note of protest stated that article 13 “relates to rivers which flow directly into the sea which is not the situation of the River Plate which flows into an estuary or bay”.

Further, the United States note stated that “it is the view of the United States Government that the provisions of Article 13 relate only to rivers which flow directly into the sea from the territory of a single State and not to rivers whose coasts belong to two or more different States.”

Additionally, the United Kingdom and the United States also protested on the grounds that article 7 of the same Convention related only to bays “the coasts of which belong to a single State” and that it is only in such circumstances that the provision of article 7, paragraph 5, for the drawing of a straight baseline of 24 miles across the mouth of a bay is applicable.

4 Whiteman 342-343 (1965); Roach and Smith 3rd ed. 121, 130.

Abbreviations:

LOS B = UN, Law of the Sea Bulletin, *available at* http://www.un.org/Depts/los/doalos_publications/los_bult.htm

LOSIC = UN, Law of the Sea Information Circular, *available at* <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/losics.htm>

Cumulative Digest = Digest of U.S. Practice in International Law 1981-1988

Digest = Digest of U.S. Practice in International Law, *available at* <http://www.state.gov/s/l/c8183.htm>

LIS = U.S. Department of State Limits in the Seas series, *available at* <http://www.state.gov/e/oes/ocns/opa/c16065.htm>

Roach & Smith, *Straight Baselines* = Roach and Smith, *Straight Baselines: The Need for a Universally Applied Norm*, 31 ODIL 47 (2000)

Roach & Smith 3rd ed. = Roach and Smith, *Excessive Maritime Claims* (3rd ed. Nijhoff 2012)

Whiteman = Digest of International Law, vol. 4, (M.J. Whiteman, ed., Dept. of State Publication 7825, 1965)

Other notes can be found thru links at the country’s legislation file of UN DOALOS, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/regionslist.htm>

Specific Focus of the Protests/Objections

- i) General reproach that SBL do not respect international law or international Law of the Sea
 - *Protest 4 (US and EC), 16, 19 (Kuwait), 30, 32 (Iran), 38 (unconfirmed)*
- ii) Reproach that SBL base points are inconsistent with international law and the LOSC
 - *Protest 29 (India), 32 (UAE, Iran)*
- iii) The coastline of the State does not meet either of the two geographic criterion authorizing the use of SBL (deeply indented coastline or fringe of islands):
 - *Protest 1, 5 (US), 6, 7, 8, 10, 11, 13 (US), 14, 15, 17 (US), 18, 19 (US, Germany/EU, Qatar), 20, 21, 24, 25 (US), 27 (Costa Rica, Colombia, US), 28 (US), 29 (India, US), 30, 31, 32 (UAE), 33, 35 (Germany/EU, US), 37 (unconfirmed), 38, 39 (US)*
- iv) General reproach that SBL do not respect criteria set down in Article 4 of the 1958 Convention or Article 7 of the LOSC
 - *Protest 3, 5 (Vietnam), 15, 22, 26 (Bangladesh), 39 (France, Thailand, Singapore)*
- v) Reproach that SBL do not meet specific rule of “general direction of the coast” defined in Article 7(3) of the LOSC
 - *Protest 5 (US), 8, 20, 21, 25, 26 (US), 27 (Colombia, US), 29 (US), 32 (UAE), 34, 35 (Saudi Arabia), 39 (US)*
- vi) Reproach that SBL do not meet specific rule of “close link to land domain” defined in Article 7(3) of the LOSC
 - *Protest 5 (US), 8, 17(US), 21, 25, 27 (Colombia, US), 29 (US), 31*
- vii) General protest against “excessive” SBL
 - *Protest 34*
- viii) Protest that SBL are excessive in terms of length
 - *Protest 5 (US), 8, 17 (US), 18, 19 (US, Germany/EU), 21, 27 (US), 29 (US), 31, 35 (Germany/EU)*
- ix) Criticism that waters enclosed by SBL segments do not qualify as juridical bay or historic bay and closing line exceeds 24 nm
 - *Protest 1, 2, 7, 13 (UK, US), 14, 17(US), 21, 23, 24, 30, 33, 34*
- x) Protest against a general claim to historic waters
 - *Protest 4 (EC), 39 (France, Thailand)*

- xi) Protest formulated in the context of disputed claims to sovereignty / ownership of islands, rocks or other geographical features
 - *Protest 5 (Philippines, Viet Nam, Japan), 19 (UAE)*
- xii) Protest formulated against SBL claim deemed to be prejudicial to sovereign rights / interests in a particular region or Sea
 - *Protest 17 (Guatemala, Nicaragua, El Salvador), 19 (Saudi Arabia), 25 (Bangladesh), 27, 29, 39 (China)*
- xiii) Protest that SBL cuts off territorial sea contrary to Article 7(6) of the LOSC
 - *Protest 18, 32 (UAE)*
- xiv) Protest against claim to status as archipelagic State
 - *Protest 5 (Vietnam, US), 9, 12, 13 (US), 30, 34*
- xv) Protest that SBL interfere with right of transit passage through a strait
 - *Protest 5 (Vietnam), 19 (Saudi Arabia, UAE)*
- xvi) Protest that SBL segments drawn to and from low-tide elevations without lighthouses or international recognition in contravention of Article 7(4) of the LOSC
 - *Protest 18, 34, 39 (US)*
- xvii) Protest against the use of islands to define internal waters where islands are not part of a valid system of SBL or closing line for a juridical bay
 - *Protest 19 (US, Germany/EU, Qatar), 35 (Germany/EU)*
- xviii) Notification that traditional and historic rights of navigation preserved in accordance with Articles 4 and 5 of the 1958 Convention and Article 8 of the LOSC despite unilateral extension of internal waters
 - *Protest 28 (Iran)*
- xix) Notification that SBL will not impact on existing legal positions
 - *Protest 32 (Egypt), 36 (Saudi Arabia)*