

NOTES & COMMENTS

China's Basepoints and Baselines under the United Nations Convention on the Law of the Sea: A Critical Analysis

Hyunsoo Kim*

China's straight baseline regime deviates from the UN Convention on the Law of the Sea in a number of ways. Such discrepancies are likely to induce legal and political conflicts between countries, and also the settlement of which would not be easy, in particular, among the East Asian countries. In consideration of this point, the legal issues surrounding China's straight baselines and basepoints should be analyzed and evaluated not only from the perspectives of UNCLOS, but also through comparative analyses based on customary international law, State practices, and special circumstances. Many of China's State practices and laws based on straight baselines are neither in accordance with international laws, nor generally recognized as being in accordance with the international law of the sea. This paper provides important legal insights into China's straight baselines, which are unlawful from the perspectives of UNCLOS and State practices, and, in addition, suggest desirable ways to solve the problems in international laws.

Keywords

Basepoint, Straight Baseline, Territorial Sea, UNCLOS, State Practice, Special Circumstances, Maritime Boundary Delimitation

* Professor of International Law at Inha University School of Law, Korea. LL.B./LL.M. (SNU), Ph.D.(Wales). This work was supported by the Inha University Research Grant. The author may be contacted at: kimhsoo@inha.ac.kr / Address: Inha University Law School, 100 Inharo, Nam-gu, Incheon 402-751 Korea.

1. Introduction

The United Nations Convention on the Law of the Sea (“UNCLOS”)¹ was signed on December 10, 1982 to establish a reasonable and comprehensive maritime order. Despite the lofty goals, some countries have recently stretched the provisions of UNCLOS to expand their marine resources and territory, ignoring the spirit of the agreement. In particular, China has unilaterally employed straight baselines along its coastline, thereby establishing a legal basis for claiming vast maritime zones. However, many of China’s State practices and laws based on straight baselines are neither in accordance with international law, nor generally recognized as being international custom.

The main objective of this research is to examine and evaluate China’s straight baseline regime based not only on UNCLOS, but also on the international law of the sea. This paper consists of four parts including Introduction and Conclusion. Part two will provide the background of China’s straight baselines. Part three will analyze the legal issues surrounding these baselines.

2. Background: China’s Straight Baselines

A. What is the Straight Baseline?

The territorial sea is a particular domain that allows a coastal State to exercise its sovereignty.² The UNCLOS limits the maximum breadth of any territorial sea to 12 nautical miles.³ In the determination of the breadth of a State’s territorial sea, it is necessary to establish the point along the coast from which the outer limits of the territorial sea is to be measured. Here, the baseline is the ground for this measurement.⁴ A baseline is a line from which outer limits of the territorial sea,

¹ U.N.T.S. 1833. The UNCLOS was entered into force in 1994 through the joint agreement by 150 member States. See the full text of the UNCLOS, available at http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm (last visited on Feb. 5, 2013).

² For details, see R. CHURCHILL & A. LOWE, *THE LAW OF THE SEA* 71-75 (1999); S. Sharma, *Territorial Sea*, 11 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 328-333 (R. Bernhardt ed., 1989).

³ UNCLOS art. 3.

⁴ *Id.* art.5. For details on the baseline, see P. BEAZLEY, *MARITIME LIMITS AND BASELINES* (1987); I. BROWNIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 176 (2008); M. EVANS, *INTERNATIONAL LAW* 626 (2006); L. Alexander, *Baseline Delimitation and Maritime Boundaries*, 23 *V.A. J. INTL L.* 503-536 (1983); R. Hodgson & R. Smith, *The Informal Single Negotiating*