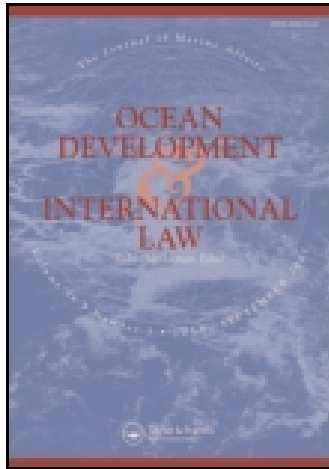


This article was downloaded by: [USAID Library]

On: 18 February 2015, At: 09:58

Publisher: Taylor & Francis

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Ocean Development & International Law

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/uodl20>

The Practice of Archipelagic States: A Study of Studies

Kevin Baumert^a & Brian Melchior^b

^a U.S. Department of State, Boulder, Colorado, USA

^b U.S. Department of State, Washington, DC, USA

Published online: 13 Feb 2015.



CrossMark

[Click for updates](#)

To cite this article: Kevin Baumert & Brian Melchior (2015) The Practice of Archipelagic States: A Study of Studies, *Ocean Development & International Law*, 46:1, 60-80, DOI: [10.1080/00908320.2015.995970](https://doi.org/10.1080/00908320.2015.995970)

To link to this article: <http://dx.doi.org/10.1080/00908320.2015.995970>

PLEASE SCROLL DOWN FOR ARTICLE

Taylor & Francis makes every effort to ensure the accuracy of all the information (the "Content") contained in the publications on our platform. However, Taylor & Francis, our agents, and our licensors make no representations or warranties whatsoever as to the accuracy, completeness, or suitability for any purpose of the Content. Any opinions and views expressed in this publication are the opinions and views of the authors, and are not the views of or endorsed by Taylor & Francis. The accuracy of the Content should not be relied upon and should be independently verified with primary sources of information. Taylor and Francis shall not be liable for any losses, actions, claims, proceedings, demands, costs, expenses, damages, and other liabilities whatsoever or howsoever caused arising directly or indirectly in connection with, in relation to or arising out of the use of the Content.

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden. Terms &

Conditions of access and use can be found at <http://www.tandfonline.com/page/terms-and-conditions>

The Practice of Archipelagic States: A Study of Studies

KEVIN BAUMERT

U.S. Department of State
Boulder, Colorado, USA

BRIAN MELCHIOR

U.S. Department of State
Washington, DC, USA

The 1982 UN Convention on the Law of the Sea contains provisions governing the maritime claims of states, including special provisions for archipelagic states. To date, 20 states have utilized these provisions by enacting archipelagic baselines, within which these states claim sovereign waters subject to the navigational rights of other states. This article systematically examines the degree to which the archipelagic claims of these states have complied with the requirements in the Law of the Sea Convention.

Keywords archipelagic states, baselines

Introduction

In 2014, as part of its *Limits in the Seas* series, the U.S. Department of State published studies assessing the maritime claims of the following 16 states: Antigua and Barbuda, the Bahamas, Cabo Verde, Comoros, the Dominican Republic, Grenada, Indonesia, Mauritius, Papua New Guinea, the Philippines, Seychelles, the Solomon Islands, Saint Vincent and the Grenadines, Trinidad and Tobago, Tuvalu, and Vanuatu.¹ As each study notes at the outset, its “purpose” is to “examine a coastal State’s maritime claims and . . . assess their consistency with international law,” according to the views of the U.S. government. These studies complement the Department of State’s previously published *Limits in the Seas* studies, including those assessing the maritime claims of Fiji, Jamaica, Maldives, and São Tomé and Príncipe.² Collectively, these 20 studies cover all claimed archipelagic states that have promulgated archipelagic baselines enclosing some or all of their islands.³ This article describes the findings of these studies and assesses the degree to which those states claiming archipelagic status under the law of the sea have conformed to the requirements of international law in promulgating their maritime claims.⁴

Received 17 October 2014; accepted 3 November 2014.

Address correspondence to Kevin Baumert, U.S. Department of State, National Geophysical Data Center, 325 Broadway E/GC3, DSRC Room 1B-113, Boulder, CO 80305, USA. E-mail: baumertka@state.gov

This article not subject to U.S. copyright law.

Color versions of one or more of the figures in the article can be found online at www.tandfonline.com/uodl.

Part IV of the 1982 UN Convention on the Law of the Sea

Prior to the conclusion of the Third UN Conference on the Law of the Sea (UNCLOS III) in 1982, the practice and views of states differed regarding whether international law permitted archipelagic states to make maritime claims that differed from those of other coastal states. States such as Indonesia and the Philippines sought a special regime for archipelagic states that would enable them to assert sovereignty over waters that, together with their islands and other natural features, form an “intrinsic geographical, economic and political entity.”⁵ Some larger maritime states, including the United States, were willing to recognize the concept of archipelagic states only if its application met certain criteria and would not impede the rights of navigation and overflight.⁶

Part IV of the 1982 UN Convention on the Law of the Sea (LOS Convention), entitled Archipelagic States, represents the successful balance that was ultimately achieved.⁷ Part IV, which includes Articles 46 to 54, provides that the sovereignty of an archipelagic state extends to the waters enclosed by its archipelagic baselines and sets forth rules relating to the rights of passage of foreign ships and aircraft within such archipelagic waters. Part IV further defines what constitutes an “archipelagic State” and provides rules governing the drawing of archipelagic baselines.

The provisions contained in Part IV of the LOS Convention now apply as a matter of treaty law as between its states parties, and the United States has taken the view that these provisions reflect customary international law binding on all states, even those that have not yet joined the Convention.⁸ This view appears uncontroversial, as archipelagic states likewise consider these provisions as reflecting customary international law.⁹ Accordingly, the basis of analysis for the U.S. Department of State’s *Limits in the Seas* studies is the provisions contained in Part IV of the LOS Convention. The implementation of these provisions by states is described below.

Article 46: Definition of Archipelagic State

Article 46 of the Convention provides that an “archipelagic State” means “a State constituted wholly by one or more archipelagos and may include other islands.” An “archipelago” is defined as “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.” Article 47 provides that only an “archipelagic State may draw straight archipelagic baselines.”

Because continental states are not “constituted *wholly* by one or more archipelagos . . .,” they are not archipelagic states and therefore may not draw archipelagic baselines around their offshore islands. The United States, for instance, may not draw baselines enclosing its offshore archipelagos such as the Hawaiian Islands. The United States has protested such baselines enacted by other continental states, including Ecuador’s baselines around the Galapagos Islands¹⁰ and China’s baselines around the Senkaku Islands and the Paracel Islands.¹¹

The Department of State’s *Limits in the Seas* studies questioned the archipelagic state status of only one country that has drawn archipelagic baselines. Specifically, the study for the Dominican Republic noted that the United States and some other countries have not accepted Dominican Republic’s claim to be an archipelagic state,¹² and identified the Dominican Republic’s maritime boundary agreement with the United Kingdom (on behalf of the Turks and Caicos Islands), concluded in 1996 but not in force,¹³ as potentially undermining

the claim of Dominican Republic in 2007 to be an “archipelagic State.”¹⁴ Because the Dominican Republic’s claimed archipelagic baseline infringes on this earlier concluded maritime boundary, it appears inconsistent with the apparent Dominican Republic view that its “islands waters and other natural features” enclosed by its archipelagic baselines are “so closely interrelated that [they] form an intrinsic geographical, economic and political entity, or which historically have been regarded as such,” as specified in Article 46.¹⁵

Article 47: Archipelagic Baselines

Article 47, consisting of nine paragraphs, is the heart of Part IV. It sets out the geographic criteria to which archipelagic states must adhere when establishing archipelagic baselines. As indicated in Table 1, the archipelagic baseline systems enacted by 13 of the 20 states examined conform to the provisions of Article 47 (Table 1). Three states—Mauritius, Seychelles, and the Solomon Islands—have enacted more than one archipelagic baseline system (Table 1).¹⁶ In these instances, to be consistent with the LOS Convention, each archipelagic baseline system must satisfy the criteria set forth in Article 47. These three states have mixed results, each with one archipelagic baseline system that failed to meet the criteria set forth in Article 47, but also each having at least one system that did meet these requirements. Table 1 also indicates the water area enclosed by the states’ respective archipelagic baselines. These archipelagic waters are sea areas over which the archipelagic state exercises sovereignty, subject to rules set forth in the LOS Convention.¹⁷ Of particular note, Indonesia’s archipelagic waters are greater than all other archipelagic states’ combined. The remainder of this section provides detail regarding the application of the criteria found in Article 47, including those instances where certain states have failed to meet its requirements, and thus have not properly established archipelagic waters under international law.

Paragraph 1: The Water-to-Land Area Ratio and Other Criteria

Article 47(1) provides that:

[a]n archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

This provision is essential to balancing the desire of archipelagic states to expand their waters with the interests of the international community in preventing vast swaths of ocean space coming under coastal state sovereignty. Thus, the baseline system must enclose an area of sea at least as large as the area of enclosed land (1 to 1 ratio), but not more than nine times that land area (9 to 1 ratio).

The practice of several states is notable with respect to the requirement in paragraph 1 that the baselines “join[ing] the *outermost points of the outermost islands* and drying reefs of the archipelago.” Although the Comoros’ archipelagic baseline system fell within the permissible range of water-to-land area, it drew its baselines using a feature, Banc Vailheu, that is not among “the outermost islands or drying reefs of the archipelago.”¹⁸ Banc Vailheu, shown in Figure 1, is neither an island nor a low-tide elevation, but rather an underwater feature. There does not appear to be any land or drying reefs in the vicinity of Banc Vailheu.

Table 1
Summary of archipelagic claims

State	No. of baseline systems	Valid?	Water area enclosed (approx. sq. km)	Notable issue(s)
Antigua & Barbuda	1	Yes	3,182	Art. 50; Art. 53
The Bahamas	1	Yes	218,292	Art. 47(7)
Cabo Verde	1	Yes*	35,963	Art. 47(8)
Comoros	1	No	15,612	Art. 47(1); Art. 47(3); sovereignty dispute
Dominican Republic	1	No	49,709	Art. 46; Art. 47(4); Art. 53
Fiji	1	Yes	130,470	Art. 50
Grenada	1	Yes	555	Art. 50
Indonesia	1	Yes	3,081,756	Art. 47(2); Art. 47(5); Art. 47(6); Art. 51; Art. 53
Jamaica	1	Yes	22,200	
Maldives	1	No	53,000	Art. 47(2); Art. 53
Mauritius	2	1 Yes, 1 No	7,285	Art. 47(1); sovereignty dispute; Art. 50; Art. 53
Papua New Guinea	1	1 No	565,551	Art. 47(1); Art. 47(2)
Philippines	1	Yes	589,739	Art. 49; Art. 53
São Tomé & Príncipe	1	Yes	3,886	
Seychelles	4	3 Yes**, 1 No	7,309	Art. 47(1); Art. 47(4); Art. 47(7); Art. 53
Solomon Islands	5	4 Yes, 1 No	128,104	Art. 47(1); Art. 47(7)
St. Vincent & Grenadines	1	Yes	1,482	Art. 50; Art. 53
Trinidad & Tobago	1	Yes	7,134	Art. 47(4); Art. 53
Tuvalu	1	Yes	3,426	Art. 50
Vanuatu	1	Yes	71,114	Art. 53

*Except for the apparent failure to specify a geodetic datum.

**Except for use of extraneous basepoints, discussed in text.

Papua New Guinea likewise does not meet the requirement in paragraph 1 that its baselines “join[ing] the outermost points of the outermost islands . . . of the archipelago.” Specifically, the points do not connect to form a single enclosed system of land and water because the starting and ending points of the archipelagic baseline system do not connect to the island of New Guinea. As shown in Figure 2, point 1 is approximately 40 nautical miles (nm) from the nearest point on the island of New Guinea and 110 nm from the northern terminus of the Papua New Guinea–Indonesia land border. The final baseline point, point 78, is on Suau Island approximately 1 nm from the nearest point on the island of New Guinea.

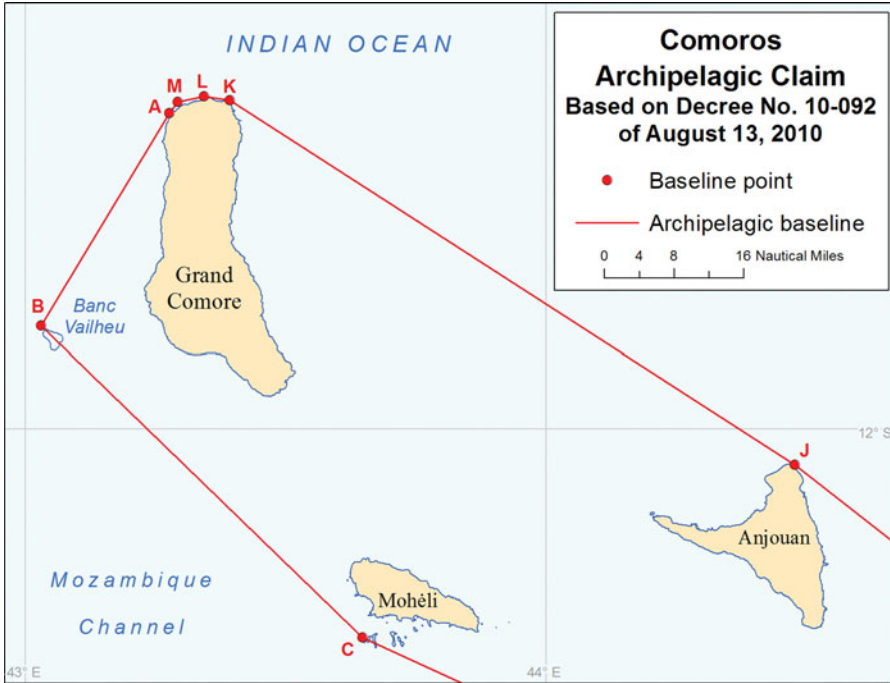


Figure 1. Comoros' archipelagic baselines near Banc Vailheu.

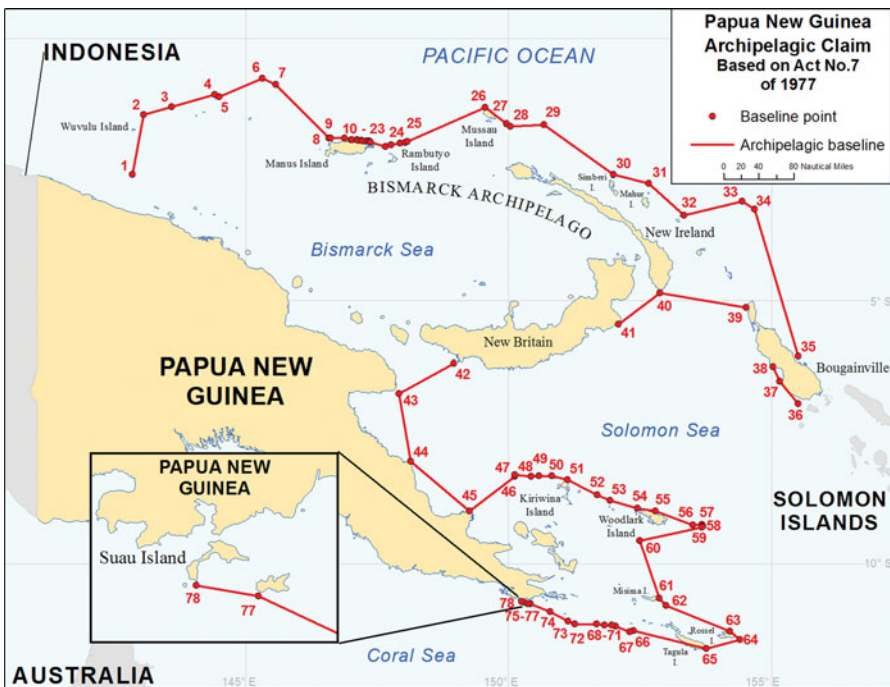


Figure 2. Papua New Guinea's archipelagic baselines near the island of New Guinea.

The reference in paragraph 1 to “main islands” creates an interpretive challenge, as this term is not defined in Part IV of the Convention. This term could have a variety of meanings, including “the largest islands, the most populous islands, the most economically productive islands, or the islands which are pre-eminent in an historical or cultural sense.”¹⁹ The 20 states examined appear to have included what could reasonably be considered the “main islands” within their archipelagic baseline systems. Interesting observations can nevertheless be made regarding how this term applies. For instance, Mauritius’ main island—the island of Mauritius—is not included in its archipelagic baseline system, although not necessarily in a manner that is inconsistent with Article 47(1). The reference in paragraph 1 to “main islands” appears to refer to the main island of an archipelago, and not of an archipelagic state, and Mauritius, which consists of multiple archipelagos, has not attempted to draw archipelagic baselines around the archipelago within which the island of Mauritius lies.²⁰

Paragraph 2: The Length of the Baseline Segments

Although Article 47 does not impose a limit on the cumulative length of archipelagic baselines, paragraph 2 does limit the lengths of individual baseline segments. Specifically, “[t]he length of [archipelagic] baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.” Most states met this criterion, perhaps because it is so objectively verifiable. Two exceptions are Maldives and Papua New Guinea. With respect to Maldives, its archipelagic baseline system includes three baseline segments that exceed 100 nm in length (segments 14–15, 28–29, and 36–37). For this to be acceptable, the Maldives baseline system would need to have 100 segments, which would make the three segments that exceed 100 nm equal to 3% of the total number of segments. However, the baseline system is composed of only 37 segments, which permits only 1 segment to be over 100 nm long.

Papua New Guinea’s archipelagic baseline system contains a baseline segment (segment 34–35) that is 174.78 nm in length, which exceeds the maximum length permitted by paragraph 2. Accordingly, like Maldives, Papua New Guinea does not meet the requirements of Article 47(2) of the LOS Convention.

Indonesia’s archipelagic baseline system, which is the longest in the world, is notable with respect to paragraph 2. Indonesia has five baseline segments that exceed 100 nm, which is within the permissible range because its archipelagic baseline system contains 192 segments (3% of 192 is 5.76). However, Indonesia’s baseline segments are not all “straight archipelagic baselines” as that term is used in Article 47(1); 160 are straight archipelagic baselines, and the remaining 32 are normal baseline segments (i.e., stretches of low-water line along the coast). Thus, if one interprets the term “baselines” in paragraph 2 to refer only to “straight archipelagic baselines,” Indonesia would be permitted only four segments exceeding 100 nm (3% of 160 is 4.8). This interpretation, however, would seem to have the perverse effect of penalizing an archipelagic state for using the normal baseline and encouraging the expansive use of straight archipelagic baselines in areas where they may not be appropriate. It is also notable that Indonesia’s archipelagic baseline system includes three land boundaries. The analysis for Indonesia’s *Limits in the Seas* study did not consider land boundaries to be baselines within the meaning of Article 47, and thus the land boundaries did not contribute to paragraph 2 calculations.

Paragraph 4: Use of Low-Tide Elevations

Paragraph 4 of Article 47 prohibits the drawing of baselines to or from a low-tide elevation (LTE), which the Convention defines as a “naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.”²¹ Paragraph 4 contains two exceptions where LTEs may be used: (1) for “lighthouses or similar installations which are permanently above sea level . . .” and (2) “where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.”

Most states have drawn their archipelagic baselines using only islands and, therefore, have not implicated paragraph 4. Some exceptions are notable, however. First, the Dominican Republic has claimed eight baseline segments that appear to be drawn from points on LTEs. These are not permissible because there are no lighthouses or similar installations on these LTEs and they are not located within the territorial sea of the nearest island.²² In contrast, Trinidad and Tobago provides an example of a country that utilized an LTE, but in a permissible manner; its baseline point 5 is on an LTE situated within 12 nm of the nearest island, as permitted by Article 47(4).

Although Seychelles has not drawn baselines using LTEs, in all four of its archipelagic baseline systems it has used a group of evenly spaced baseline points that seem to be placed in open water where there are no islands, drying reefs, or low-tide elevations.²³ (See Figure 3.) This is not permitted by Article 47. If the baseline system must join “the outermost points of the outermost *islands and drying reefs* of the archipelago” (paragraph 1; emphasis added), and LTEs may be used only in limited circumstances (paragraph 4), then *a fortiori*, points located in open water may not be used. However, if Seychelles were to remove these points, its archipelagic baseline systems could still conform to the requirement that none of the baseline segments exceed 100 nm in length (paragraph 2). Likewise, because these open water points form a straight line, their removal would still allow the baseline system to “not depart to any appreciable extent from the general configuration of the archipelago” (paragraph 4), unlike Comoros’ use of a basepoint above Banc Vailheu. Thus, it is not apparent why Seychelles included these extraneous baseline points, and their removal would entail no reduction in claimed archipelagic waters and would enable greater compliance with Article 47.

Paragraphs 5 and 6: Neighboring States

Paragraph 5 of Article 47 provides that the “baselines shall not be applied . . . in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.” There appear to be few areas in the world where this scenario would occur,²⁴ and most states have not drawn archipelagic baselines in a manner that implicates paragraph 5. The practice of Indonesia appears most relevant. In 2012 Timor-Leste objected to two of Indonesia’s archipelagic baseline segments on the basis of their cutoff effect.²⁵ These two segments—TD112A—TD113 and TD113B—TD114—can be seen in Figure 4. Accordingly, Indonesia may need to address with Timor-Leste the effect that these two archipelagic baseline segments have on Timor-Leste’s maritime claims.

Although not framed in terms of cut off, paragraph 6 of Article 47 addresses a related situation; namely where “a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighboring State. . . .” In such a situation, “existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue to be respected.” This situation is also addressed in Article 51, which requires

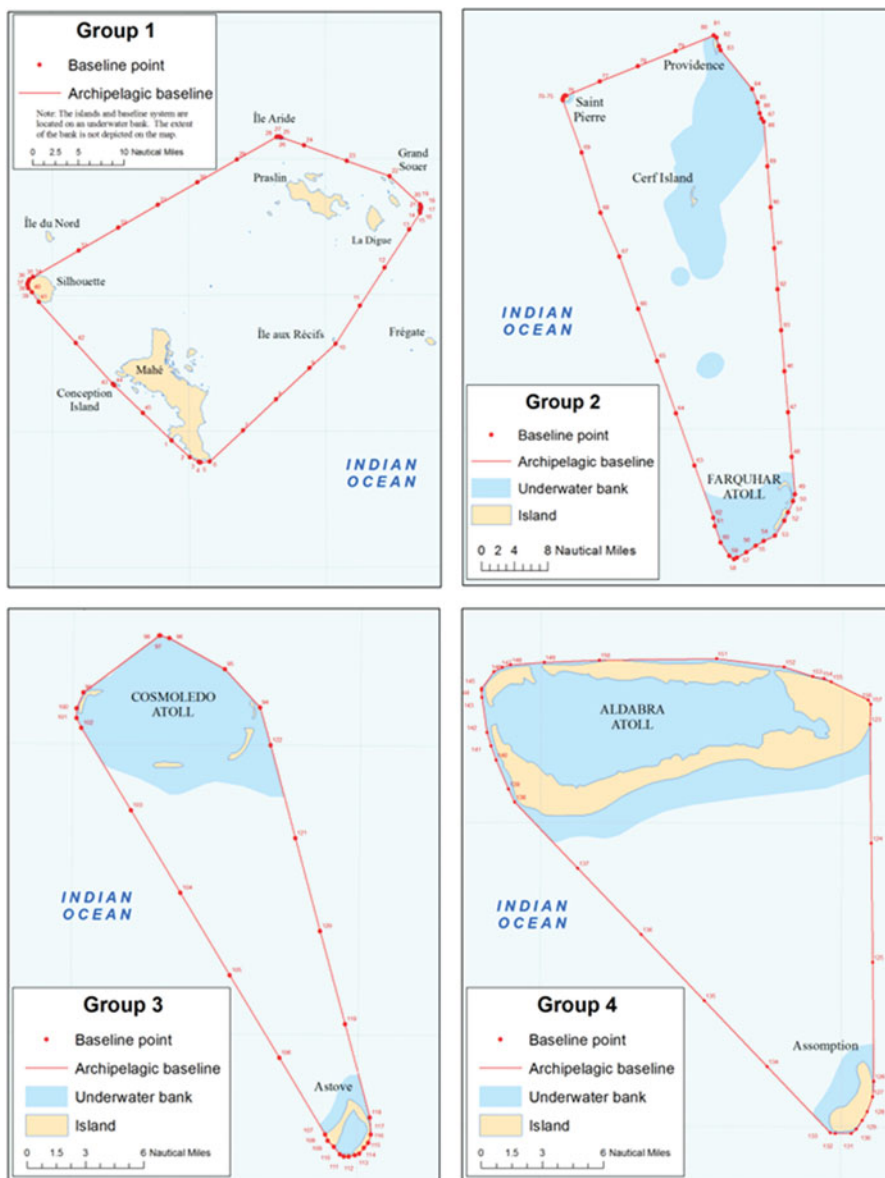


Figure 3. Seychelles' claimed archipelagic baselines.

an archipelagic state to “respect existing agreements with other States” and “recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. . . .” These traditional fishing rights and other legitimate activities are to be “regulated by bilateral agreements.”

Both Article 47(6) and Article 51 were drafted to address the unusual geographic situation between Indonesia and Malaysia, which have concluded a bilateral agreement regarding the relevant area.²⁶ As described in a 1982 Agreement, “part of the archipelagic waters of the Republic of Indonesia lies between East and West Malaysia.”²⁷ The agreement provides that Indonesia will continue to respect existing rights and other legitimate interests

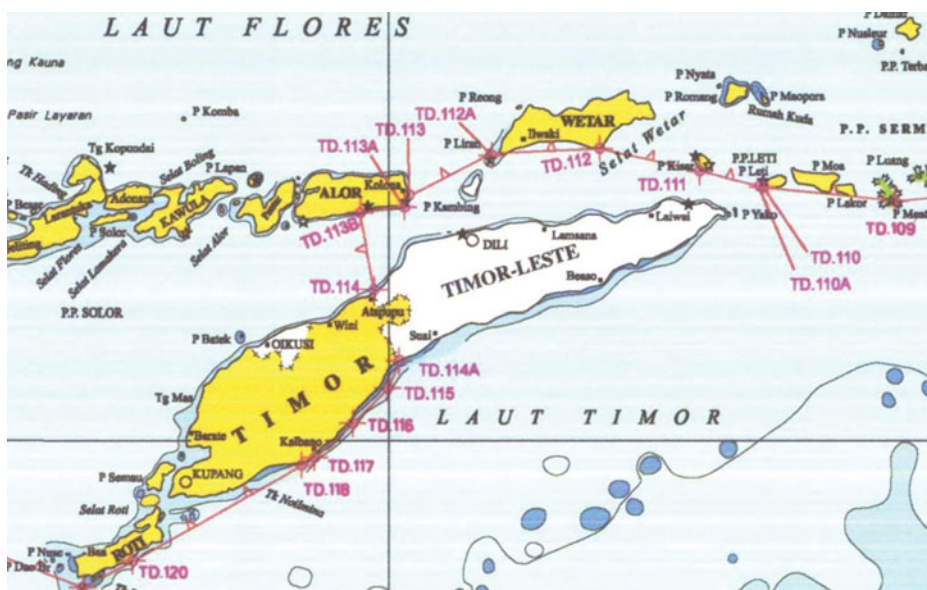


Figure 4. Indonesia's claimed archipelagic baselines near Timor-Leste. (Source: Indonesia's illustrative map accompanying the communication of its archipelagic baseline coordinates, available from DOALOS, at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/idn_mzn67_2009.jpg)

of Malaysia including, for instance, those “relating to the existence, protection, inspection, maintenance, repair and replacement of submarine cables and pipelines which are already in position. . . .”²⁸ Other rights mentioned in the Agreement include continued exercise of traditional fishing, navigation and overflight passage, coordination on search and rescue, and cooperation in scientific research, among others.

Paragraph 7: The Water-to-Land Area Ratio, Revisited

Paragraph 7 of Article 47 relates to the water-to-land area ratio, discussed above. It provides that:

[f]or the purpose of computing the ratio of water to land . . . land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

The second part of this provision, which can be difficult to apply, was included in the text to accommodate the concerns of the Bahamas with its characteristically large and shallow underwater banks, which appear to be an example of “steep-sided oceanic plateau[s].”²⁹ Although these banks are submerged, paragraph 7 states that land area may include such waters; therefore, a state is permitted, but not required, to consider such waters as land area for the purpose of computing the water-to-land area ratio in Article 47(1). When

assessing the ratio for the Bahamas, the islands and most—but not all—of the underwater banks were considered as land.³⁰

The baseline claims of Seychelles implicate further nuances of paragraph 7. Although the water-to-land area ratios for three of Seychelles, archipelagic baselines systems—Groups 1, 2, and 3—exceed 9:1, all of these island groups are located above underwater banks. But this does not necessarily mean that Seychelles can utilize the flexibility afforded by paragraph 7. For instance, although Group 1 is located above Seychelles Bank, it does not appear as though Seychelles Bank is “enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau” as described in Article 47(7). Group 1 therefore cannot use paragraph 7 and, with a water-to-land area ratio of 10.58 to 1, does not meet the ratio standard of paragraph 1. The banks in Groups 2 and 3, on the other hand, are largely enclosed by islands and drying reefs on their perimeter, and could meet the water-to-land area ratio by using paragraph 7. For these groups, it would be appropriate for Seychelles to clarify how, if at all, it has attempted to utilize the provisions of paragraph 7.

The Solomon Islands’ Ontong Java Atoll presents a third interesting potential application of paragraph 7. As shown in Figure 5, the Solomon Islands drew archipelagic baselines around this small atoll and, with segment 54–55, attempted to enclose waters outside of the atoll as part of its archipelagic waters. Considering that paragraph 7 may allow the lagoon within the atoll to be considered land or water, the *Limits in the Seas* study for Solomon Islands includes water-to-land area calculations under the assumption that the lagoon is considered as water area (29.9:1 ratio) and, alternatively, as land area (0.29:1). Neither approach meets the ratio requirement set forth in Article 47(1). An alternative approach, which was not explored in Solomon Islands’ *Limits in the Seas* study, could be to consider as land the waters within the fringing reefs, but not the waters within the lagoon.

Although it can be argued that single isolated atolls comprised of multiple islands, such as the Solomon Islands’ Ontong Java Atoll and Papua New Guinea’s Nukumanu Atoll and Tauu Islands,³¹ meet the definition of an archipelago under Article 46(b) of the Convention, a more appropriate baseline rule for such features would seem to be Article 6, entitled Reefs. Article 6 applies “[i]n the case of islands situated on atolls or of islands having fringing reefs” and provides that “the baseline for measuring the breadth of the territorial sea is

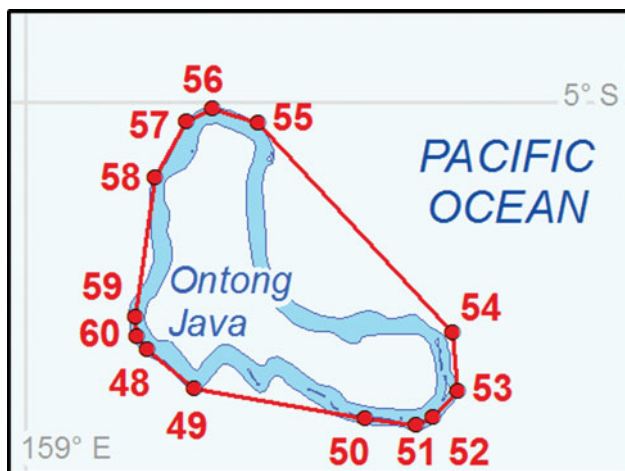


Figure 5. Solomon Islands’ claimed archipelagic baselines around Ontong Java Atoll.

the seaward low-water line of the reef. . .” Since most atolls possess one or more channels through the reefs, it appears that Article 6 permits states to draw closing lines across such channels or other openings in the reef. Thus, the waters enclosed within such features would be internal, rather than archipelagic, waters.³² Tuvalu provides a good example of a state that has used both approaches in a defensible manner. Tuvalu has enclosed some atolls, such as Funafuti, within archipelagic baselines when the atoll is part of a larger archipelago, but Tuvalu has used Article 6 for single isolated atolls such as Nui.³³

Paragraphs 8 and 9: Technical and Administrative Requirements

Paragraph 8 of Article 47 provides that the baselines “shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.” Paragraph 9 requires that the “archipelagic State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.”

These requirements, which are important for communicating archipelagic claims to the international community, have been largely complied with. Cabo Verde appears to be a partial exception. Although Cabo Verde has deposited the geographic coordinates of its baselines with the UN secretary-general, in doing so it appears as though Cabo Verde did not specify the geodetic datum for the coordinates as noted in Article 47(8). The geographic calculations and illustrative map in *Limits in the Seas* No. 129, which assessed Cabo Verde’s claims, assumed its geographic coordinates were based on the WGS84 datum.

Enclose Some Islands or All?: The Use of Other Baseline Methods

Considering that an archipelagic state is comprised of “. . . one or more archipelagos and may include other islands,” it seems apparent that an archipelagic state may enclose all of its islands within archipelagic baselines, or not, depending on its circumstances. Twelve of the 20 states examined—Antigua and Barbuda, the Bahamas, Cabo Verde, Comoros, the Dominican Republic, Grenada, Indonesia, Jamaica, Maldives, São Tomé and Príncipe, Saint Vincent and the Grenadines, and Trinidad and Tobago—appear to have enclosed all of their islands within their claimed baselines. The remaining eight states examined—Fiji, Mauritius, Papua New Guinea, the Philippines, Seychelles, the Solomon Islands,³⁴ Tuvalu, and Vanuatu—did not enclose all of their islands within archipelagic baselines, either because they would have been unable to meet the requirements of Article 47 (e.g., the water-to-land area ratio or the lengths of baseline segments) or for other reasons.

In these instances, states used other baseline methods for islands located outside of the claimed archipelagic baselines. This includes the various methods prescribed in the LOS Convention, such as the normal baseline (low-water line, Article 5), reefs (Article 6), straight baselines (Article 7), river mouth closing lines (Article 9), and bay closing lines (Article 10). Mauritius is particularly notable in this regard, having used all of the baseline methods referred to above.³⁵

Article 49: Legal Status of Archipelagic Waters

Article 49 of the LOS Convention provides in part that “[t]he sovereignty of an archipelagic State extends to the waters enclosed by its archipelagic baselines drawn in accordance with Article 47” and, further, that “[t]his sovereignty is exercised subject to [Part IV],” including

its provisions related to the rights of foreign ships and aircraft operating within “archipelagic waters.”

Nineteen of the 20 states examined have properly articulated the legal character of the waters within their claimed archipelagic baselines. The situation of the Philippines, however, is complex. In 2009, the Philippines enacted legislation establishing its archipelagic baselines;³⁶ however, this legislation did not clarify whether the waters within the baselines are archipelagic waters. Such a clarification would have been warranted in light of Article 1 of the Philippine Constitution, which states that “[t]he waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the *internal waters* of the Philippines.”³⁷ On signing the LOS Convention in 1982 and again in ratifying the Convention in 1984, the Philippines stated: “The concept of archipelagic waters [under the LOS Convention] is similar to the concept of internal waters under the Constitution of the Philippines.”³⁸ The United States and other countries have protested this understanding, including on the grounds that archipelagic waters, unlike internal waters, are subject to the regimes of innocent passage and archipelagic sea-lanes passage.³⁹

The Philippines has stated that it “intends to harmonize its domestic legislation with the provisions of the Convention” and that it “will abide by the provisions of the said Convention.”⁴⁰ Although such legislation has not yet been enacted,⁴¹ the Philippine Supreme Court has unanimously upheld the constitutionality of the Philippines’ archipelagic baseline law and recognized that Philippine sovereignty over the waters within the baselines is subject to the rights of innocent passage and archipelagic sea-lanes passage, as provided for under international law.⁴²

Article 50: Delimitation of Internal Waters

As provided for in Article 50 of the LOS Convention, “[w]ithin its archipelagic waters, the archipelagic State may draw closing lines for the delimitation of internal waters, in accordance with articles 9, 10 and 11” (pertaining to mouths of rivers, bays, and ports, respectively). For instance, if a juridical bay exists on an island that is enclosed by archipelagic baselines, a closing line may be drawn across the mouth of the bay, thus enclosing internal waters within archipelagic waters. It appears that 6 of the 20 states examined—Antigua and Barbuda, Fiji, Grenada, Mauritius, Saint Vincent and the Grenadines, and Tuvalu—have delimited internal waters within their archipelagic waters. Additional states, however, have legislation that authorizes or describes rules for the delimitation of internal waters. Papua New Guinea’s National Seas Act, for instance, contains “principles” for delimiting the internal waters of bays and rivers.⁴³ In the case of Papua New Guinea and some other states, however, it does not appear as though the delimitation of internal waters has been accomplished by publishing a “list of geographical coordinates of points” or depiction “on charts of a scale or scales adequate for ascertaining their position,” as specified in Article 16 of the LOS Convention.

Articles 52 and 53: Navigation

As discussed above, the drafters of the LOS Convention sought to balance the expansion of an archipelagic state’s sovereign waters with provisions preserving the navigational rights and freedoms of foreign ships and aircraft. In doing so, they developed the right of archipelagic sea-lanes passage, an important new navigational regime that the United States has referred to as “an indispensable [right] which is a necessary concomitant to an

archipelagic state juridical regime.”⁴⁴ The following are the key navigational provisions in Part IV of the LOS Convention.

- Innocent passage—“[S]hips of all States enjoy the right of innocent passage through archipelagic waters,” in accordance with other Convention provisions.⁴⁵
- Archipelagic sea-lanes passage—The archipelagic state “may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.”⁴⁶ Within these sea lanes and air routes, “[a]ll ships and aircraft enjoy the right of archipelagic sea lanes passage,”⁴⁷ which is defined as “the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit. . . .”⁴⁸

Article 53 contains procedures for designating archipelagic sea-lanes. Specifically, an archipelagic state may designate such sea-lanes, and also traffic separation schemes, provided that “an archipelagic State shall refer [such] proposals to the competent international organization with a view to their adoption.”⁴⁹ As the competent international organization, the International Maritime Organization (IMO) may “adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe, or substitute them.”⁵⁰ Importantly, “[i]f an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.”⁵¹

To date, only one archipelagic state—Indonesia—has designated archipelagic sea-lanes and air routes. In 1998, the IMO adopted three archipelagic sea-lanes,⁵² which the government of Indonesia later designated in its Regulation No. 37 of 2002.⁵³ These archipelagic sea-lanes run in the north-south direction; no east-west routes have been submitted to the IMO for adoption. In addition to designating three archipelagic sea-lanes, Indonesia’s domestic regulation prescribes in detail the rights and obligations of foreign ships and aircraft exercising the right of archipelagic sea-lanes passage. While generally conforming to the Convention’s provisions, Article 3 of Regulation No. 37 appears to limit the exercise of archipelagic sea-lanes passage to designated sea-lanes.⁵⁴

Considering that Indonesia has designated only three north-south routes, such a restriction is not permitted by Article 53 of the LOS Convention. Article 53(4) states that “[archipelagic] sea lanes and air routes . . . shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters . . . provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.” In adopting the three north-south routes, the IMO stipulated, and Indonesia confirmed at the time of adoption by the IMO, that this was a partial designation and that the provisions of Article 53(12) of the LOS Convention continued to apply pending adoption of designations for all normal passage routes.⁵⁵ Therefore, the right of archipelagic sea-lanes passage may be exercised within the three designated routes and also within other routes normally used for international navigation.⁵⁶

An important feature of Article 53, as discussed above, is that archipelagic states are not permitted to unilaterally establish archipelagic sea lanes. Rather, they must first work with other states through the IMO for approval. The situation of the Philippines is instructive. In 2011, the Philippine administration introduced legislation to establish an archipelagic sea-lanes passage regime, including three archipelagic sea-lanes.⁵⁷ This draft legislation did not

recognize the role of the IMO, as it would have established the sea-lanes without their prior adoption through the IMO. Furthermore, the legislation was not consistent with Article 53(12) of the LOS Convention since it would have permitted the exercise of archipelagic sea-lanes passage through only three routes and precluded the exercise of archipelagic sea-lanes passage through many other routes normally used for international navigation. Accordingly, the scheme contemplated in this legislation, which has not been enacted into law, would have established a partial, not a complete, system of archipelagic sea-lanes.

Because only one archipelagic state—Indonesia—has designated archipelagic sea-lanes and air routes, the predominant worldwide practice is for foreign ships to have the right to exercise archipelagic sea-lanes passage “through the routes normally used for international navigation.”

The legislation of the following 12 archipelagic states appears to recognize the right of archipelagic sea-lanes passage, although not always using the precise terminology found in Article 53: Antigua and Barbuda, the Bahamas, Fiji, Grenada, Indonesia, Jamaica, São Tomé & Príncipe,⁵⁸ Seychelles, the Solomon Islands, Saint Vincent and the Grenadines, Trinidad and Tobago,⁵⁹ and Tuvalu. The Maldives legislation partially recognizes this right, in that it includes ships but not aircraft.⁶⁰ With respect to the Dominican Republic, the recognition of the right of archipelagic sea-lanes passage is unclear. Its legislation refers to innocent passage (and not archipelagic sea-lanes passage), yet it appears to cover overflight rights, which are not part of the regime of innocent passage but are part of archipelagic sea-lanes passage.⁶¹ The legislation of the following six archipelagic states appears to contain no mention of the right of archipelagic sea-lanes passage: Cabo Verde, Comoros, Mauritius, Papua New Guinea, the Philippines, and Vanuatu. However, the absence of express legislative recognition should not necessarily be construed as nonrecognition of the right, considering that a state may respect the passage right in practice even without legislative enactment. With respect to the Philippines, for instance, its Supreme Court has taken judicial notice of the right to archipelagic sea-lanes passage.⁶²

Even while recognizing relevant navigational rights, some states nevertheless contain impermissible restrictions on the passage of ships and aircraft through archipelagic waters and territorial seas that are not permitted by the LOS Convention. For instance, the laws of Antigua and Barbuda,⁶³ Maldives,⁶⁴ Seychelles,⁶⁵ Saint Vincent and the Grenadines,⁶⁶ and Vanuatu⁶⁷ require that foreign warships receive permission from their respective governments prior to navigating in their territorial sea or archipelagic waters. The laws of the Dominican Republic,⁶⁸ Mauritius,⁶⁹ Maldives,⁷⁰ and Seychelles⁷¹ contain similar requirements or prohibitions for ships carrying nuclear or other inherently dangerous or noxious substances. Although the LOS Convention contains provisions that specifically relate to the innocent passage of warships⁷² and nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances,⁷³ the United States considers that neither these provisions nor any other provision of the Convention permits a coastal state to condition another state’s exercise of the rights of innocent passage or archipelagic sea-lanes passage on its prior authorization. The U.S. practice is to protest such restrictions via diplomatic note and operational assertion by U.S. naval vessels.⁷⁴

Sovereignty Disputes

Archipelagic claims can be complicated by sovereignty disputes over islands within the claimed archipelagic baselines. The extent of international recognition of such archipelagic baselines will depend on the degree to which states recognize, or do not recognize, the sovereignty claimed over the disputed island(s). In two instances—Comoros and

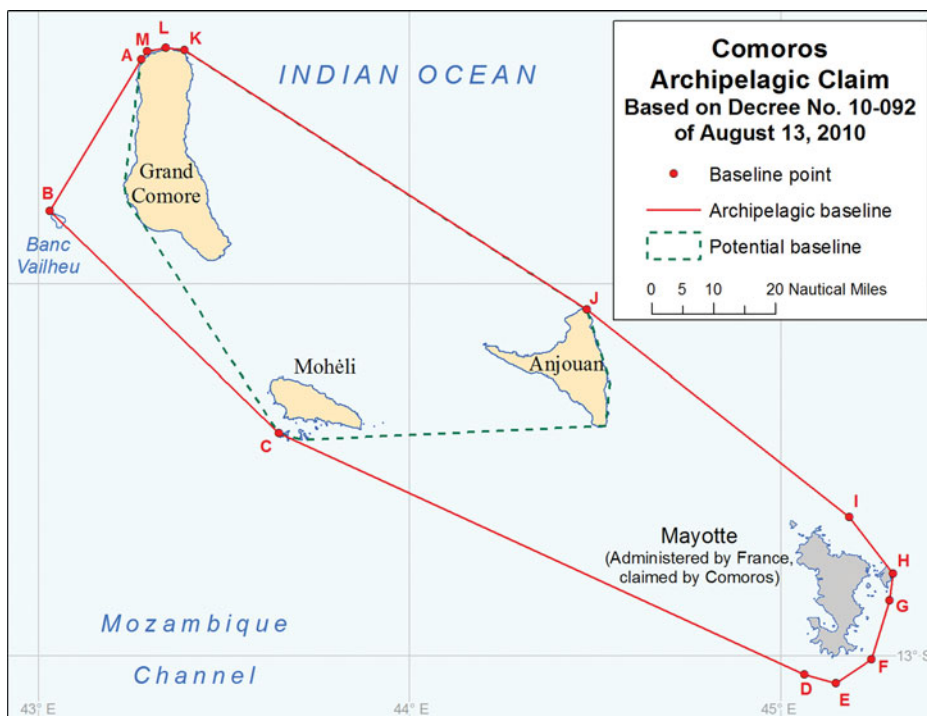


Figure 6. Comoros' claimed archipelagic baselines and a potential alternative baseline.

Mauritius—archipelagic baselines have been established that enclose an island or group of islands also claimed by another state.

Comoros claims Mayotte, the sovereignty of which is contested with France, and has drawn its archipelagic baselines to enclose Mayotte along with other undisputed islands belonging to Comoros. (See Figure 6.) France, which administers Mayotte as a Department and region of France, has protested this use of baseline points on Mayotte as “not compatible with the status of Mayotte and . . . without legal effect.”⁷⁵ In December 2013, France promulgated baselines, including straight baselines and bay closing lines, from which the territorial sea of Mayotte is measured.⁷⁶ Thus, Mayotte is subject not only to conflicting sovereignty claims, but also to conflicting and inconsistent baseline and maritime claims enacted by France and Comoros. As depicted in Figure 6, it appears that Comoros' archipelagic baselines could still conform to the Convention if Mayotte (and Banc Vailheu, which is submerged) were excluded.⁷⁷

Second, Mauritius claims the British Indian Ocean Territory, an overseas territory of the United Kingdom, as the Chagos archipelago and has drawn archipelagic baselines around these islands. This claim has been protested by the United Kingdom and is likewise not recognized by the United States.⁷⁸

Conclusions

The following findings and conclusions emerge from a review of the U.S. Department of State's *Limits in the Seas* studies of archipelagic states.

First, the assessment of states' compliance with international law is aided by Part IV of the LOS Convention's many objective provisions. The water-to-land area ratio standard, the limitations on baseline segment lengths, and the use of low-tide elevations, for instance, lend themselves readily to geographical analysis. In addition to facilitating compliance assessment with the baseline requirements of Article 47, these provisions also assist states in asserting archipelagic claims that are more likely to be consistent with international law and therefore internationally recognized. There is no point, for instance, in claiming a 150 nm baseline segment since it would not enjoy international acceptance.

Second, notwithstanding the above, the interpretation and application of some provisions in Articles 46 and 47 can be challenging. For instance, how stringent of a threshold assessment should be made as to whether the area enclosed by baselines is an "archipelago," as that term is somewhat vaguely defined in Article 46(b)? What constitutes the "main islands" of an archipelago, and is it even possible to enclose an "archipelago" while excluding its main islands? For the purposes of calculating the water-to-land area ratio, what constitutes "a steep-sided oceanic plateau. . ." referred to in Article 47(7), thus enabling some water area to qualify as "land"? In some instances, resorting to the Convention's *travaux préparatoire* and expert commentary is necessary to assist in interpretation and application of certain provisions.

Third, and perhaps most importantly, irrespective of the objectivity or ambiguity in Article 47, there appears to be full convergence that the rules governing the maritime claims of archipelagic states are those contained in the LOS Convention. Most states examined are meeting the Convention's standards and, even where states do not comply fully with those standards, there is no evidence to suggest that the states in question believe that different rules apply. In other words, states are either complying with the Convention's provisions, or attempting to do so.

Fourth, where states fall short of full compliance, most shortfalls could be remedied with relatively minor changes in their archipelagic baseline systems. This is particularly the case with the archipelagic baseline systems of Comoros,⁷⁹ Maldives, Papua New Guinea, and two of the three nonconforming archipelagic baseline systems of Seychelles.

Fifth, the practice of archipelagic states is relatively underdeveloped with respect to navigation. While 20 states have asserted archipelagic baselines, only Indonesia has designated archipelagic sea-lanes, and this designation is a partial one. It might be expected that the workload of the IMO will increase with respect to the consideration and possible adoption of archipelagic sea-lanes.

Sixth, the practice of archipelagic states has evolved. Several states, such as Cabo Verde, the Philippines, and Indonesia, have updated or changed their maritime claims legislation to conform to the Convention. The practice of the United States has also been responsive to these changes, in that claims of the states previously protested by the United States are now recognized insofar as they have been updated to conform to Part IV of the Convention.

Finally, the above-noted evolution will likely continue in the future, and not just with respect to the states already examined in the State Department's *Limits in the Seas* studies. Several other states have enacted legislation indicating that they may claim archipelagic status but have not yet established archipelagic baselines,⁸⁰ and still other states may be eligible to claim such baselines around some of their islands but have not yet done so. Thus, it is likely that future studies will need to be conducted to assess both revised and entirely new archipelagic baseline claims.

Notes

1. United States, Department of State, *Limits in the Seas*, No. 128 (The Bahamas); No. 129 (Cabo Verde); No. 130 (Dominican Republic); No. 131 (Trinidad and Tobago); No. 132 (Seychelles); No. 133 (Antigua and Barbuda); No. 134 (Comoros); No. 135 (Grenada); No. 136 (Solomon Islands); No. 137 (Vanuatu); No. 138 (Papua New Guinea); No. 139 (Tuvalu); No. 140 (Mauritius); No. 141 (Indonesia); No. 142 (Philippines); and No. 144 (St. Vincent and the Grenadines), available at the *Limits in the Seas* Web site at www.state.gov/e/oes/ocns/opa/c16065.htm. The dates of publication range from 31 January 2014 to 15 September 2014. *Limits in the Seas*, No. 144 (St. Vincent and the Grenadines) is forthcoming.

2. *Limits in the Seas*, No. 101 (Fiji) (1984); No. 125 (Jamaica) (2004); No. 126 (Maldives), (2005); and No. 98 (São Tomé and Príncipe) (1983). Available at the LIS Web site, *supra* note 1. *Limits in the Seas* No. 98 analyzed the archipelagic baselines of São Tomé and Príncipe claimed under Decree-Law No. 14/78 of 1978, which was later revoked by Law No. 1/98 of 1998. The geographic coordinates of São Tomé and Príncipe's archipelagic baselines, however, appear to be unchanged in the more recent legislation. Available at the UN Division for Ocean Affairs and the Law of the Sea (DOALOS) Web site at www.un.org/Depts/los/.

3. Some states have enacted legislation indicating that they may claim archipelagic status, but have not yet established archipelagic baselines. See Kiribati, Marine Zones (Declaration) Act, 1983, Section 5; and Marshall Islands Marine Zones (Declaration) Act 1984, Section 6. Legislation available at the DOALOS Web site, *supra* note 2.

4. See also relevant prior studies, including *The Law of the Sea: Archipelagic States—Legislative History of Part IV of the United Nations Convention on the Law of the Sea* (UN Office for Ocean Affairs and the Law of the Sea, 1990); *The Law of the Sea: Practice of Archipelagic States* (UN Office for Ocean Affairs and the Law of the Sea, 1992); V. Prescott and C. Schofield, *The Maritime Political Boundaries of the World*, 2nd ed. (Martinus Nijhoff, 2005), chapter 8; M. Munavvar, *Archipelagic Regimes in the Law of the Sea* (Martinus Nijhoff, 1995); J. A. Roach and R. Smith, *Excessive Maritime Claims*, 3rd ed. (Martinus Nijhoff, 2012) chapters 9 and 13; and Center for Oceans Law and Policy, *UN Convention on the Law of the Sea 1982: A Commentary*, Vol. II (Martinus Nijhoff, 1993).

5. The Fiji, Indonesia, Mauritius, and Philippines proposals are contained in Documents A/AC.138/SC.II/L.15 and A/AC.138/SC.II/L.48 submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction in 1973, cited in *Commentary*, *supra* note 4, at 400–401.

6. See Roach and Smith, *supra* note 4, at 203.

7. U.N. Convention on the Law of the Sea, 10 December 1982, 1833 *U.N.T.S.* 397.

8. See, for example, Letter dated April 4, 1989, David H. Small, Assistant Legal Adviser, U.S. Department of State, in *Digest of United States Practice in International Law 1981–1988*, at 2061:

Although the 1982 Law of the Sea Convention is not yet in force, the archipelagic provisions reflect customary international law and codify the only rules by which a nation can now rightfully assert an archipelagic claim. Recognition of Indonesia's archipelagic claim by the United States in 1986 and reaffirmed in 1988 was conditioned on Indonesia's commitment that its claim was then and would be in the future applied toward other States and their nationals in full conformity with international law.

See also Roach and Smith, *supra* note 4, at 372 citing a U.S. diplomatic note addressed to the government of the Philippines referring to “customary international law, as reflected in the 1982 Law of the Sea Convention. . . .”

9. That many archipelagic states enacted archipelagic baselines prior to the entry into force of the LOS Convention (Antigua and Barbuda, Cabo Verde, Fiji, Grenada, Indonesia, the Philippines, São Tomé and Príncipe, and the Solomon Islands) or prior to their accession to the LOS Convention (Maldives) appears to indicate that these states consider their claims to be based on customary law

and not only treaty law. The practice of archipelagic states also indicates that these states consider their claims opposable to nonparties of the LOS Convention such as the United States.

10. See *Digest 1981–1988*, supra note 8, at 1791–1792; and Roach and Smith, supra note 4, at 109.

11. See *Digest of United States Practice in International Law 2013*, at 369–370 (Senkaku Islands); and Roach and Smith, supra note 4, at 98 and note 103 (Paracel Islands and mainland). See also *Limits in the Seas*, No. 117 (Straight Baselines Claim: China) (1996), available at the LIS Web site, supra note 1.

12. *Limits in the Seas* (Dominican Republic), supra note 1, footnote 4 and accompanying text, referring to demarches from 2007, 2008 (United States and United Kingdom, and Japan), 2010 (United States and United Kingdom), and 2012 (United States and United Kingdom). For a contrary view, see S. Kopela, “2007 Archipelagic Legislation of the Dominican Republic: An Assessment,” *International Journal of Marine and Coastal Law* 24 (2009): 501–533.

13. Agreement Between United Kingdom and the Dominican Republic Concerning the Delimitation of the Maritime Boundary Between the Dominican Republic and the Turks and Caicos Islands, 2 August 1996, not in force, available at www.marineregions.org/documents/DOM-GBR1996TC.pdf.

14. *Limits in the Seas* (Dominican Republic), supra note 1, footnote 12 and accompanying text.

15. *Ibid.*

16. Although Part IV of the LOS Convention does not explicitly state that archipelagic states can draw separate systems of archipelagic baselines around different groups of islands, the definition of an “archipelagic state” in Article 46(a) implies that separate systems of baselines are permissible. For further discussion, see *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea* (UN Office for Ocean Affairs and the Law of the Sea, 1989), at 37; and R. R. Churchill and A. V. Lowe, *The Law of the Sea*, 3rd ed. (Manchester University Press, 1999), at 125.

17. LOS Convention, supra note 7, art. 49.

18. The use by Comoros of a baseline point on Banc Vailheu is also inconsistent with LOS Convention Article 47(3), which requires that the baselines “not depart to any appreciable extent from the general configuration of the archipelago.” Banc Vailheu is more than 10 nm from the closest point on the island of Grand Comore. See Figure 1.

19. *Baselines*, supra note 16, at 35. See also Churchill and Lowe, supra note 16, at 124.

20. For discussion, see *Commentary*, supra note 4, at 430.

21. LOS Convention, supra note 7, art. 13.

22. *Limits in the Seas* (Dominican Republic), supra note 1, at 3 and 8 (map). See segments 4–5, 5–6, 6–7, 7–8, 8–9, 10–11, 11–12, and 12–13, beginning at Arenas Key, incorporating Mouchoir, Silver, and Navidad Banks, and connecting to Cape Engaño Key.

23. The lengths of the line segments between these open water points are mostly evenly spaced. This appears to be the case in all four of the Seychelles’ baseline systems. In Group 1, baseline points 7–9, 11–13, 23–24, 29–33, 42, and 45 are not located on any islands, drying reefs, or low-tide elevations, so are not appropriate baseline points. For the same reason, points 46–48, 63–69, 77–79, and 89–93 in Group 2; points 103–106 and 119–121 in Group 3; and points 124–125 and 134–137 in Group 4 are not appropriate baseline points.

24. For further discussion, including with respect to the effect of Indonesia’s archipelagic baselines on Singapore, see Churchill and Lowe, supra note 16, at 124.

25. Timor-Leste stated that: “The first archipelagic straight baseline [TD112A–TD113] does not take in consideration the median line between the territorial sea of Timor-Leste’s island of Ataúro and the territorial seas of Indonesia’s island of Lirang and Alor. The second archipelagic straight baseline [TD113B–TD114] does not conform with Article 47(5) of the Convention as it encompasses the territorial sea of the Timor-Leste enclave of Oecussi [labeled “Oikusi” in Figure 4], thus excluding the enclave of Oecussi from access to the high seas and to its exclusive economic zone.” Timor-Leste, Diplomatic Note NV/MIS/85/2012 of Feb. 6, 2012, available at the DOALOS Web site, supra note 2.

26. *Commentary*, supra note 4, at 421, 452.

27. Treaty Between Malaysia and Indonesia Relating to the Legal Regime of Archipelagic State and the Rights of Malaysia in the Territorial Sea and Archipelagic Waters as well as in the Airspace Above the Territorial Sea, Archipelagic Waters and the Territory of the Republic of Indonesia Lying Between East and West Malaysia, Jakarta, 25 February 1982, entered into force 25 May 1984, reprinted in *Practice of Archipelagic States*, supra note 4, at 144–155. See preambular paragraph 5. See also Articles 9 and 22 of Indonesia’s Act No. 6 of 1996, reprinted as Annex 3 to *Limits in the Seas* (Indonesia), supra note 1.

28. *Ibid.*, art. 2, para. (2)(f).

29. During the meeting of the Second Committee of the Third UN Conference on the Law of the Sea on 12 August 1974, concerning the agenda item on archipelagos, the representative of the Bahamas explained the need for such a provision: “The Bahama Banks . . . presented a special problem of delimitation since both the ratio of very shallow water to dry-land areas and the steepness of the slopes appeared to be unparalleled.” *Official Records of the Third United Nations Conference on the Law of the Sea*, Vol. II, at 265, paragraph 77. See also, *Commentary*, supra note 4, at 399–405, 416–432; and *Legislative History*, supra note 4, at 78.

30. *Limits in the Seas* (Bahamas), supra note 1, at 2–3 and note 7.

31. Papua New Guinea has enacted legislation that authorizes the use of archipelagic baselines around Tauu Islands and Nukumanu Atoll, but it appears that no baselines have yet been drawn. *Limits in the Seas* (Papua New Guinea), supra note 1, at 2, 4, 9 (map), 13, 18.

32. *Baselines*, supra note 16, at 10–12, noting that “it may be inferred [from Article 6] that the enclosed waters [within a lagoon] can be regarded as internal waters” and that “[i]f the lagoon waters of atolls are to be considered as internal waters, it follows that it will be necessary to construct closing lines across the entrance channels.”

33. *Limits in the Seas* (Tuvalu), supra note 1, at 3, 7 (map), 18.

34. This is not specified in the Solomon Islands’ legislation, but the list of islands in its 1979 Declaration establishing five archipelagos appears to omit some islands such as the outlying islands of Tikopia, Anuta, and Fatutaka. See *Limits in the Seas* (Solomon Islands), supra note 1, at 17 reprinting the 1979 Declaration.

35. *Limits in the Seas* (Mauritius), supra note 1, at 4–6 and Annex 2, in which Section 4 of Mauritius’ Maritime Zones Act 2005 is reprinted.

36. The Philippines, Republic Act No. 9522 (An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines (2009), 70 *U.N. Law of the Sea Bulletin* 32.

37. The 1987 Constitution of the Republic of the Philippines, 11 February 1987, available at www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/ (emphasis added).

38. See the Philippines’ understandings filed on its signature of the Convention and confirmed on ratification, available at the DOALOS Web site, supra note 2.

39. See *Limits in the Seas* (Philippines), supra note 1, footnotes 6 and 27 and accompanying text.

40. Declaration of the Republic of the Philippines in response to Australia’s Objection to the Declaration of the Philippines upon Signature of the United Nations Convention on the Law of the Sea, 26 October 1988, available at: treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXI~6&chapter=21&Temp=mtdsg3&lang=en#EndDec.

41. Such legislation has been introduced into the Philippines. See *Limits in the Seas* (Philippines), supra note 1, at 4–5.

42. *Prof. Merlin M. Magallona, et.al. v. Hon. Eduardo Ermita, in his capacity as Executive Secretary, et al.* G.R. No. 187167, 16 July 2011, *en banc* (Carpio, J.). The court’s unanimous opinion is available at sc.judiciary.gov.ph/jurisprudence/2011/august2011/187167.html. See *ibid.*, at 4–5.

43. *Limits in the Seas* (Papua New Guinea), supra note 1, at 5, and 13–14.

44. U.S. Department of State Diplomatic Note No. 34 delivered in March 1987 to Trinidad and Tobago, see Roach and Smith, supra note 4, at 373–374.

45. LOS Convention, supra note 7, art. 52.

46. *Ibid.*, art. 53(1).

47. *Ibid.*, art. 53(2).

48. *Ibid.*, art. 53(3).

49. *Ibid.*, art. 53(9).

50. *Ibid.*

51. *Ibid.*, art. 53(12).

52. IMO Maritime Safety Committee, Resolution MSC 72(69), 19 May 1998, adopted the partial system of archipelagic sea-lanes in Indonesian archipelagic waters. The MSC Resolution is available at www.imo.org/blast/blastData.asp?doc_id=6794&filename=72%2869%29.pdf.

53. See *Limits in the Seas* (Indonesia), supra note 1, at 4–5.

54. *Ibid.*, at 4–5.

55. IMO, Report of the Maritime Safety Committee on its 69th Session, MSC 69/22, May 29, 1998, paragraphs 5.22–5.29, available at the IMO Web site at www.imo.org. See also MSC Resolution 72(69), supra note 52.

56. The United States communicated its view on this matter to Indonesia in a Diplomatic Note dated 8 August 2003, *Digest of United States Practice in International Law 2003*, at 760–762. In 1999, the IMO issued guidance for ships transiting archipelagic waters, SN Circular SN/Circ.206, 8 January 1999, and SN/Circ.206/Corr.1, 1 March 1999, available at the IMO Web site, supra note 55. See also A. Havas, “Archipelagic Sea Lanes Passage Designation: The Indonesian Experience,” in *Freedom of the Seas, Passage Rights and the 1982 Law of the Sea Convention*, ed. M. H. Nordquist et al. (Martinus Nijhoff, 2009), at 385–391, 455–457.

57. The Philippines, Senate Bill No. 2738 and House Bill No. 4153, 15th Congress. The House bill is available at www.congress.gov.ph/download/billtext_15/hbt4153.pdf.

58. São Tomé and Príncipe is an example of a state that appears to recognize the navigational regime in Part IV of the LOS Convention, but in general terms that do not align with the language of the Convention. Specifically, São Tomé and Príncipe, Article 7 of Law No. 1/98, supra note 2, provides that: “States may enjoy the freedoms of navigation, overflight and installation of submarine cables, tubes, as well as the other internationally legitimate use of the sea related to navigation and communication.”

59. The legislation of Trinidad and Tobago provides that its president may issue regulations relating to archipelagic sea-lanes passage. *Limits in the Seas* (Trinidad and Tobago), supra note 1, at 3–13. It is not clear whether Trinidad and Tobago considers that the exercise of this right is conditioned on prior designation of sea-lanes and air routes by its president. See Roach and Smith, supra note 4, at 374–75, partially reprinting the diplomatic communications between the United States and Trinidad and Tobago on this subject.

60. See paragraphs 12 and 15 of the Maldives’ legislation, reprinted in *Limits in the Seas* (Maldives), supra note 2, at 9–10.

61. Dominican Republic, Law No. 66–07, Articles 5 and 11, recognize the right of “innocent passage through [the Dominican Republic’s] archipelagic waters and superjacent airspace” (emphasis added). See *Limits in the Seas* (Dominican Republic), at 10–11. Under the LOS Convention, Part II and Article 52, innocent passage applies to ships, not aircraft. Archipelagic sea-lanes passage, however, does include overflight rights. Accordingly, the reference to “superjacent airspace” in the legislation may indicate that the Dominican Republic was intending to refer to the regime of archipelagic sea-lanes passage.

62. *Magallona, et.al. v. Hon. Eduardo Ermita*, supra note 42.

63. See Antigua and Barbuda, Act No. 18, Section 14(2), requiring a foreign warship to receive permission prior to navigating in its archipelagic waters and territorial sea. *Limits in the Seas* (Antigua and Barbuda), supra note 1, at 1, 3–4, and 9.

64. See Maldives, Act No. 6/96, Article 13(b), requiring a foreign warship or a foreign nuclear-powered ships or a ship carrying nuclear or other inherently dangerous or noxious substance to receive authorization from the Government of Maldives prior to entering the territorial sea. *Limits in the Seas* (Maldives), supra note 1, at 5 and 9.

65. See Seychelles, Act No. 2, Sections 16(2), 16(4), and 17(3) requiring foreign warships, nuclear-powered ships, and ships carrying any nuclear substance or radioactive substance or materials to give notice to and obtain the prior authorization from the government of Seychelles before transiting the territorial sea or archipelagic waters. *Limits in the Seas* (Seychelles), supra note 1, at 5 and 18–19.

66. See Saint Vincent and the Grenadines, Maritime Areas Act, 1983, Sections 10 and 11(2) providing that: “A foreign warship shall not navigate in the waters of Saint Vincent and the Grenadines without the prior permission. . . .” *Limits in the Seas* (St. Vincent and the Grenadines) (forthcoming), at 4. The legislation is available at the DOALOS Web site, supra note 2.

67. See Vanuatu, Act No. 6, Section 5(10), providing that, for certain vessels such as foreign warships, the right of innocent passage is “subject to the prior written approval of the Minister [responsible for the Maritime Zones].” *Limits in the Seas* (Vanuatu), supra note 1, at 3 and 9–11.

68. See Dominican Republic, Law No. 66–07, Article 12, stating that “ships and aircraft containing cargoes of radioactive substances or highly toxic chemicals” navigating through the archipelagic waters and territorial sea or its superjacent airspace shall not be considered innocent. *Limits in the Seas* (Dominican Republic), supra note 1, at 4 and 11.

69. See Mauritius, Maritime Zones Act 2005, Section 10(3), prohibiting any ship carrying radioactive materials from passing through any part of the archipelagic waters, internal waters, or territorial sea unless it has given prior notice to and obtained the prior authorization from the government of Mauritius. *Limits in the Seas* (Mauritius), supra note 1, at 8 and 16.

70. Maldives’ legislation, supra note 64.

71. Seychelles’ legislation, supra note 65.

72. LOS Convention, supra note 7, arts. 29–32, pertaining to “Rules Applicable to Warships and other Government Ships Operated for Non-Commercial Purposes.”

73. *Ibid.*, art. 23, requiring such ships to “carry documents and observe special precautionary measures established for such ships by international agreements” when exercising the right of innocent passage.

74. See Roach and Smith, supra note 4 at, 12–13. For examples of diplomatic protests, see the 2007 joint protest (with the United Kingdom) of the Dominican Republic’s legislation. *Digest of the United States Practice in International Law 2007*, at 641–643; the 2001 protest of the Maldives’ legislation, *Digest of the United States Practice in International Law 2000*, at 711–714; the 2000 protest of the Seychelles’ legislation, at 707–709 *Digest 2001*; and the 1987 protest of Antigua and Barbuda’s legislation, *Digest 1981–1988*, supra note 8, at 1849.

75. France, Note Verbale No. 961 to the UN Secretary-General, 23 December 23, 2011, in (2012), 78 *U.N. Law of the Sea Bulletin* 35. Also available at the DOALOS Web site, supra note 2.

76. France, Decree No. 2013–1177, 17 December 2013, concerning the baselines for measuring the breadth of the territorial sea of the Department of Mayotte, available at the DOALOS Web site, supra note 2.

77. The alternative archipelagic baseline depicted in Figure 6 would have a water-to-land area ratio of 3.18:1, which is consistent with the requirement stated in LOS Convention, supra note 7, art. 47(1).

78. United Kingdom, Diplomatic Note No. 26/09, 19 March 2009; and Mauritius’ response, Diplomatic Note No. 107853/09, 9 June 2009, available at the DOALOS Web site, supra note 2. See also *Limits in the Seas* (Mauritius), supra note 1, at 4–5. See also arbitral proceedings initiated by Mauritius against the United Kingdom pursuant to Annex VII of the LOS Convention for which written pleadings and other documents are available from the Permanent Court of Arbitration at www.pca-cpa.org/showpage.asp?pag_id=1429.

79. Although the problem with Banc Vailheu could be easily remedied, the matter of Mayotte—which is disputed with France—is not. See discussion at supra notes 75 and 76 and accompanying text.

80. See, for example, Kiribati and Marshall Islands, supra note 3.