

## Archipelagic States Practice

The section in the Committee's interim report on State Practice of archipelagic States (paragraphs 76-78) needs to be updated in light of subsequent developments, including the publication of additional studies in the Limits in the Seas series and the announcement that St. Vincent and the Grenadines has now drawn archipelagic straight baselines, as reflected in the attached table.

Suggested revised paragraphs 76-78 are as follows (footnote numbers were changed by Word):

76. Since the conclusion of UNCLOS III, and adoption of the LOSC a total of 22 States have sought to claim archipelagic status.<sup>1</sup> Those States claiming status as an archipelagic State under the LOSC, twenty of which have declared archipelagic baselines in reliance upon Article 47 of the LOSC, are identified in Annex 1. On the basis of available information with respect to archipelagic State claims,<sup>2</sup> the following observations can be made. The water to land ratio of 9:1 to 1:1 is met by the vast majority of archipelagic States. In 1977 Cape Verde proclaimed archipelagic baselines which resulted in a water to land ratio that exceeded the limits set down in Article 47 (1).<sup>3</sup> The United States protested this claim in 1980. In 1992 Cape Verde modified its straight archipelagic baselines in a manner that is consistent with the LOSC.<sup>4</sup> In the case of Papua New Guinea, the water to land ratio has been calculated at 1.22:1 if the main island of New Guinea is included. In addition the baseline system of Papua New Guinea does not completely enclose the archipelago as its initial turning point is located at sea rather than on the mainland. Further, another turning point is located at sea (50 nm S Wuvulu Island).<sup>5</sup> In the case of the Seychelles, which has enclosed four separate groups of islands within straight archipelagic baselines, three of those enclosures appear to significantly exceed the 9:1 ratio.<sup>6</sup> When applying the land to water ratio test, Prescott and Schofield claim that the Bahamas counts oceanic plateaus to satisfy the test.<sup>7</sup>

77. It would appear on the basis of existing state practice that the 125 nm baseline length constraint is not a significant issue for the great majority of archipelagic States, with only the Maldives appearing to exceed the 3% limitation with three of its 37 baselines in the 100-125 nm range.<sup>8</sup> These claims have been subject to protest by the United States.<sup>9</sup> Papua New Guinea

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<sup>1</sup> An extensive review of state practice amongst archipelagic States up to 1991 can be found in Barbara Kwiatkowska and Ety R. Argoes, *Archipelagic State Regime in Light of the 1982 UNCLOS and State Practice* (1991).

<sup>2</sup> Drawn from the Law of the Sea Bulletin, Limits in the Seas, the United Nations Practice of Archipelagic States (1992), and Roach and Smith, *Excessive Maritime Claims* 3<sup>rd</sup> (2012). The Limits in the Seas series now includes analyses of all 20 states claiming archipelagic straight baselines, see <http://www.state.gov/e/oes/ocns/opa/c16065.htm>.

<sup>3</sup> The Cape Verde claim enclosed an area of water of 50,546 sq km, while the land area was 4,031 sq km resulting in an approximate ratio of 12.5:1.

<sup>4</sup> See Roach and Smith, *Excessive Maritime Claims* 3<sup>rd</sup> (2012) 209.

<sup>5</sup> Limits in the Seas No. 138. The island of New Guinea is divided by a land border that runs north/south along the axis of 141E and divides the island such that the eastern portion is under the title of Papua New Guinea and the western portion is under the title of Indonesia; the island is unique as it is the only island that forms a portion of two archipelagic States.

<sup>6</sup> Limits in the Seas No. 132.

<sup>7</sup> Prescott and Schofield, *The Maritime Political Boundaries of the World* 2<sup>nd</sup> (2005) 177. Limits in the Seas No. 128 agrees.

<sup>8</sup> Limits in the Seas No. 126.

<sup>9</sup> See Roach and Smith, *Excessive Maritime Claims* 3<sup>rd</sup> (2012) 216.

appears to be the only archipelagic State with a baseline in excess of 125 nm (174.78 nm).<sup>10</sup> Cape Verde adjusted the length of two of its straight archipelagic baselines in 1992 in response to a United States protest to achieve compliance with this provision.<sup>11</sup>

78. Some archipelagic States have adjusted their archipelagic baselines from time to time, partly as a result of the changing circumstances of the territory that makes up their State. Indonesia, one of the largest archipelagic States, modified its original 1960 baselines with Act no. 6/1996 on Indonesian Waters. The changes that were made in regard to the baselines/basepoints around the Celebes Sea included Pulau Sipadan and Pulau Ligitan within the Indonesian archipelagic baselines system. A further baseline designation occurred in 2008 under PP no. 37/2008 (19 May 2008) which revised the baseline system in the Sulawesi Sea, in the vicinity of Timor, and off the south coast of Java. Changes made to Indonesia's archipelagic baseline on the south coast of Java were made in order to accommodate the three per cent requirement of Article 47 (2) with the effect that one long baseline has now been divided into three shorter ones. The new baseline configuration here has been shifted slightly landwards, only minimally impacting upon Indonesia's archipelagic waters and territorial sea claims.<sup>12</sup>

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<sup>10</sup> Limits in the Seas No. 138.

<sup>11</sup> See Roach and Smith, 209.

<sup>12</sup> Clive Schofield and I. Made Andi Arsana "Closing the loop: Indonesia's revised archipelagic baselines system" (2009) 1 (2) *Australian Journal of Maritime and Ocean Affairs* 57, 61-2.

**ARCHIPELAGIC STATES**

State	SBL Drawn	Number of archipelagos	Law <sup>13</sup>	Analysis	Water:land ratio 1:1~9:1 OK	# segments; % > 100 nm Max 3%	#> 125 nm 0 OK
Antigua & Barbuda	yes	1	PAS 1-16	LIS 133	7.91:1	0/22 0.0%	0
The Bahamas	yes	1	LOSB 69: 74-77	LIS 128	6.86:1	2/95 2.11%	0
Cape Verde	yes	1	PAS 17-19	LIS 129	8.92:1	0/25 0.0%	0
Comoros <sup>14</sup>	yes	1	LOSB 74: 16-17	LIS 134	5.99:1	0/13 0.0%	0
Dom Rep <sup>15</sup>	yes	1	LOSB 65: 18-32	LIS 130	1.03:1	0/20 0.0%	0
Fiji	yes	1	LOSB 66: 67-70	LIS 101	2.98:1	1/33 0.33%	0
Grenada	yes	1	LOSB 71: 36-39	LIS 135	1.61:1	0/23 0.0%	0
Indonesia <sup>16</sup>	yes	1	LOSB 69: 81-104	LIS 141	1.61:1	5/197 2.6%	0
Jamaica	yes	1	LOSB 32: 41-	LIS 125	2.00:1	0/28 0.0%	0

<sup>13</sup> Laws and charts appear in the DOALOS publications noted and online at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/regionslist.htm>.

<sup>14</sup> French protest re Comoros claim to Mayotte 23 December 2011.

<sup>15</sup> The Dominican Republic may not qualify as an archipelagic State. See US/UK note in LOSB 66: 98-99 and US Digest 2007: 641-643.

<sup>16</sup> Timor-Leste protest of Indonesia claim 6 Feb 2012.

			42				
Kiribati	no	-	PAS 56-60	-	-	-	-
Maldives	yes	1	Act 6/96	LIS 126	2.63:1	3/37 8.1%	0
Marshall Islands	no	-	-	-	-	-	-
Mauritius <sup>17</sup>	yes	2	LOSB 65: 52- 60; 67:13- 38; 70: 59; 71: 44; 76: 35-36	LIS 140	1: 2.84:1  2: 7.5:1	1:0/3  2:0/32 0.0%	1:0  2:0 0.0%
Papua New Guinea	yes	1	LOSB 50: 31- 33 PAS 61-74	LIS 138	1.22:1	1/74 1.35%	1
Philippines <sup>18</sup>	yes	1	LOSB 70: 32- 35	LIS 142	1.98:1	3/101 2.97%	0
St Vincent & the Grenadines	yes		PAS 86-92				
Sao Tome & Principe	yes	1	PAS 93-99	LIS 98	4.03:1	0/14 0.0%	0
Seychelles	yes	4	LOSB 70: 16- 25, 30	LIS 132	1: 10.58:1 2: 239.93:1 3: 44.5:1 4: 5.15:1	1: 0/45 2: 0/48 3: 0/29 4: 0/35 0.0%	1: 0 2: 0 3: 0 4: 0
Solomon Islands	yes	5	PAS 100-	LIS 136	1: 4.06:1	1: 1/37 1.2%	1: 0

<sup>17</sup> French protest re Mauritius claim to Tromelin 30 July 2009; UK protest re Mauritius claim to BIOT 19 March 2009.

<sup>18</sup> China protest re Philippine claims to Nansha Islands/Kalayaan Group and Huanghan Island/Bajo de Masinloc 13 April 2009.

			108		2: 4.44:1 3: 29.92:1 or 0.29:1 4: 7.03:1 5: 3.57:1	2: 0/10 3: 0/13 0.0% 4: 0/15 0.0% 5: 0/8 0.0%	2: 0 3: 0 4: 0 5: 0
Trinidad & Tobago	yes	1	LOS 55: 29-30	LIS 131	1.39:1	0/11 0.0%	0
Tuvalu	yes	1	LOS 83:	LIS 139	7.58:1	0/60 0.0%	0
Vanuatu <sup>19</sup>	yes	1	LOS 73: 14-38	LIS 137	5.83:1	0/59 0.0%	0

Abbreviations:

PAS: UN DOALOS, Practice of Archipelagic States (E.92.V.3, 1992)

LOS: UN DOALOS, Law of the Sea Bulletin,  
[http://www.un.org/Depts/los/doalos\\_publications/los\\_bult.htm](http://www.un.org/Depts/los/doalos_publications/los_bult.htm)

LIS: US State Department, Limits in the Seas series,  
<http://www.state.gov/e/oes/ocns/opa/c16065.htm>

Yellow highlighting indicates LIS study identifies excessive claim.

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<sup>19</sup> French protest re Vanuatu claim to Matthew and Hunter Islands 6 December 2010.