

## Remedies for Excessively Long Straight Baseline Segments

Paragraphs 44 and 63 of the Committee's 2014 interim report noted that the ICJ in *Qatar v Bahrain* stated that the method of straight baselines must be "applied restrictively". However, to date no court or tribunal since the *Anglo-Norwegian Fisheries Case* in 1951 has been called upon to rule on the maximum length of straight baseline segments even though that option has been available to State Parties since the entry into force of the Convention in 1994.

Paragraph 37 of the Committee's 2014 report stated that "there are a number of longstanding and contemporary straight baseline claims which have been considered by both publicists and other States to be excessive." At the time the Committee was unable to agree on the way ahead. Some observations by distinguished persons were not considered in the report. Ambassador Tommy Koh, President of the Third Conference for its final two years, commented in two addresses celebrating the 30<sup>th</sup> anniversary of the opening of the Convention for signature, on 10 December 2012, that "[w]e should avoid undermining the integrity of the Convention by taking actions of questionable legality in order to further our short-term national interests. . . . Let me cite some examples. Some States have drawn straight baselines when they are not entitled to do so." (A/67/PV.49, p.4) He repeated this criticism at another conference in Yeosu, Republic of Korea: "I have come across cases in which States have drawn straight baselines when, according to my reading of the Convention, they are not entitled to do so." ("Asia and UNCLOS: Progress, Practice and Problems," *Peaceful Order in the World's Oceans: Essays in Honor of Satya N. Nandan*, (Lodge and Nordquist eds., Brill 2014), at 91)

Given the evidence adduced by the analysis of all claimed straight baseline segments it is apparent that a considerable percentage of them exceed the length of the longest Norwegian baseline segment approved in the *Fisheries* case, two of them more than five times longer (Burma's 222.3 nm segment in the Gulf of Martaban and Libya's 300.8 nm line in the Gulf of Sidra), two segments four times longer (Vietnam), seven segments three times longer (7 States), and 44 segments more than twice the longest (20 States).

Any State Party to the Convention that believes segments longer than 40 nm are unlawful could—and some 18 -- have protested those claims, and if not able to resolve the disputes through negotiation (as is the case), may proceed unilaterally to CDS before the applicable court (ICJ or ITLOS) or arbitral tribunal under Annex VII (the default forum).

Section 1, General Provisions, of Part XV of the LOS Convention provides in article 279 "States Parties shall settlement any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter."

Subject to the limitations and exceptions in section 3 of Part XIV of the LOS Convention, section 2 article 286 provides that "any dispute concerning the implementation or application of this Convention, where no settlement has been reached by recourse to section 1 [General Provisions], be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section."

None of the limitations and exceptions in section 3 apply to disputes over the permissible length of straight baseline segments drawn pursuant to article 7 of the Convention. Accordingly such disputes are subject to compulsory dispute resolution without exception.

As listed in the table below most of the 52 State Parties that either have claimed SBL greater than 40 nm or protested them (or both) have made no choice of forum under Article 287. Accordingly for them, the default is Annex VII arbitration.

### Choices of Forum under Article 287

State Party	ICJ	ITLOS	Annex VII
Argentina		yes	yes
Bangladesh <sup>1</sup>	--	yes	--
Brazil	--	--	--
Cambodia (not a Party)			
Canada <sup>2</sup>	--	yes	yes
Chile	--	yes	yes
China <sup>1,2</sup>	--	--	--
Colombia (not a Party)			
Costa Rica <sup>1</sup>	--	--	--
Cuba	no	--	--
Denmark	yes	--	--
Dominican Republic <sup>2</sup>	--	--	--
Ecuador <sup>2</sup>	yes	yes	--
Gabon			
Germany <sup>1</sup>	yes	yes	yes
Guinea	--	--	--
Guinea-Bissau <sup>2</sup>	no	--	--
Haiti	--	--	--
Honduras <sup>2</sup>	yes	--	--
Iceland	--	--	--
India <sup>1,2</sup>	--	--	--
Iran (not a Party)			
Italy	yes	yes	--
Japan <sup>1</sup>	--	--	--
Kenya	--	--	--
Libya (not a Party)			
Madagascar	--	yes	--
Malaysia	--	--	--
Mauritania	--	--	--
Mozambique	--	--	--
Myanmar <sup>2</sup>	--	--	--
Nicaragua <sup>1</sup>	yes	--	--
Norway	--	yes	--
Pakistan <sup>1,2</sup>	--	--	--
Peru	--	--	--

Portugal	yes	yes	yes
Republic of Korea	--	--	--
Russian Federation	--	yes	yes
Saudi Arabia	--	--	--
South Africa	--	--	--
Spain	--	--	--
Tanzania	--	--	--
Thailand <sup>1,2</sup>	--	--	--
Tunisia	--	yes	yes
UK <sup>1</sup>	yes	--	--
Uruguay	--	yes	--
Venezuela	--	--	--
Viet Nam <sup>1</sup>	--	--	--

<sup>1</sup> Have protested SBL claims

<sup>2</sup> Been protested by another State Party