

Comment

THE PROBLEMS OF DELIMITATIONS OF BASE LINES FOR OUTLYING ARCHIPELAGOS

An archipelago has been defined as a formation of two or more islands (islets or rocks) which geographically, socially, politically and economically may be considered as a whole.¹ Outlying archipelagos are groups of islands situated out in the ocean at such a distance from the coast or firm land as to be considered complete in themselves, an independent whole rather than forming a part of an outer coastline of the mainland.²

Traditionally the belt of water constituting the territorial sea has been measured from the low water mark on the coast and extended one marine league from that point.³

The United States has long been of the view that until there is international agreement the three mile territorial sea is established international law, and the unilateral acts of states claiming territorial seas of greater breadth are in conflict with the accepted principle of freedom of the sea.⁴

1. Klein, *The Territorial Waters of Archipelagos*, 26 *FED. B.J.* 317 (1966) (hereinafter cited as *Klein*).

2. Evensen, *Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos*, U.N. Doc. No. A/CONF. 13/18 [reprinted in I *Official Records, United Nations Conference on the Law of the Sea* 289 (1958)] (hereinafter cited as *Evensen*).

3. U.S. *FOR. REL.*, vol. i, at 649.

4. The United States' position regarding the three mile limit was first

The problem facing the United States, Japan, Germany and the other major maritime nations is how to enforce this traditional view short of hostilities. The unilateral expansion by the smaller nations of their territorial and internal waters has had a substantial effect on the maritime powers. It has closed large areas of the ocean to foreign nations for transportation, fishing, and mineral exploration. Cutting off mineral exploration has infringed on their supply or potential supply. The claiming nations such as Peru, Ecuador, Indonesia, and the Philippines point to the fact that their populations are totally dependent on the sea as a means of livelihood. They maintain that expansion is necessary to protect the general welfare of their population, to insure survival and to prevent the depletion of the ocean's resources by foreign nations.

Since the expanding nations have refused to submit to the jurisdiction of the International Court of Justice, no other legal remedies seem to be available. Therefore, until an agreement can be reached the controversy will continue, neither side recognizing the validity of the other's position. The larger maritime powers will continue to violate the claimed territorial limits, and the claiming nation will try to enforce their position through confiscation and fines.

The problem arises when the archipelagos use straight base lines⁵ as a means of delimiting their territorial waters. The implications of this method can be graphically illustrated by an analysis of the system as it is applied by the two largest mid-ocean archipelagos—the Philippines and Indonesia.

Indonesia extends for more than 3,000 miles east and west and roughly 1,300 miles north and south across the equator between Asia and Australia; and is composed of 3,000 or more islands. The Philippine Islands consist of about 7,000 islands lying about 500

taken in 1793, when the Secretary of State Thomas Jefferson warned British and French privateers not to hover within three miles of our coast, since this area was territorial waters. In 1794 Congress passed a statute adopting the three mile limit in conferring jurisdiction on federal district courts in prize cases. Act of June 5, 1794, ch. 50, § 6, 1 STAT. 384.

The convention with Great Britain for the Prevention of Smuggling of Intoxicating Liquors provided, "The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from the low-water mark constitute the proper limits of the territorial waters." 43 STAT. 1761, T.S. No. 685 at 1 (1924).

Prominent authorities of International Law also state this to be the United States' position: 1 HACKWORTH, DIGEST OF INT'L LAW 672 (1940); JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 49 (1927); 1 MOORE, INT'L LAW DIGEST 107 (2d Ed. 1887).

5. "A baseline is simply the line (whatever it may be, and whether straight, curved or indented) which is properly to be taken as the inner line of the coastal belt of the territorial sea." 8 INT'L & COMP. L.Q. 75, 76 (1959).

miles off the Southeast coast of Asia. The Islands extend North and South about 1,152 miles and East and West about 688 miles.⁶

In the delimitation of their territorial waters, each of these countries has proclaimed that the straight base line method is to be employed.⁷ Under this method, a line is drawn around the outermost islands until the group as a whole is completely enclosed. The waters within the line become internal waters irrespective of the distances between the islands, and these waters are subject to the states' right of sovereignty.⁸ Through these waters there would be no right of aerial overflight, and movement of fishing vessels, surface warships and submarines through, over or under these areas would be seriously curtailed.

The entire Indonesian straight base line system extends for 8,167.6 nautical miles. The system encloses approximately 660,000 square nautical miles of internal waters including the important straits of Sunda, Sumba, Lombok, Ombia, Molucca, and Macassar as well as numerous internal passages within the Indonesian archipelago. This system contains 196 individual segments within an average length of 41.67 nautical miles. . . . Since the Indonesian territorial sea claim extends seaward for twelve miles from the straight base lines, an additional 98,000 square nautical miles of water could theoretically fall under Indonesian sovereignty.⁹

The Philippine Government has also adopted the straight base line system:

The length of the system is . . . 8,174.8974 nautical miles. . . . [T]he average length of a segment is 102.185 nautical miles. The longest base line segment is 140.05 nautical miles. . . . The base line system, in effect, closes the important Surigao Strait, Sibutu Passage, Balabil Strait and Mindoro Strait, as well as the more internal passages through the Philippine Islands. The largest body of water enclosed is the Sulu Sea but other significant seas, the Moro, Mindanao, Sibuyan, etc., are also within the system. . . . The effect of the system can best be illustrated by area figures. The approximate land area of the Philippines is 115,600 square (statute) miles or 87,278 square nautical miles. The area contained within the straight base lines measures 328,345 square miles or 247,845 square nautical miles. The enclosure system therefore increases

6. *Klein, supra* note 1, at 317.

7. *Indonesia: Act Concerning Indonesian Waters*, promulgated at Djakarta on 18 Feb. 1960.

Philippines: An Act to define the Baselines of the Territorial Sea of the Philippines. Approved 17 June 1961.

8. *Id.*

9. STATE DEP'T BUREAU OF INTELLIGENCE RESEARCH (OFF. OF THE GEOGRAPHER), (INTERNATIONAL BOUNDARY STUDY—SERIES A—LIMITS IN THE SEA—STRAIGHT BASELINES: INDONESIA) No. 35, at 8 (1971).

the national "territory" approximately 2.8 fold. The resulting land to water ratio is approximately 1:1,841. The use of this system increases by more than 2.14 the "territory" within the base lines.¹⁰

The justification offered for the use of the straight base lines is that geographically the archipelagic groups have their own characteristics and peculiarities. The archipelagos point out that historically they have constituted one entity, and maintain that in the interest of the territorial integrity of the islands, and the waters lying between these islands, they should be regarded as a single unit.¹¹

The United States and other major maritime nations, which have traditionally advocated freedom of the seas, oppose the straight base line system utilized by these archipelagos. They claim that each and every island, irrespective of its distance from another, should have its own territorial sea, and that it is not permissible to establish one area of territorial sea for the group as a whole, incorporating the enclosed waters as internal waters.¹²

Consistent with this approach, the United States, in delimiting the territorial waters of its own archipelagos (i.e., Hawaiian Islands) has given each island its own territorial sea of three nautical miles. Where the islands are six miles or less apart the territorial waters of such islands will intersect, but not even in this case are straight base lines applied for such delimitation. The sea between the islands, but outside the three mile limit, is considered high seas, and open for free passage to all vessels.¹³

Recognizing all the waters around the islands as internal waters would seriously affect commerce and travel.

A detour around the whole of an archipelago may necessitate a marked deviation from, and lengthening of, the normal course between foreign destinations. These considerations apply to both air and sea transport. The possible effect of enclosing archipelagic waters as internal waters is dramatically illustrated by the estimate that in the case of Indonesia access to an area of water 3,000 miles in length could be closed to foreign navigation at the discretion of the local authorities. Even if the waters between the islands are regarded as part of the territorial sea, the archipelagic state could seriously hinder international transport, particularly that of planes and warships.¹⁴

10. STATE DEP'T BUREAU OF INTELLIGENCE RESEARCH (OFF. OF THE GEOGRAPHER), (INTERNATIONAL BOUNDARY STUDY—SERIES A—LIMITS IN THE SEA—STRAIGHT BASELINES: THE PHILIPPINES) No. 33, at 8 (1971).

11. *Indonesia*; *supra* note 9.

12. M. McDUGAL & W. BURKE, *THE PUBLIC ORDER OF THE OCEANS* 313, 314 (1962) (hereinafter cited as *McDougal*).

13. *Evensen*, *supra* note 2, at 297.

14. *McDougal*, *supra* note 12, at 313-314.

PROPOSALS BY INTERNATIONAL BODIES AND
INTERNATIONAL LAW PUBLICISTS

The question of the delimitation of the territorial waters of archipelagos has been discussed at length by numerous international bodies, but no international agreement has been reached.

The Institut De Droit International in the final resolution of 1928 proposed:

Where archipelagos are concerned, the extent of the marginal sea shall be measured from the outermost islands or islets provided that the archipelago is composed of islands and islets not further apart from each other than twice the breadth of the marginal sea and also provided that the island or islets nearest to the coast or the mainland are not situated further out than twice the breadth of the marginal sea.¹⁵

The 1924 meeting of the International Law Association, in Stockholm, proposed:

Where there are archipelagos the islands thereof shall be considered as a whole, and the extent of the territorial waters . . . shall be measured from the islands situated most distant from the center of the archipelago.¹⁶

In this proposal no maximum was suggested regarding the distance between the islands of the archipelago. The final document of this association was amended by the draft convention two years later at their 34th Conference in Vienna. The final document contained no reference to archipelagos. Thus, although suggestions and proposals were offered and argued, agreement could not be reached.¹⁷

The American Institute of International Law proposed in Article 7 of Project No. 10 (National Domain) that:

In the case of an archipelago, the islands and keys composing it shall be considered as forming a unit and the extent of the territorial waters . . . shall be measured from the center of the archipelago.¹⁸

Harvard Research in International Law proposed that:

15. 34 ANNUAIRE OF INSTITUTE DE DROIT INTERNATIONAL 673 (1928) (unofficial translation) (terms marginal sea and territorial waters are synonymous).

16. REPORT OF THE 33D CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION, STOCKHOLM at 266 et. seq. (1924).

17. REPORT OF THE 34TH CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION, VIENNA, at 40 et. seq. (1926).

18. 20 AM. J. INT'L L. 318, 319 (Spec. Supp. 1926).

In any situation where the islands are within six miles of each other the marginal sea will form one extended zone. No different rule should be established for groups of islands or archipelagos except if the outer fringe of the islands is sufficiently close to form one complete belt of marginal seas.¹⁹

The Hague Codification Conference of 1930²⁰ was also a failure in acquiring international agreement on the question of the territorial waters of archipelagos. The views of the governments on this question varied drastically. Some governments expounded the theory that each island has its own territorial waters. Other governments held that a single belt of territorial waters could be drawn around archipelagos provided that the islands and islets of the group were not further apart than a certain maximum. The suggestions as to the maximum also varied. Other governments expressed the view that archipelagos must be regarded as a whole where the geographical peculiarities warranted such treatment. They advocated no particular maximum distance, but rather that the geographical facts of each case must be taken into account.²¹

From the divergence of views expressed it is clear that although the question has been debated by many different international agencies, no exclusive agreement has ever been reached.

THE ANGLO-NORWEGIAN FISHERIES CASE

On December 18, 1951, the International Court of Justice delivered judgment in favor of Norway in the *Anglo-Norwegian Fisheries Case*,²² deciding the question of the legality of straight base lines. The litigation began when the United Kingdom deposited application on September 28, 1949. The judgment put an end to a dispute between the two countries which had existed for about 40 years and had become acute in September, 1948, when the Norwegian Government decided to strictly enforce the provisions of the Royal Norwegian Decree of July 12, 1935.

The Norwegian Decree provided that, in the area of Northern Norway, the exclusive Norwegian fisheries zone should extend four miles to the seaward of straight base lines drawn between certain specified base points. The points were to be either on the mainland, islands, or rocks. The effect of the base lines was to enclose

19. 23 AM. J. INT'L L. 241, 276 (Spec. Supp. 1929).

20. The Codification Conference was appointed by the League of Nations in 1924 to prepare a conference for the codification of international law.

21. BASIS OF DISCUSSION No. 12, ON TERRITORIAL WATERS (SER. L.O.N.P. 1929, v. 2, at 50 et. seq.) Replies of the various governments to the Hague Certification Conference of 1930.

22. [1951] I.C.J. 116 (hereinafter cited as *Fisheries*).

for exclusive use by Norwegian fishermen, areas of water which the United Kingdom Government believed to be high seas.

The basic issue before the court was the correct method of determining the territorial sea, which both parties agreed to be four miles in breadth. Norway argued that its method of using straight base lines was not contrary to international law. The United Kingdom maintained that Norway was entitled to a belt of territorial waters of fixed breadth, that the outer limit of Norway's territorial waters must never be more than four sea miles from some point on the base line, and that, as a rule, the base line must be the low water mark on permanently dry land or the proper closing line of Norwegian internal waters.

In the United Kingdom's view, Norway, like any other state, was bound by the rule that the breadth of the territorial sea is measured from the line of the low water mark along the entire coast.

Both parties to the litigation agreed that the trace parallele method,²³ although theoretically feasible along a very straight coastline, becomes progressively impractical in proportion as the coastline becomes indented, and would be completely impractical along a very indented coastline such as that of Northern Norway.

The arcs of circles method²⁴ is the method which the United Kingdom uses. The United Kingdom did not argue that the arcs of circles method is itself binding on Norway under international law, but contended rather that the coastline rule is binding on Norway and the arcs of circles method is the easiest and most natural method of applying the coastline rule.

The court found, by ten votes to two, that the method employed for the delimitation of the fishery zone by the Royal Norwegian decree of July 12, 1935 was not contrary to international law.

23. Trace parallele method consists of drawing on the chart an exact replica of the coastline x miles out from that coastline.

24. "Arcs of circles method of delimitation of the territorial sea is really the inverse of the process used by a ship to discover whether she is inside or outside territorial waters. In using this method, the outer lines of the territorial waters become a series of gentle curves and, especially in the case of an indented coastline, a very much smoother line than the coastline itself. The reason the outer is a smoother line than the coastline is that, owing to the intersection of the arcs drawn from the more prominent points on the coastline, the arcs drawn from the less prominent points become irrelevant." 1 INT'L & COMP. L.Q. 145, 172 (1952). See also Boggs, 24 AM. J. INT'L L. 541 (1930).

The court began its judgment by paying particular attention to the geographical aspect of the case. It stressed the indented nature of the coast of Northern Norway, the unity of the "skjaergaard"²⁵ with the mainland.

In ruling in favor of the method of straight base lines employed by Norway "the court did not expressly state that there are no rules of general international law on the subject of territorial waters that bind all states, but rather adopted the position that such general rules as these are possess a considerable degree of flexibility."²⁶

Having emphasized the particular geographical features of the Norwegian coast the court said, "Such are the realities which must be born in mind in appraising the validity of the United Kingdom contention that the limits of the Norwegian fisheries zone laid down in the 1935 Decree are contrary to international law."²⁷

The court found that because of the special geographical features of the coast in question:

The line of the low water mark can no longer be put forward as a rule requiring the coastline to be followed in all its sinuosities; nor can one speak of exceptions when contemplating so rugged a coast in detail. Such a coast, viewed as a whole, calls for the application of a different method.²⁸

Thus, the solution for the determination of territorial waters at which the court appears to have arrived is that while straight base lines are not in themselves illegal, they must nevertheless conform to a certain principle, that is, "the principle that the belt of territorial waters must follow the general direction of the coast." This principle, it is said, "makes it possible to fix certain criteria valid for any determination of the territorial sea."²⁹ While the decision is binding on the party litigants, it does not establish a precedent which other nations must follow. This is so for two reasons. First, international law does not recognize the principle of stare decisis. Second, Article 59 of the court's statute provides that the decision of the court has no binding force except between the parties and in respect of that particular case.³⁰

Even though this judgment is not binding on other nations, its implications and ramifications upon what was thought to be estab-

25. "Skjaergaard" means rock rampart, a series of islands and reefs. *Fisheries*, *supra* note 22, at 128.

26. 1 INT'L & COMP. L.Q. 145, 155 (1952).

27. *Fisheries*, *supra* note 22, at 128.

28. *Id.* at 129.

29. *Id.*

30. 1 INT'L & COMP. L.Q. 179 (1952).

lished international law are great. This case laid aside the idea that the base lines must be the low water mark along the coast, and for the first time recognized the legality of the straight base line method as a means of delimitation in certain circumstances.

In analyzing the judgment the court laid down certain guidelines which must be taken into consideration in determining whether the use of straight base lines are appropriate: 1) the drawing of base lines must not depart to any appreciable extent from the general direction of the coast; 2) the real question raised in the choice of base lines is, in effect, whether certain sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters; 3) certain economic interests particular to a region, the reality and importance which are clearly evidenced by long usage should not be overlooked.³¹

Since the use of straight base lines was held to be a valid method of delimitation, the question still remains: do outlying archipelagos thus have a right to use this method of straight base lines in the delimitation of their territorial waters? The *Fisheries Case* does not answer this question. Although the use of straight base lines was judged to be valid, the circumstances were completely different. The major and most prominent difference is that the *Fisheries Case* dealt with a unique coastal archipelago and the problem still unanswered is in relation to mid-ocean archipelagos.

U.N. CONFERENCE ON THE LAW OF THE SEA, 1958

From February 24 to April 28, 1958, the United Nations held its first Conference on the Law of the Seas at Geneva. The Conference on the Law of the Seas derives its importance from two major facts. First, it was attended by all the major maritime states of the world, including most of the members of the United Nations plus some important non-member states. Second, the Conference achieved a broad scope of accomplishment.

After nine weeks of work the Conference adopted four conventions dealing with: (1) the territorial sea and the contiguous zone; (2) the high seas; (3) fishing and conservation of the living resources of the high seas; and (4) the continental shelf.

In the final act of the Convention on the Territorial Sea and the

31. *Fisheries*, *supra* note 22, at 133.

Contiguous Zone,³² Section II, "Limits of the Territorial Sea," deals with the question of base lines.

Section II. Limits of the Territorial Sea

Article 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 4

1. In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3. 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.

4. Where the method of straight baselines is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

5. The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

6. The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.

Article 5

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.

2. Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters.

Article 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

In the foregoing provisions Article 3 lays down "the low-water line along the coast" as being "the normal baseline for measuring the breadth of the territorial sea;" however, in article 4, recognition is given to the principles enunciated by the International Court of Justice in the Fisheries Case as being applicable for deciding (a)

32. *Done* April 29, 1958, 15 U.S.T. 1606 (1964), T.I.A.S. No. 5639, 516 U.N.T.S. 205, in force September 10, 1964.

in what circumstances straight baselines, rather than the low-water line along the coast can be used; and (b) what are the conditions governing the method of drawing particular base lines where the use of straight base lines is permissible.

The significance of paragraph 4 is that it makes it clear that economic interests are not per se a justification for the institution of straight base lines. After the physical and geographical criteria laid down by paragraph 1 of Article 4 of the Convention are present, then the existence of economic interests in a particular region may properly be allowed to affect the way certain individual base lines are drawn.³³

Regarding the conditions governing the method of drawing straight base lines where appropriate, paragraph 2 follows the principles enumerated in the *Fisheries Case*.

At first glance the provisions of this Convention may seem to solve the problem of the delimitation of territorial waters. A closer analysis, however, reveals that the provisions in no way dealt with, affect or solve the controversy with regard to midocean archipelagos. For example, in dealing with the question of when straight base lines may properly be used, Article 4, paragraph 1 uses the term "fringe of islands along the coast." This description makes it clear that the conference had in mind not outlying or midocean archipelagos but rather coastal archipelagos. The final resolution also required a continuous "fringe" sufficiently solid and close to the mainland to form a unity with it, before the use of straight base lines may properly be employed.

Article 10 of the Convention³⁴ deals with islands. It may be argued that this Article makes no special provisions for the use of straight base lines for the delimitation of the territorial sea of islands. Paragraph 2 of Article 10 dealing with the method of measuring the territorial sea of islands proclaims it is to be "measured in accordance with the provisions of these Articles." Therefore,

33. Fitzmaurice, *Some Results of the Geneva Conference on the Law of the Sea*, 8 INT'L & COMP. L.Q. 73, 77 (1959).

34. *Supra* note 32, Article 10:

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

since Article 3 maintains that "normally" the territorial sea is measured from the "low-water line along the coast," in the absence of "special circumstances" enumerated in Article 4, the low-water line around each island seems to be the proper base line from which the territorial waters are to extend.

It seems therefore, according to the terms of this Conference, that before islands may make use of straight base lines they must show justification geographically (Article 4), and only after this justification is shown may economic, social, historic and other interests be considered.

The provisions of the Convention concerning the delimitation of the territorial seas of islands is ineffective when applied to the Philippines or Indonesia. By the terms of the Convention the articles are binding only on signatories, and neither the Philippine nor Indonesian Government has subscribed.³⁵ Therefore, this Conference was also a failure in achieving international agreement on this question.

In 1960 the Conference again assembled at Geneva for the Second United Nations Conference on the Law of the Seas. This Conference limited its discussion to the two most pressing issues and failed to achieve agreement on either. The topics of discussion were: (1) the breadth of the territorial seas; and (2) the breadth of fishery limits. In failing to achieve agreement on either of these two problems, and dismissing the Conference, the question of delimitation of base lines for outlying archipelagos remained unanswered and the question is still in a state of flux and unresolved.

CONCLUSION

The delimitation of sea areas have 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 an 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.³⁶

In arriving at a solution which will achieve international consensus regarding the delimitation of base lines of outlying archipelagos, the international bodies have taken the wrong approach. In trying to solve this problem they have advocated a single method to be applied across the board to every archipelago. This approach is doomed from the start because of the diverse geography of the various archipelagic states. Some are closely-knit groups of islands

35. *Supra* notes 9 & 10.

36. *Fisheries*, *supra* note 22, at 132.

covering relatively little area, while others are spread out over miles of ocean. Because of these vast differences, the only way international agreement can be achieved is to analyze the claims, problems and justifications of each archipelago separately. Due weight should be given the criteria laid down by the International Court of Justice in the *Fisheries Case* in arriving at an agreement. Since international agreement will not prevail if either side is unwilling to make concessions, a compromise will have to be achieved.

The court in the *Fisheries Case* emphasized the need for:

. . . [F]lexibility in the rules of international law governing the territorial sea. Considerations to be taken into account are those such as the vital economic interest of the regions involved, the practical needs and the local requirements of the coastal population, the historic element in the case as a proof of such needs and the more or less close relation between the water areas in question and the land³⁷

An incorporation of the methods advocated by the different interest groups may provide a solution for the archipelagic states. This method would take into consideration the major concerns of both advocates. The populations of the archipelagic states rely heavily on the ocean as a means of livelihood, and fishing is a major concern of their economics. Thus, the governments are concerned with the depletion of the stock by foreign countries and advocate exclusive fishing rights inside the base lines. The other view is concerned with the effect of the straight base line method on the movement of trans-ocean vessels, planes and submarines. If the water inside the base lines were to be recognized as internal or territorial, foreign vessels could be denied free access through these waters subject only to the right of innocent passage through International Straits.³⁸

If the two systems were incorporated and the low-water mark around each island was used as the base line for measuring the territorial sea, the question of free passage would be met. All foreign vessels and planes would have free access to the use of these

37. Evensen, *The Anglo-Norwegian Fisheries Case and its Legal Consequences*, 46 AM. J. INT'L L. 609, 630 (1952).

38. CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE, *supra* note 32, Art. 16(4). "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or territorial sea of a foreign state."

waters subject only to the belt of territorial waters around each island. On the other hand, if *along* with this method the straight base lines advocated by the archipelagic states were employed to constitute a contiguous zone, the right to exploit the resources of the ocean within these base lines would be reserved for the archipelagic population, thus eliminating a threat to their economy through depletion.

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