

NOTES & COMMENTS

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

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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

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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*

contiguous zone, and the Exclusive Economic Zone ("EEZ") are measured.

There are two types of baseline: normal and straight one. A normal baseline is a low-water line along the coast marked on large-scale charts officially recognized by the coastal State.⁵ In principle, normal baselines must be used when determining the extent of maritime zones. However, it is not possible to employ normal baseline if the coastline is deeply indented and cut into, or has fringing islands. In such areas, straight baseline connecting appropriate points may be adopted.⁶ However, drawing straight baselines must not deviate substantially from the general direction of the coast. In addition, sea areas lying within the lines must be sufficiently and closely linked to the land domain,⁷ because the coastal State must not claim unfairly vast maritime zones by drawing straight baselines on a unilateral basis.

When the coastline is highly unstable, because of the presence of a delta or other natural conditions, appropriate points may be selected along the furthest seaward point of the low-water line. Such a baseline remains effective regardless of the subsequent regression of the low-water line until changed by the coastal State in accordance with UNCLOS.⁸

Straight baseline must not be drawn to and from low-tide elevations. However, such baseline is acceptable if there exist lighthouses or similar installations that are permanently above sea level or if the baselines have received general international recognition. The method of straight baseline may not be applied by a State that cuts off the territorial sea of another State from high seas or an EEZ.⁹

Article 10 of UNCLOS relates only to those bays whose coasts belong to a single State. A bay is a well-marked indentation whose penetration is in proportion to the width of its mouth such that it contains land-locked waters and constitutes more than the mere curvature of the coast. An indentation can be regarded as a bay if its area is greater than or equal to that of a semi-circle whose diameter is a line drawn across the mouth of that indentation.¹⁰ If the distance between two low-water marks

Text (Committee II): A Geographical Perspectives, 3 OCEAN DEV. INT'L L. 225-59 (1976); D. O'CONNELL, *THE INTERNATIONAL LAW OF THE SEA*, vol. I, chs. 5 & 9-11 (1982); J. Prescott, *Straight and Archipelagic Baselines*, in *MARITIME BOUNDARIES AND OCEAN RESOURCES* 38-51(G.blake ed., 1987).

⁵ UNCLOS art. 5.

⁶ *Id.* art. 7(1). See Churchill & Lowe, *supra* note 2, at 34; Brownlie, *supra* note 4, at 179

⁷ UNCLOS art. 7(3). See Evans, *supra* note 4, at 626-627; D. ROTHWELL & T. STEPHENS, *THE INTERNATIONAL LAW OF THE SEA* 44 (2010).

⁸ UNCLOS art.3

⁹ *Id.*

¹⁰ UNITED NATIONS OFFICE FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, *THE LAW OF THE SEA: BASELINES* 67 (1989), available at http://www.un.org/Depts/los/doalos_publications/publicationtexts/The%20Law%20of%20the%20Sea_Baselines.pdf(last visited on Apr. 1, 2013). See also Churchill & Lowe, *supra* note 2, at 41-42.

of natural entrance points of a bay does not exceed 24 nautical miles, then a closing line may be drawn between these two points, and enclosed seas is then considered as internal waters.¹¹ If this distance exceeds 24 nautical miles, then a straight baseline of 24 nautical miles must be drawn within the bay such that it encloses the maximum area of waters.¹² These requirements do not apply to the so-called 'historic' bays, or cases in which the method of straight baselines provided for in Article 7 of UNCLOS is applied.¹³

B. China's Straight Baselines

China first revealed its stance through the 1958 Declaration of the Government of the People's Republic of China on China's Territorial Sea,¹⁴ which states that its territorial sea starts from straight baselines connecting the country's coasts or outer islands. This was a proclamation reflecting the firm implementation of straight baselines. China did not actually use this method of straight baselines when this declaration was adopted.

However, China's Law on the Territorial Sea and the Contiguous Zone (hereafter the Law on the Territorial Sea) and its Declaration on the Baselines of the Territorial Sea (hereafter the Declaration on the Baselines) are actually based on the method of straight baselines.¹⁵ Currently, China's straight baselines extend from the Shandong Peninsula to the west of Hainan Island. In addition, there is no provision regarding the system of normal baselines in the Law on the Territorial Sea. Articles 3 and 15 of this law employ 49 basepoints for coastlines, 28 basepoints for the Paracel Islands, and straight baselines connecting these basepoints.¹⁶ Such a system can be considered *a de facto* proclamation for using only straight baselines and excluding normal ones.

The Law on the Territorial Sea defines the 'territorial sea' as a "certain range of waters linked to the land domain" and designates mainland China, nearby islands,

¹¹ UNCLOS art. 8. See Evans, *supra* note 4, at 627; Rothwell & Stephens, *supra* note 7, at 47.

¹² UNCLOS art. 10(5). For details, see D. ANDERSON, MODERN LAW OF THE SEA 456-457 (2008)

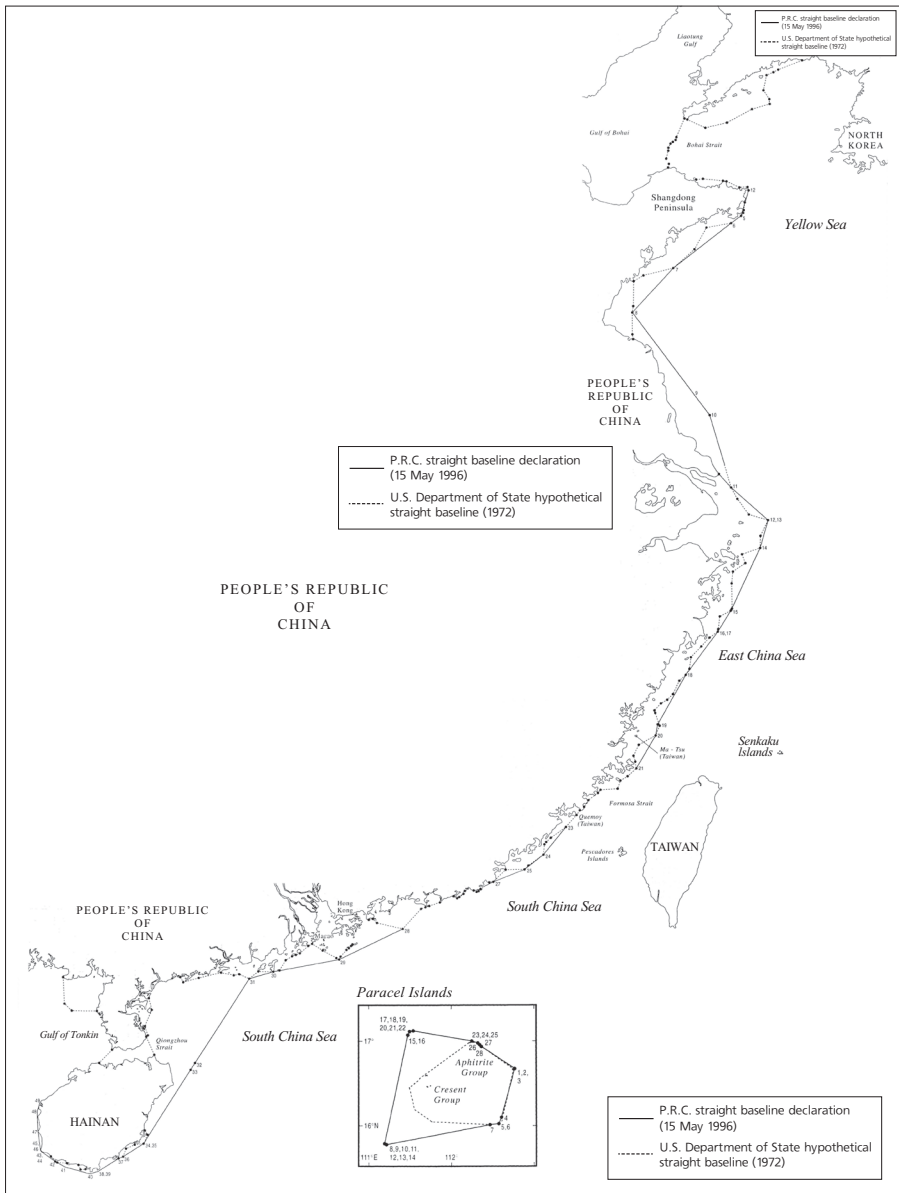
¹³ S. NANDAN & S. ROSENNE EDS., UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: A COMMENTARY, Vol. 2, 117 (1993). For details, see Brownlie, *supra* note 4, at 183; Churchill & Lowe, *supra* note 2, at 43-44.

¹⁴ US Dept. of State, International Boundary Study, ser. A, no. 43(Limits in the Seas), available at <http://www.law.fsu.edu/library/collection/limitsinseas/l043.pdf> (last visited on Mar. 1, 2013). For details, see D. Dzurek, *The People's Republic of China Straight Baselines*, 4:2 IBRU BOUNDARY AND SECURITY BULL. 77 (1996), available at <http://paracels.com/maps/baseline.html> (last visited on Jan. 3, 2013).

¹⁵ US Dept. of State, Straight Baseline Claim: China, 117 Limits in the Seas 9-10 (1996), available at <http://www.law.fsu.edu/library/collection/LimitsinSeas/l117.pdf> (last visited on Apr. 2, 2013).

¹⁶ For details, see UNITED NATIONS, 21 LAW OF THE SEA BULL. 24-27 (1992).

Figure 1: China's Baselines



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

Taiwan, the Diaoyu Islands, the Penghu Islands, the Dongsha Islands, the Paracel Islands, the Xisha Islands, the Spratly Islands and other islands as the territory of China.¹⁷

By drawing straight baselines based on these provisions of the Law on the Territorial Sea, China can employ its outermost islands as basepoints for straight baselines and claim the areas between those baselines and outer limits measuring 12 nautical miles outwardly from the baselines as its territorial sea. As a result, a vast area composed of the East China Sea and the South China Sea can be incorporated into China's territorial sea. In fact, China has claimed ownership of the islands in the East China Sea and the South China Sea, and asserted that the areas on the landward side of the baselines connecting associated islands and the mainland are its internal waters.¹⁸ However, such claims are in direct violation of UNCLOS.

3. Legal Problems Associated with China's Straight Baselines

As mentioned earlier, China has connected 49 basepoints along its coastline with straight lines. In addition, there are 29 basepoints along the coast near the Paracel Islands, which are connected by straight archipelagic baselines.¹⁹ The legal issues surrounding China's straight baselines are summarized as follows.

A. Straight Baselines Lacking Natural Requirements

1. Basepoints 9 and 10

Basepoints 9 and 10 are localities where normal baselines cannot be employed such as underwater shoals, and low-tide elevations, even when they are located above sea level.²⁰ Geographic data from China show that these two basepoints are sand dunes below sea level.²¹ According to data from the US State Department,

¹⁷ The Law on the Territorial Sea art.2.

¹⁸ Law on the Territorial Sea art. 2. It reads: "The P.R.C's territorial sea refers to the waters adjacent to its territorial and islands including Diaoyu Island, Penghu Islands, Dongsha Islands, Xisha Islands, Nansha(Spratly) Islands and other islands that belong to the People's Republic of China. The PRC's internal waters refer to the Waters along the baseline of the territorial sea facing the land."

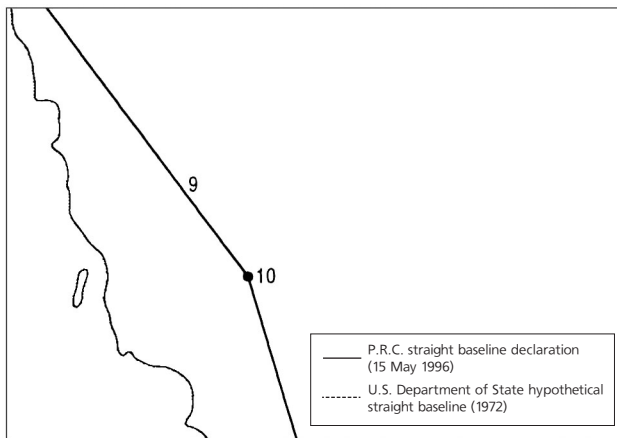
¹⁹ HYUNSOO KIM, THE LAW OF THE SEA II (해양법각론) (available only in Korean) 45 (2011)

²⁰ See Sushan Dao, available at http://www.getamap.net/maps/china/shandong/_sushandao (last visited on Jan. 8, 2013).

²¹ *Id.*

Basepoint 9 is an area located three meters below the surface, and Basepoint 10 is a low-tide elevation.²² As discussed earlier, low-tide elevations cannot be the basis for baselines without meeting the requirements provided by Article 13, paragraph 1 of UNCLOS.²³ A normal baseline can be employed for low-tide elevations only when the elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea surrounded by water at sea from the mainland or an island. However, Basepoints 9 and 10 are located 80 kilometers away from China's coastal waters and thus lack the requirements stipulated at Article 13.²⁴

Figure 2: Baseline connecting Basepoints 9-10



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

A straight baseline cannot be drawn from Basepoint 9 to Basepoint 10 for the following reasons. First, the coastlines between Basepoints 9 and 10 are plain in shape and have no unstable indentation or fringe of islands. Second, these two localities are low-tide elevations and have well-developed shoals, without connecting islands or reefs. Drawing straight baselines from these areas would be in violation of Article 7, paragraph 4 of UNCLOS, which declares that straight baselines

²² US Dept. of State, *supra* note 15, at 6.

²³ UNCLOS art.13(1). It reads: "A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea."

²⁴ Heecheol Yang, *A Study on the Response Proposals and Consideration Factors in the Maritime Boundary Delimitation of the Yellow Sea between Korea and China* (한중 황해 해양경계획정에서의 고려요소와 대응방안에 관한 연구) (available only in Korean), 57 KOREAN J. INT'L L. 115 (2012).

must not be drawn to and from low-tide elevations.²⁵

In addition, these areas are not “where because of the presence of delta and other natural conditions the coastline is highly unstable.” Article 7, paragraph 2 of UNCLOS takes a delta as a particular example of unstable coastline.²⁶ In other words, if the coastline is not highly unstable, then straight baselines cannot be employed regardless of the presence of a delta. As discussed earlier, the coastlines of these localities are plain-shaped areas; there are shoals but no deltas. In addition, these baselines are separated from the mainland at low-tide.

Yang mentions that: “Basepoints 9 and 10 are the underwater shoals, which are 1.2~1.5m and 1.0~1.6m below sea level, respectively. In recent, China placed some installations such as lighthouse upon these areas.”²⁷ This action indicates China’s intention to strengthen the legitimacy of using localities as basepoints.²⁸ Nonetheless, given the location and the geographical environment, these areas are not appropriate points for drawing baselines to measure the breadth of the territorial sea. Although China has installed lighthouses, meteorological stations and transmitting towers in these localities, no such installations can be sufficiently considered as “lighthouses or similar installations which are permanently above sea level” based on Article 7, paragraph 4 of UNCLOS. There are only a few installations such as transmitting towers along the shoals, but they are not sufficient to justify the straight baseline connecting Basepoints 9 and 10. Rothwell and Stephens agree that lighthouses or similar installations that are permanently built on underwater banks or shoals at sea level do not create internal waters.²⁹

2. Basepoints 6, 7 and 8

The coastlines near Basepoints 6, 7 and 8 are simple in-shape. Accordingly, they lack the natural requirement for the system of straight baselines. These localities are neither “where the coastline is deeply indented and cut into,” nor “where there is a fringe of islands along the coast in its immediate vicinity.”³⁰

²⁵ It reads: “Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.”

²⁶ Nandan & Rosenne, *supra* note 13, at 101.

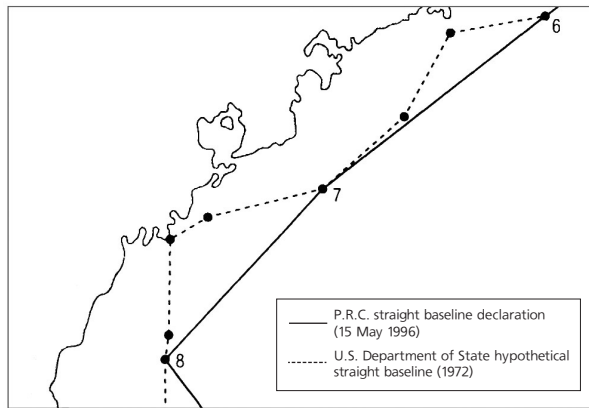
²⁷ Yang, *supra* note 24, at 121. For details on Macaiheng Island, see Top World Images, available at <http://www.topworldimages.com/Macaiheng.htm> (last visited on Apr. 1, 2013).

²⁸ Yang, *supra* note 24, at 121.

²⁹ Rothwell & Stephens, *supra* note 7, at 45.

³⁰ UNCLOS art.7(1).

Figure 3: Baselines connecting Basepoints 6-8



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

Article 10 of UNCLOS lays down the requirements for a bay in terms of indentations. To be in compliance with the requirement for a “well-marked indentation” as laid down in Article 10, an indented area must exceed the semi-circle whose diameter is a line drawn across the mouth of that indentation. This method is generally referred to as the ‘semicircle test.’³¹ The ratio of the length of the straight baseline joining low-water marks of natural entrance points of a bay to the distance between the straight baseline and the low-water mark around the shore of the indentation must be at least 10:5 (US State Department suggests a 10:6 ratio).³² Moreover, a single indentation is sufficient to become a bay.³³ However, the indentation requirement suggested in Article 7 of UNCLOS is different. A single well-marked indentation does not create “localities where the coast is deeply indented.” The prevalent view acknowledges that the presence of several indentations is required for the system of straight baselines.³⁴ The original purpose of adopting Article 7 is to allow for the implementation of straight baselines only when the coastline is unstable because of

³¹ US Dept. of State, *supra* note 15, at 67; Anderson, *supra* note 12, at 456; Evans, *supra* note 4, at 627.

³² US Dept. of State, Developing Standard Guidelines for Evaluating Straight Baselines, 106 Limits in the Seas 6-7 (1987), available at <http://www.law.fsu.edu/library/collection/LimitsinSeas/LS106.pdf> (last visited on Apr. 1, 2013).

³³ Churchill & Lowe, *supra* note 2, at 42. See also United Nations, *supra* note 10, at 28.

³⁴ Dzurek mentioned that: “The PRC has delimited sections north of the Yangtze Delta where the coast is not deeply indented and there is no fringe of islands.” See *supra* note 14, at 84. A United Nations study stated that: “It is generally agreed, however, that there must be several indentations which individually would satisfy the conditions establishing a juridical bay.” See *supra* note 10, at 17.

a serious indentation.³⁵ Unlike a bay (which is a single indentation), coastline joined by straight baselines must consist of several indentations.³⁶ The US State Department provides that at least three well-marked indentations are required for drawing straight baselines.³⁷

The presence of several islands is inherent in the requirement for “a fringe of islands” in Article 7, paragraph 1 of UNCLOS. A single island is not “a fringe of islands.”³⁸ Namely, there must be at least three islands.³⁹ Moreover, the mere presence of a few isolated islands does not constitute a sufficiently solid fringe. The distance between two islands must be less than 24 nautical miles.⁴⁰ If so, then the territorial seas of the two islands may overlap. In this case, the method of straight baselines connecting them can be rationalized.

Basepoints 6, 7 and 8 consist of eight inflection points suitable for the system of normal baselines. There are no islands spread out near the shore to form a continuous fringe along the coast. In addition, the areas lying within these straight baselines are not close enough to the land to be subject to the regime of internal waters. Consequently, it is impossible to employ straight baselines for such a deeply indented coast.

3. Basepoints 12 and 13

Basepoints 12 and 13 represent the mouth of the Yangtze River. The coastline of this area is unstable, and there is a fringe of islands. However, for straight baselines to be drawn, basepoint islands must be sufficiently close to the land domain.⁴¹ However, these two localities are inhabited islands far off the coast.⁴² Basepoints 12 and 13 are, respectively, located 69 and 70 nautical miles away from the coast. The sea areas lying within the straight baseline connecting these basepoints are not close enough to the land to be subject to the regime of internal waters.⁴³ Moreover, as Greenfield points out, using these islands as basepoints for drawing straight baselines joining Basepoints 11, 12, and 13 causes the excessive deviation from the general direction of

³⁵ Nandan & Rosenne, *supra* note 13, at 100(7.9(b)).

³⁶ P. BEAZLEY, *MARITIME LIMITS AND BASELINES: A GUIDE TO THEIR DELINEATION* 8 (1987).

³⁷ *Supra* note 32, at 9-13.

³⁸ United Nations, *supra* note 10, at 20.

³⁹ *Id.* See also U.S. Navy et al., *The Commander’s Handbook on the Law of Naval Operations*, available at <http://www.usnwc.edu/getattachment/a9b8c92d-2c8d-4779-9925-0defea93325c> (last visited on Apr. 1, 2013).

⁴⁰ United Nations, *supra* note 10, at 21.

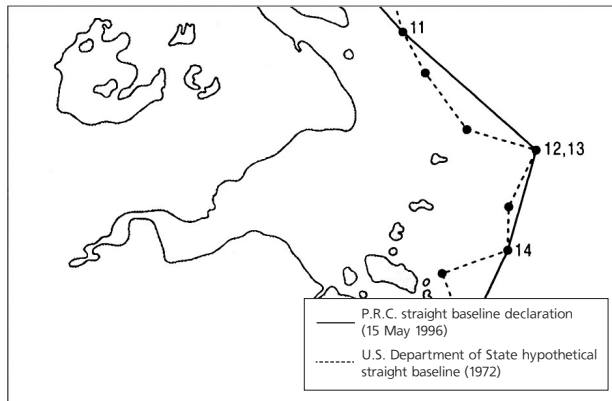
⁴¹ UNCLOS art. 7(3).

⁴² *Supra* note 15, at 7.

⁴³ UNCLOS art. 7(3).

the coast and can lead unjust extension of the territorial sea.⁴⁴ Appropriate localities must be appointed as new basepoints.⁴⁵

Figure 4: Baseline connecting Basepoints 12-13



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

The line connecting Basepoints 6-11 is too far from the coastline. In particular, the straight baselines joining Basepoints 8-11 draw a convex line, while the inner coast is concave. This is in violation of the principle specifying that the drawing of straight baselines must not overly deviate from the general direction of the coast.⁴⁶

B. Direction and Length of the Straight Baselines

Article 7, paragraph 3 of UNCLOS provides that straight baselines “must not depart to any appreciable extent from the general direction of the coast.”⁴⁷ This requirement is not formulated in mathematical terms. In the *Anglo-Norwegian Fisheries* case, the direction of the straight baselines drawn on the skjaergaard generally does not depart more than 15° (degree) from the coastline.⁴⁸ Today, it is conventional

⁴⁴ J. GREENFIELD, *CHINA'S PRACTICE IN THE LAW OF THE SEA* 69 (1992).

⁴⁵ *Id.* See also *Anglo-Norwegian Fisheries* (U.K. v. Nor.), Judgment, 1951 I.C.J. 133, ¶ 2 (Dec. 18). It read: “Among these considerations, some reference must be made to the close dependence of the territorial sea upon the land domain.”

⁴⁶ UNCLOS art.7(3).

⁴⁷ *Id.*

⁴⁸ R. Hodgson & L. Alexander, *Towards an Objective Analysis of Special Circumstances: Bays, Rivers, Coastal and Oceanic Archipelagoes and Atolls*, 13 *Law of the Sea Institute Occasional Paper* 37-38 (1972), available at <http://www.worldcat.org/title/towards-an-objective-analysis-of-special-circumstances-bays-rivers-coastal-and-oceanic-archipelagos-and-atolls/oclc/2695722> (last visited on Apr. 2, 2013).

that drawing of straight baselines must not depart more than 20°(degree) from the general direction of the coastline.⁴⁹

There is no written statute containing the limitation of the length of individual baselines. In the *Fisheries* case, the International Court of Justice (“ICJ”) finds that the system of straight baselines is “an application of general international law to a specific case.”⁵⁰ The ICJ acknowledges the discretion of the coastal State regarding straight baselines, emphasizing that: “the State is in the best position to appraise the local conditions of its domain.”⁵¹ In other words, a coastal State can decide by its own discretion based on its geographic conditions because there is no established standard for the length of straight baselines.⁵² However, such discretion is not unlimited, as indicated by the ICJ’s position on the international aspect of the delimitation:⁵³

The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law [...].

The thrust of this judgment is as follows: (1) There must be no manifest abuse in drawing straight baselines; (2) Drawings must not depart from the bound of what is moderate and reasonable; and (3) Straight baselines deviating from such a criterion shall be considered illegitimate.⁵⁴

Scholars have generally recognized that any drawing of straight baselines must not exceed the reasonable limitation.⁵⁵ In fact, China attempted to adopt the 1958 Territorial Sea Declaration⁵⁶ to introduce the maximum length of 15 nautical miles for any single baseline, but was unsuccessful because it failed to follow the breadth

⁴⁹ *Supra* note 32, at 19-21.

⁵⁰ *Supra* note 45, at 131.

⁵¹ *Id.*

⁵² In the *Fisheries* case, the ICJ held that: “In the case in point, the divergence between the base-line and the land domain formation is not such that it is a distortion of the general direction of the Norwegian coast.” *Id.* at 142.

⁵³ *Id.* at 132.

⁵⁴ *Id.* at 142.

⁵⁵ Dzurek, *supra* note 14, at 85. See also J. ROACH & R. SMITH, UNITED STATES RESPONSES TO EXCESSIVE MARITIME CLAIMS 64 (1996); *supra* note 48, at 8.

⁵⁶ See the English version of the 1958 Declaration of China’s Territorial Sea, US Dept. of State, *supra* note 14, at 2, available at <http://www.state.gov/documents/organization/58832.pdf> (last visited on Apr. 1, 2013).

of the territorial sea.⁵⁷ In terms of the maximum length of a straight baseline, Dzurek suggests 15 to 48 nautical miles,⁵⁸ whereas Hodgson and Alexander do 42 to 48 nautical miles.⁵⁹ The US State Department suggests 24 nautical miles in its internal guidelines.⁶⁰ This indicates no common criteria for the length of individual baselines. Nonetheless, it is generally agreed that three nautical miles is sufficient, but that 100 nautical miles is excessive.⁶¹ In view of the above discussion, each straight baseline can be analyzed in the following.

1. Basepoints 31 – 34

Basepoints 31-34, which connect Hainan Island to the mainland, are beyond the reasonable limitation. The total length of these straight baselines is about 189 nautical miles, which extends far beyond the general direction of the coast. In particular, the distance between Basepoints 31 and 32 is 54 nautical miles. In addition, the area of the waters on the landward side of these baselines is 23,300 square kilometers, and those areas lying within these baselines are not close enough to the land domain. Finally, they lack the natural requirements of straight baselines.⁶² Further, Basepoints 32 and 33 are mere outer reefs of Hainan Island.

⁵⁷ R. SMITH, EXCLUSIVE ECONOMIC ZONE CLAIMS: AN ANALYSIS AND PRIMARY DOCUMENTS 6 (1986).

⁵⁸ Dzurek, *supra* note 14, at 85.

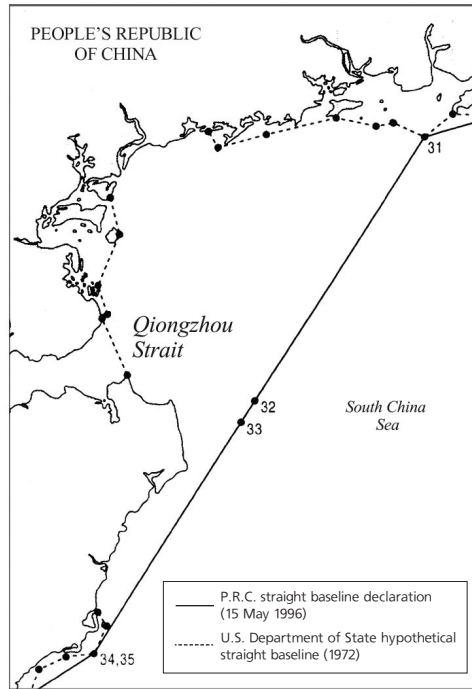
⁵⁹ *Supra* note 48, at 8.

⁶⁰ *Supra* note 32, at 15.

⁶¹ J. Prescott, *Straight Baselines: Theory and Practice*, in THE UN CONVENTION ON THE LAW OF THE SEA: IMPACT AND IMPLEMENTATION 288-318 (E. Brown & R. Churchill eds., 1987).

⁶² UNCLOS art.7(3).

Figure 5: Baselines connecting Basepoints 31-34



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

Making matters critical for straight baselines from these basepoints, the sea areas lying within the baselines include even those localities that not subject to the effective regime of the Chinese government including Makao, Jimmen (Quemoy), Mazu (Matsu), and Wuqiu(Wuchiu). These areas also include Taiwan,⁶³ further deteriorating relations between China and Taiwan.

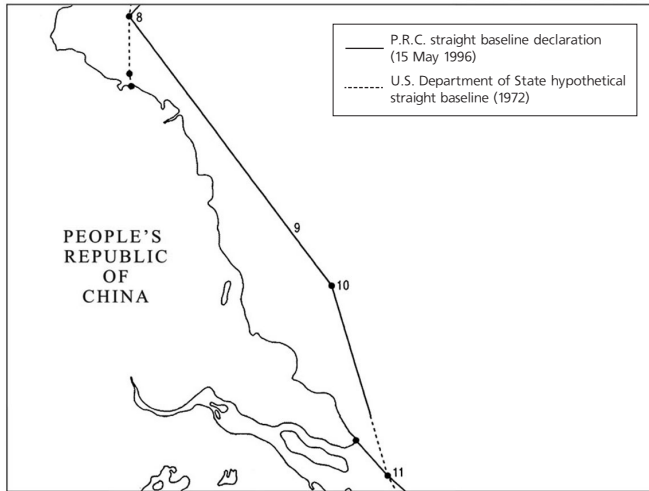
2. Basepoints 8 to 11

Currently, the length of the baseline joining Basepoints 8 and 9 is 121.7 nautical miles, and the distance between Basepoints 10 and 11 is 98 nautical miles. Although there is no written statute regarding the length of straight baselines, it is intuitively clear that 121.7 or 98 nautical miles are far beyond a reasonable limitation.⁶⁴

⁶³ Law on the Territorial Sea and the Contiguous Zone, China (Feb. 25, 1992) art. 2, available at <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/law-of-the-peoples-republic-of-china-concerning-the-territorial-sea-and-the-contiguous-zone-1992.html> (last visited on Apr. 1, 2013).

⁶⁴ *Supra* note 24, at 125.

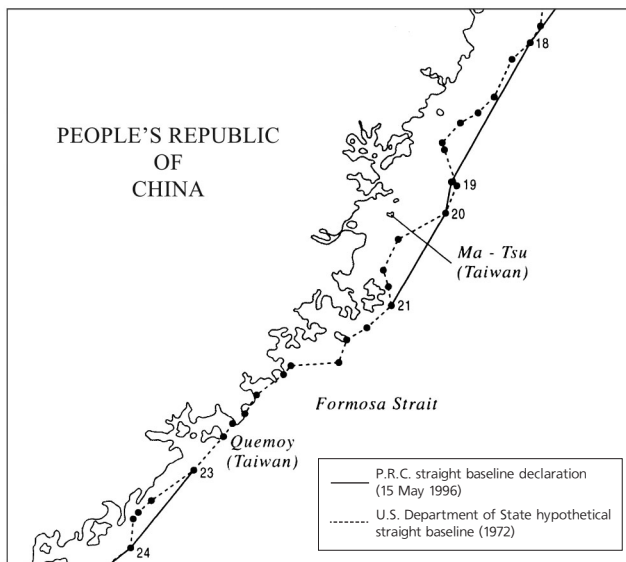
Figure 6: Baselines connecting Basepoints 8-11



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

3. Other Basepoints along the Chinese Coast

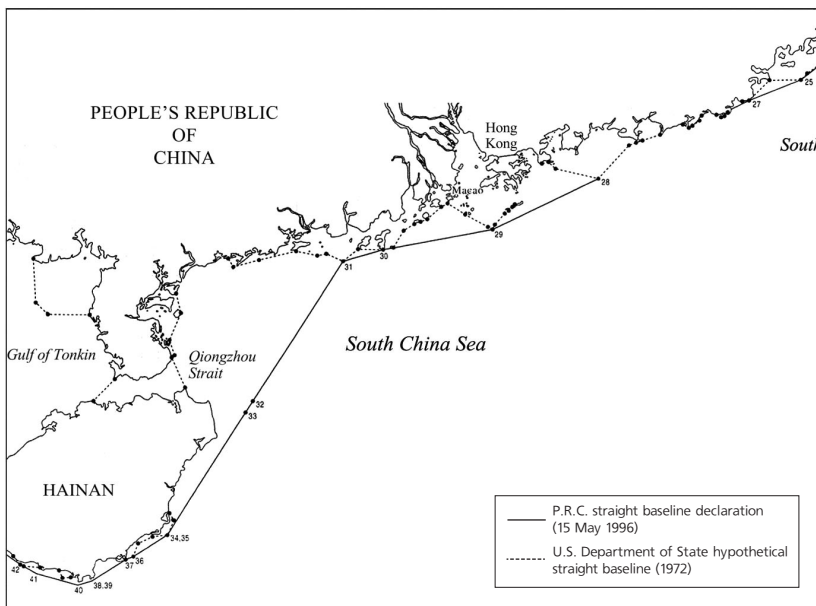
Figure 7: Baselines connecting Basepoints 18-24



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

The overall lengths of straight baselines employed for China's coast are excessive. The baselines joining Basepoints 18 and 19 (73.2 nautical miles), 19 and 20 (14.3 nautical miles), and 20 and 21 (50.3 nautical miles) reflect a serious issue. The same issue can be also observed for baselines 21 and 22 (38 nautical miles), and 22 and 23 (87 nautical miles). These basepoints should be replaced with appropriate areas by taking into account lengths and geographic conditions. In particular, these localities are simple in shape and not deeply indented and thus do not meet the natural requirements of the method of straight baselines. The baselines connecting Basepoints 23 and 24 (48.5 nautical miles), 24 and 25 (30.8 nautical miles), 27 and 28 (84.6 nautical miles), 28 and 29 (71.3 nautical miles), 29 and 30 (66.8 nautical miles), 30 and 31 (25.4 nautical miles), and 31 and 32 (107.8 nautical miles) are also excessively long. There is no fringe of islands near these points. In addition, the sea areas lying within this baseline are not closely enough to the land to be subject to the regime of internal waters. There is no historic bay nearby, either. However, it may be possible to draw new straight baselines close to the coast. Basepoints 33, 34, 40, and 41 should be replaced with appropriate areas by taking into account of straight baseline lengths and geographic conditions.

Figure 8: Baselines connecting Basepoints 25-42



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

Among 48 straight baselines established along China's shore, 25 baselines exceed 24 nautical miles. The average length is 36.3 nautical miles, while the longest one between Basepoints 8 and 9 is 121.7 nautical miles apart. There is no substantive provision regulating the length of straight baselines. In terms of the maximum length, some scholars have maintained 15 to 28 nautical miles,⁶⁵ whereas others, 24 to 48 nautical miles.⁶⁶ The US State Department suggests 24 nautical miles.⁶⁷

C. Straight Baselines for the Paracel Islands

China established 28 archipelagic baselines for the Paracel Islands, turning a vast area into archipelagic waters. However, this implementation of archipelagic baselines is illegitimate for the following two reasons. First, only an archipelagic State can draw archipelagic baselines along its archipelago.⁶⁸ Both China and Vietnam claim sovereignty over the Paracel Islands, but neither is an archipelagic State. Second, for drawing of straight archipelagic baselines, the ratio of the area of the water to that of the land must be from 1:1 to 9:1 based on Article 47 of UNCLOS.⁶⁹ The gross area of the waters lying within the archipelagic baselines is 17,400 square kilometers. Although the exact extent of the land domain of the Paracel Islands is not known, the approximate area including atoll reefs is about few hundred square kilometers, which is not anywhere near the maximum ratio suggested by Article 47. The gross area should be at least 1,933 square kilometers to meet the 9:1 ratio.

⁶⁵ See United Nations, *supra* note 10, at 21; Roach & Smith, *supra* note 55, at 64-65.

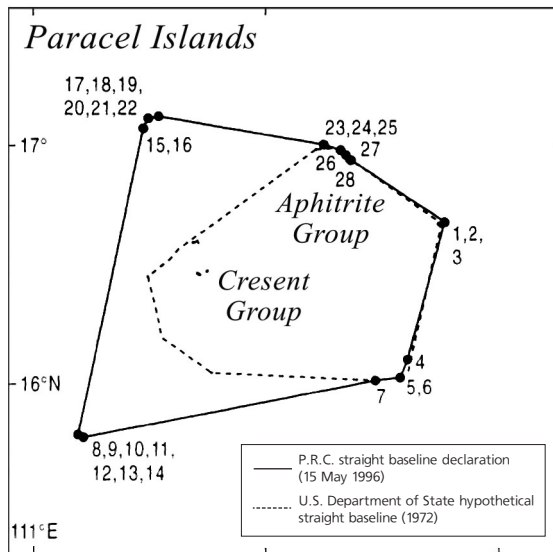
⁶⁶ See Roach & Smith, *supra* note 55, at 64; Hodgson & Alexander, *supra* note 48, at 8; US Dept. of State, *supra* note 32, at 106.

⁶⁷ *Supra* note 15, at 4.

⁶⁸ UNCLOS art. 46.

⁶⁹ *Id.* art. 47(1).

Figure 9: Baselines for the Paracel Islands



Source: Dzurek, *supra* note 14, at 78-79 (modified by the author).

D. US State Department's Stance on China's Straight Baselines

The US State Department concedes that most of the basepoints used by China are in violation of UNCLOS and that some areas lying within Basepoints 1-13 are not consistent with the principle of drawing for bay closing lines. It means that coastlines are too simple to use the method of straight baselines.⁷⁰ Moreover, such baselines are drawn to and from low-tide elevations or islands that are far from the general direction of the coastline.⁷¹ In fact, China's basepoints are considerably different from the virtual basepoints established by the US State Department in 1972.⁷²

Korea has also protested against Basepoints 9 (麻菜珩, Macaiheng), 10 (外磕脚, Waikejiao), 12 (海礁, Haijiao), and 13 (東南礁, Dongnanjiao).⁷³

⁷⁰ *Supra* note 15, at 5-6.

⁷¹ *Id.* at 7.

⁷² US Dept. of State, *supra* note 14, at 4.

⁷³ *Supra* note 24, at 115.

4. Conclusion

China has unilaterally adopted straight baselines along its coastlines in violation of the requirements set by UNCLOS to retain excessive maritime zones. It is clear that such baselines lead to inequitable maritime boundaries with neighboring countries. As discussed in this paper, China's straight baselines: (1) are drawn to and from localities where the coastline is not very unstable or is a low-tide elevation; (2) deviate substantially from the general direction of the coast or excessively long; or (3) include areas that are not subject to the effective regime of the Chinese government. In particular, "the northern coast of the Yangzhe Delta is not deeply indented and has no fringe of islands in its immediate vicinity."⁷⁴ The straight baseline along the northern coast reaches 186-227 kilometers and thus is the longest one (Basepoints 8 and 9).

The method of straight baselines is not suitable for China's coast because of the country's overall geographical conditions. In general, China's coastline is not deeply indented and cut into as that of Norway. In addition, there is no fringe of islands along the coastline from the Yangzhe River to the eastern shore in its immediate vicinity.

From an international legal perspective, straight baseline must be employed only to supplement the method of normal baseline. The method of straight baselines should not be applied to a unilaterally extend a coastal State's maritime jurisdiction.⁷⁵ In addition, a coastal State must take into account the fact that drawing straight baselines may affect the extent of maritime zones of other coastal States. Therefore, the Chinese government should redraw its straight baselines within a reasonable and moderate limitation.⁷⁶ For the re-delimitation, it should fully consult with neighboring coastal States as a member of UNCLOS as well as the global community. Although a coastal State may draw its straight baselines, the validity of baselines with respect to affected States clearly depends on the international law of the sea.

⁷⁴ Dzurek, *supra* note 14, at 84

⁷⁵ The ICJ stressed that: "The delimitation of sea areas has always an international aspects; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law." See *Anglo-Norwegian Fisheries case*, *supra* note 45, at 132.

⁷⁶ Hyunsoo Kim, *The 1992 Chinese Territorial Sea Law in the Light of the UN Convention*, 43 INT'L & COMP. L. Q. 895-896 (1994).

