

Basic Maritime Zones

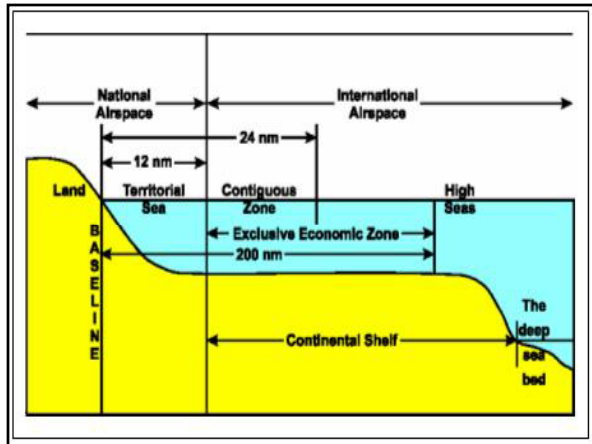
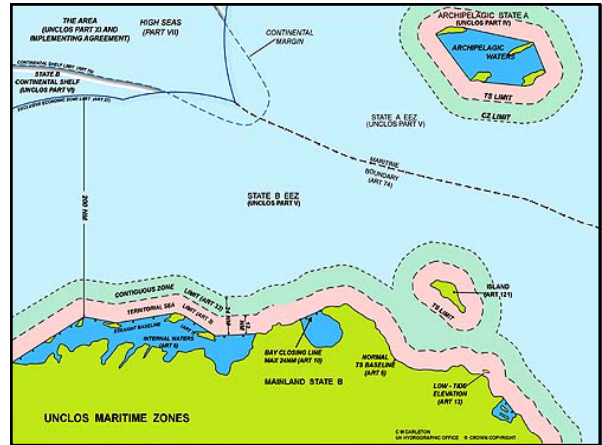
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Scope

- Territorial Sea and Contiguous Zone
 - Territorial sea baselines
 - Innocent passage
- Exclusive Economic Zones
 - Rights and duties of states
- Islands and their effect on maritime zones

Maritime Zones

- Internal Waters
- Archipelagic Waters
- Territorial Sea
- Contiguous Zone
- Exclusive Economic Zone
- Continental Shelf
- High Seas



Internal Waters (UNCLOS Art. 8)

- Waters on the landward side of territorial sea baselines
- No right of innocent passage except where the use of territorial sea straight baselines encloses waters not previously internal waters
- Ships entering internal waters must conform with the rules and regulations of the coastal or port State (Port State Control)

Territorial Sea (UNCLOS Part II)

- Up to 12 nautical miles from territorial sea baselines
- Ships of all States enjoy the right of innocent passage through the territorial sea
- No right of overflight in the territorial sea
- 2 main issues with the territorial sea regime in the Asia-Pacific region:
 - Use of straight baselines
 - Innocent passage of warships

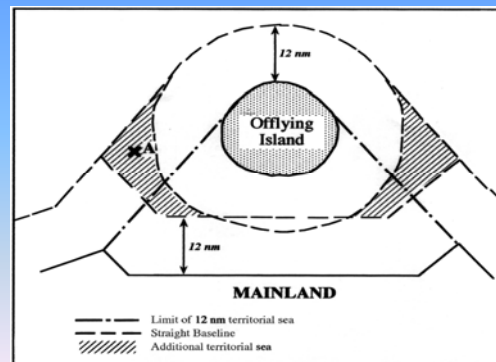
Baselines

- *Normal Baselines* - the normal baseline for the measurement of maritime zones is the low-water mark along the coast, marked on large-scale charts officially recognised by the coastal State (UNCLOS Article 5).
- *Straight Baselines* - three criteria for drawing straight baselines (UNCLOS Article 7) – (1) deeply indented coast or a fringe of islands; (2) should not depart from trend of coast; and (3) some economic relationship
 - rules for river mouths in Art. 9 and bays in Art. 10
- *Archipelagic Baselines* – not the same as Territorial Sea baselines

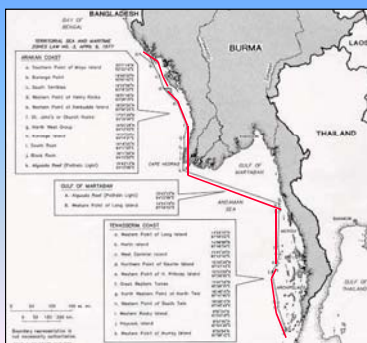
Importance of Baselines

- Fundamental to maritime claims
 - Define outer limits of internal waters
 - Starting point for claiming maritime zones
 - Provide basepoints for generation of limits of national maritime claims and maritime boundary negotiations

Advantage of Straight Baselines



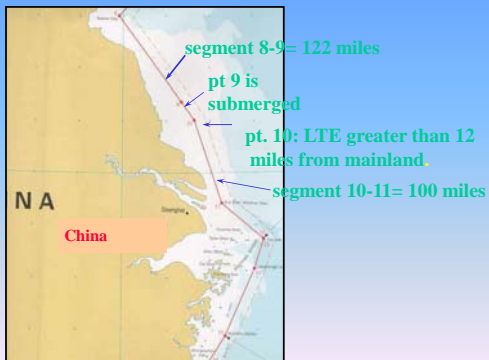
Myanmar's Claimed Straight Baselines



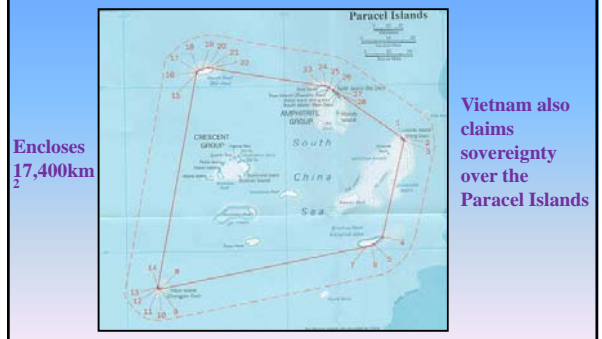
China's Straight Baselines

May 15, 1996
Declaration

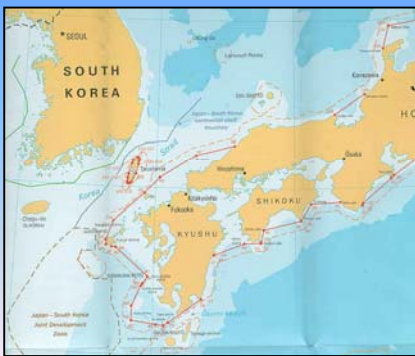
Segment of China's Straight Baseline System



China's Straight Baseline claim around the Parcel Islands



Japan's Straight Baseline Claim



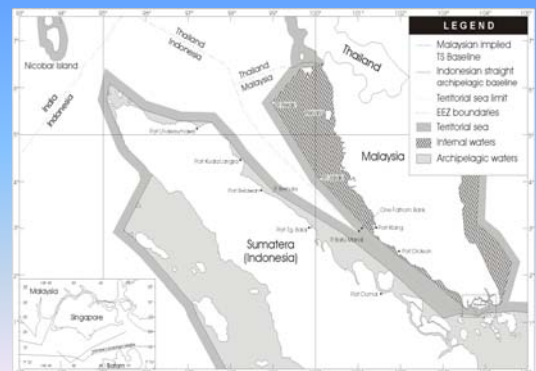
South Korea's Straight Baselines



Vietnam's Claimed Straight Baselines



Malaysia's Baseline System



International Legal Implications

- Does East Asian liberal use of straight baselines influence customary norms of international law?
- Arguments against:
 - UNCLOS Article 7 very clear
 - ICJ cases – including 2001 *Qatar v. Bahrain* decision
- But some division of scholarly opinion
 - Regional v. Global views

RESTRICTIONS ON INNOCENT PASSAGE OF WARSHIPS - INDIAN & PACIFIC OCEANS

- REQUIRE PRIOR NOTIFICATION - INDIA, INDONESIA, SOUTH KOREA, MAURITIUS, SEYCHELLES
- REQUIRE PRIOR AUTHORISATION - BANGLADESH, BURMA, CAMBODIA, CHINA, IRAN, MALDIVES, OMAN, PAKISTAN, PHILIPPINES, SOMALIA, SRI LANKA, UAE, VIETNAM, YEMEN

China's statement on ratifying UNCLOS:

“The People's Republic of China reaffirms that the provisions of the United Nations Convention on the Law of the Sea concerning innocent passage through the territorial sea shall not prejudice the right of a coastal state to request, in accordance with its laws and regulations, a foreign state to obtain advance approval from or give prior notification to the coastal state for the passage of its warships through the territorial sea of the coastal state.”

Arguments against Prior Authorization or Notification

- “Ships of all States have the right of innocent passage (UNCLOS Art. 17)
- Attempts during UNCLOS negotiations to have the requirement included in the convention failed.
- “I think the Convention is quite clear on this point. Warships do, like other ships, have a right of innocent passage through the territorial sea, and there is no need for warships to acquire the prior consent or even notification of the coastal State.”
(Ambassador Tommy Koh, Singapore)

Contiguous Zone (UNCLOS Art. 33)

- May not extend beyond 24 nm from territorial sea baselines
- Coastal state may prevent (and punish) infringements of its customs, fiscal, immigration or sanitary laws and regulations
- Vessels suspected of smuggling arms, drugs or people cannot be intercepted/arrested outside of contiguous zone
- Nothing about “security” in Art. 33

Exclusive Economic Zones (UNCLOS Part V)

- Extend up to 200nm from territorial sea baselines.
- A zone *sui generis* (i.e. neither territorial sea nor high seas) – included within US concept of *international waters*
- Coastal State has sovereign rights over resources, living and non-living, and jurisdiction in respect of artificial islands, etc; marine scientific research; and preservation & protection of the marine environment (UNCLOS Article 56)
- Other States have certain rights (high seas freedoms of navigation and overflight) and obligations in an EEZ (UNCLOS Article 58)

Rights and duties of other States in an EEZ

- Art. 58(1) - all States enjoy the freedoms (*i.e. of the high seas*) referred to in Art. 87 of navigation and overflight and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships aircraft, etc.
- Art 58 (2) - Articles 88 – 115 and other pertinent rules of international law apply in an EEZ – includes piracy regime, right of visit, hot pursuit, etc
- Art. 58 (3) – In exercising their rights and performing their duties in the EEZ, States shall have due regard to the rights and duties of the coastal State

EEZ - Regional Issues

- Countries claiming jurisdiction over military activities in the EEZ: China, Malaysia and India
- Countries with security zones and/or ADIZs beyond the territorial sea: India, DPRK, Indonesia
- Incidents include: USN EP3 off Hainan, military surveys by US and UK in Asian EEZs, North Korean “spy ships” off Japan and Chinese scientific research off Okinotori
- Marine scientific research, military surveys and intelligence collection
- Interpretation of “due regard” in UNCLOS Arts 56(2) and 58(3)

Freedoms of Navigation and Overflight available in an EEZ (UNCLOS Art. 87)

- Freedom of the high seas comprises, *inter alia*:
 - (a) freedom of navigation;
 - (b) freedom of overflight; etc
- All exercised with due regard to the interests of other States.

Regime of Islands (UNCLOS Art. 121)

- “An island is a naturally formed area of land, surrounded by water, which is above water at high tide.”
- An island can generate the full suite of maritime zones
- But “Rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf.”
- Regional issues – so what is an island and what is not? (e.g. Macclesfield Bank (Zhongsha), Spratly islands, Okinotori-shima)



Okinotori Islands Dispute between Japan and China

Okinotori Islands



- A small coral reef about 1700 km South of Tokyo with two areas of rock above HW
- Japan’s protests to China re operation of Chinese oceanographic vessels in its claimed EEZ
- Dispute is really over the legitimacy of the claimed EEZ around the feature