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THE UN CONVENTION ON THE LAW OF THE SEA
AMENDMENTS OR "INTERPRETATION"?

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Summary

Ten years after the entry into force of the United Nations Convention on the Law of the Sea it is now possible to revise and simplify the rules concerning straight baselines which may be used for the closing of indentations and bays; new rules would settle the many outlaw situations which exist at present and would enable the definition of many situations which still have to be settled. Draft new rules concerning straight baselines are proposed.

The 1982 United Nations Convention on the Law of the Sea entered into force in 1994; there are now many articles in force, which contain ambiguities, some technical errors and technical concepts which have been *de facto* overtaken by progress and State practice.

Certainly, many parts of the Convention require significant modifications or improvements: it suffices to cite Part II "Territorial Sea and Contiguous Zone", Part VI "Continental Shelf" and Part XI "The Area" to give an idea of the work with which legal experts will be confronted.

Articles 312 and 313 are also in force which govern the revision or amendment of the Convention. As from 2004 it will be possible to propose specific amendments and to ask for a Conference to be convened to consider any proposed amendments.

The intention of this short paper is to amend and simplify the text of Part II of the Convention and, in particular, those articles which, in practice, have been and are normally ignored or infringed. The final goal is to produce a text which corresponds to reality, whether it be the geographic, juridical or practical reality.

Part II is composed of 32 articles on "Territorial Sea and Contiguous Zone"; of these Articles 3, 4, 5 and 7 to 16 specifically concern "baselines" (and, in particular, "straight baselines") from which the breadth of the territorial sea and contiguous zone is measured and the principles and limitations for drawing them and the effects consequently produced.

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Since it is impossible that the provisions of these articles fit every geographic situation, many authors of international renown have attempted to find new standard geometric rules to which all States should conform; the best known of them all is the study "Developing Standard Guidelines for evaluating Straight Baselines", published in 1987 by the U.S. Department of State in the Series "Limits in the Seas", No. 106.

Nevertheless, it seems that the recommendations of such an authoritative voice have not produced the desired effects; this explains our attempt to find a solution which is compatible with the already existing (and unchangeable) situations which, evidently reflect the "general interpretation of the Convention", but also those situations waiting for a definition, taking care not to prejudice the freedom of navigation and the territorial sovereignty of coastal States.

Part II of the Convention concerns the geographical and physical aspects of the coast, the part of the territory of a coastal State in direct contact with the sea, which, over the past 50 years, has assumed increasing economical and social importance, and not only for its industrial activity (harbours, container terminals, steel industry, shipyards) and the traditional maritime aspect (fishing and navigation), but mainly for the generally improving standard of living, which in summer time produces real mass migrations towards the coasts: according to statistics, the Mediterranean coasts welcome in summer 80 million visitors. This has produced a rapid development in home building, new roads and touristic facilities, along with a contemporary progressive encroachment of the inland areas, particularly those areas mostly devoted to agriculture or scarcely industrialized. This is valid not only for areas of ancient and qualified touristic tradition, but also for "recently discovered" in Africa, in the Americas, in Oceania: in practice, all the world over.

Therefore the coastal area, and in particular the shore belt is becoming increasingly important for the production of income; in this area sites which are particularly needed and utilized are those where the coast forms indentations and curvatures, even gentle, because this provides shelter from wind and stream and facilitates many activities in connection with the sea, from fishing to permanent cultivation of mussels, from the fish canning industry to the hotel industry, from yachting to water sports in general.

Logically, these areas have to be protected as much as possible from any disturbances, either voluntary or accidental, originating from the high seas. It is therefore comprehensible why many States have closed with straight baselines every indentation, even the most gentle, mainly in order to drive the external limit of the territorial sea away from the coast and to turn to "internal waters" the belt of waters closest to the shore, with the possibility to exercise a more effective action of control. As an example we can recall the baseline systems established by France in 1967 and by Spain in 1977: they actually close even any mere curvature of the coast (Fig. 1 and 2). As a limit-case, the system established by Egypt in 1990 almost coincides with the physical coastline (Fig. 3).

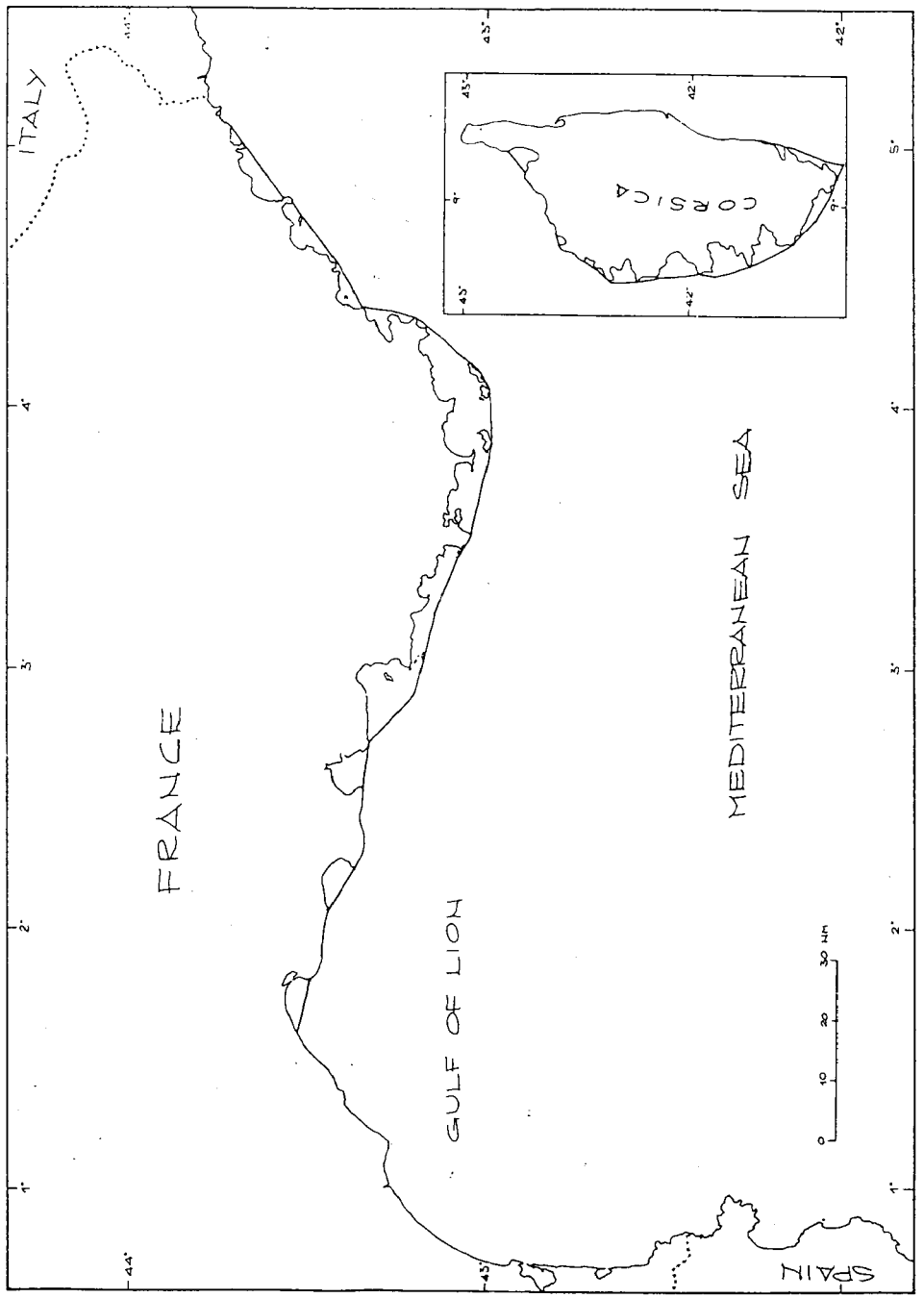

FIG. 1.- France: Straight Baselines (Mediterranean Sea)
From T. SCOVAZZI, G. FRANCALANCI, D. ROMANO, S. MONGARDINI.
Atlas of the Straight Baselines, Milan, Giuffrè Edit., 1989.

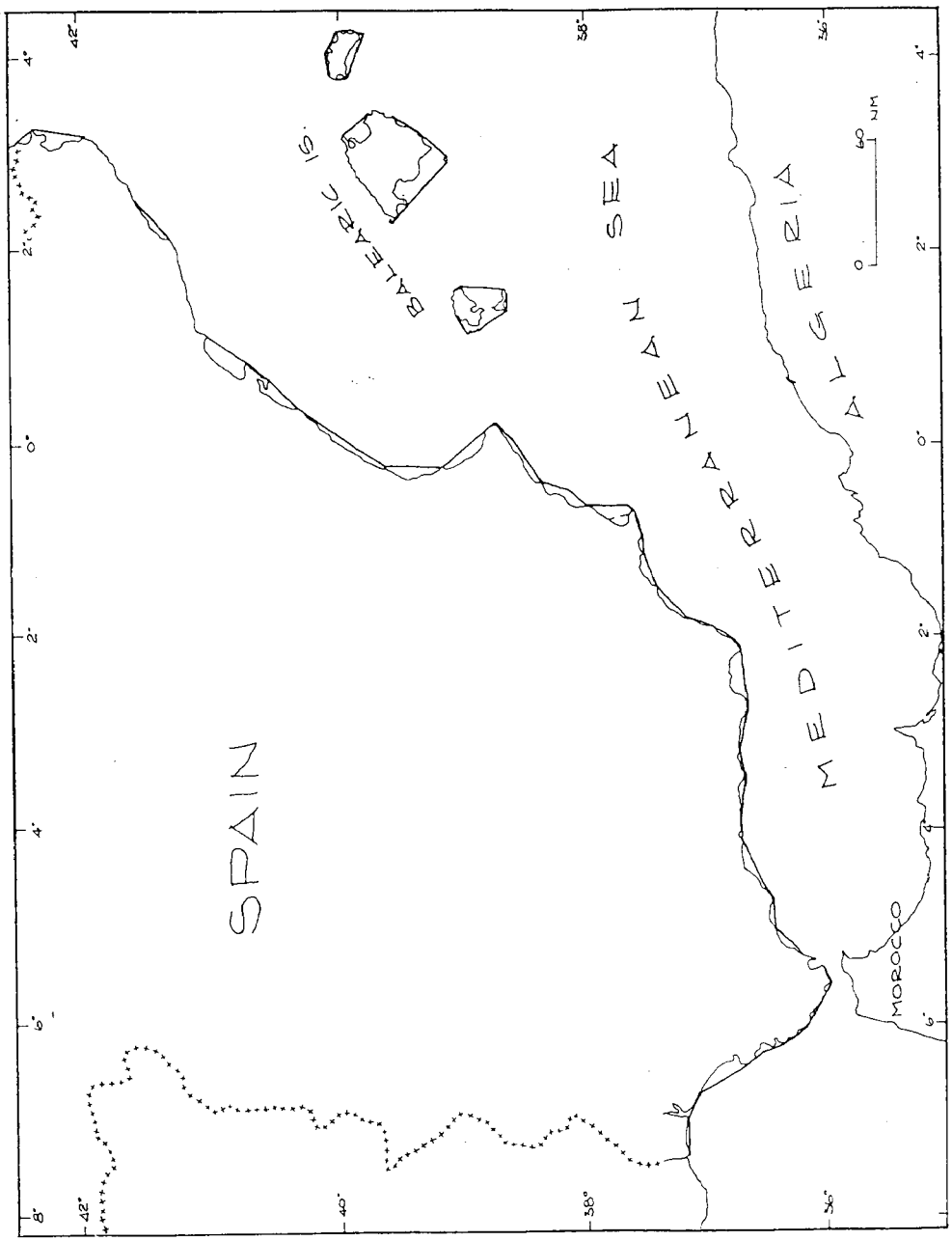

FIG. 2.- Spain: Straight Baselines (Mediterranean Sea)
From T. SCOVAZZI, G. FRANCALANCI, D. ROMANO, S. MONGARDINI.
Atlas of the Straight Baselines, Milan, Giuffrè Edit., 1989.

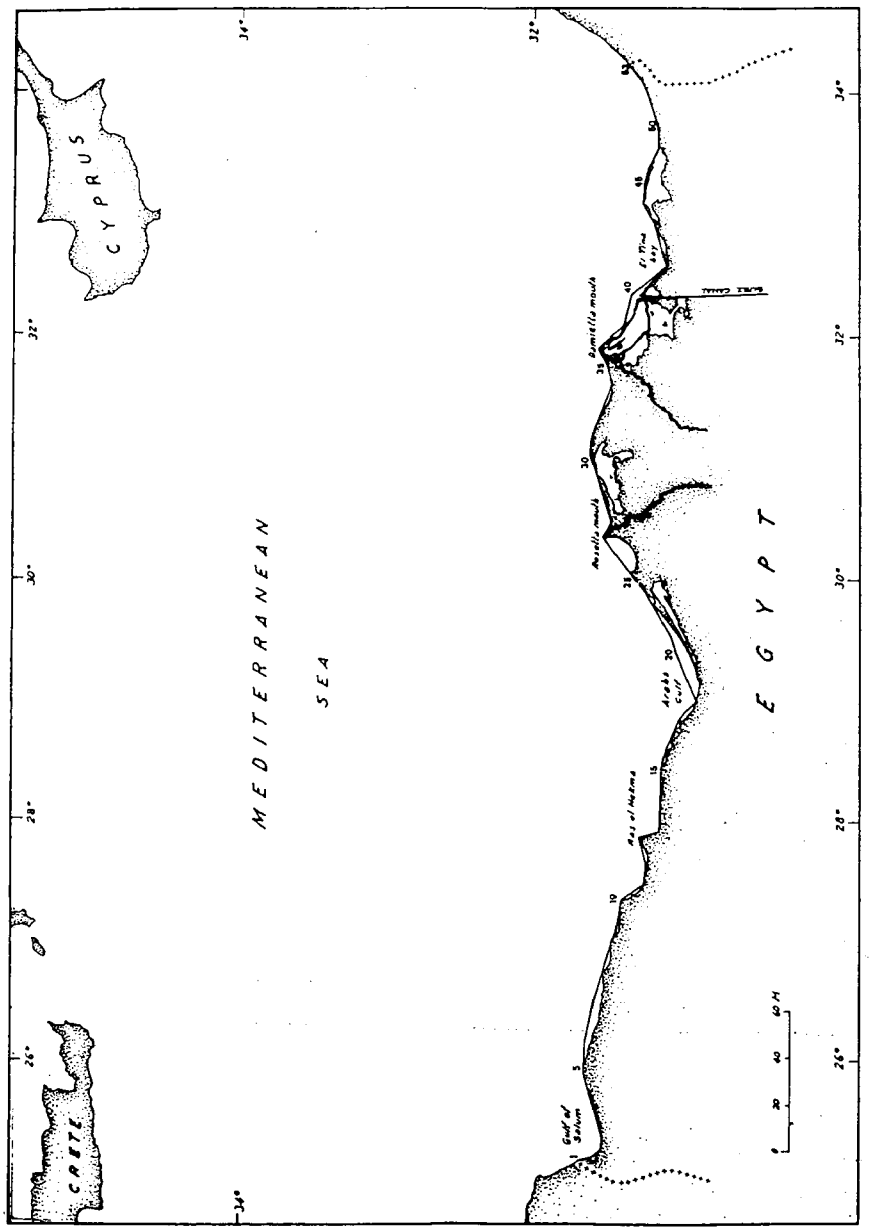

FIG. 3.- Egypt: Straight Baselines (Mediterranean Sea)

This way, the adjacent and external belt of the territorial sea acts as a "shield", being separate from internal waters by a boundary-line which, in other circumstances (ports, mouths of rivers) cannot be crossed without the previous consent of the coastal State. And we may assume that this is the "interpretation" desired by the States which have established their own straight baselines; but paragraph 2 of Article 8 of the Convention states that a right of innocent passage shall be maintained in the internal waters which were previously considered as territorial waters. This provision makes the drawing of straight baselines practically useless first because the internal waters of a new establishment have, in practice, the regime of territorial waters; second, because when the curvature of the coast is very gentle (and this is the most common case) the seawards extention of the outer limit of the territorial sea is very small, sometimes insignificant. The shortening of the outer limit of the territorial sea is, after all, very slight.

Why then, draw straight baselines which are apparently useless? It is satisfactory for the only advantage of the prohibition of overlying the new internal waters, not provided (maybe inadvertently) by the authors of Convention?

Article 8 is meaningful when applied to sea areas where regular international transit exists, i.e. a group of islands close to the mainland (the Tuscan Archipelago, the Pontian islands); but when the "penetration" of an indentation is shorter than the breadth of the territorial sea, the application of the rule should be more flexible and logical.

We consider it justified (and already realized *de facto*) that a State may close all indentations or curvatures, even gentle, with straight baselines, even of long extent, but it must be clear that the application of this principle shall not modify the fundamental concepts contained in Article 7, paragraph 3, which reads: "the drawing of straight 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".

A new hypothetical rule has in fact its crucial point on the "quantum": how large an area of waters should be to become "internal"? How long should be the straight baselines to be established? The closure of an indentation will be authorized no matter how large, if this indentation is a part of an approximately straight coastline; but the closure of a bight so large to assume a regional geographic significance (Gulf of Genoa, Gulf of Lion, Gulf of Taranto, Gulf of Sirte) will not be allowed because this would concern sea areas too large to be considered "sufficiently closely linked to the land domain", unless we apply the artifice of the "historic bay". But this is another intriguing point of the Convention and it will have to be decided whether new precise rules are to be introduced or whether it should be deleted from the Convention.

A mathematical formula which can be applied to all geographical cases does not exist; it would need to contain so many variable parameters that it becomes an impracticable enigma. The role of the semi-circle itself is now obsolete, at least in part, overtaken by logic and state practice. It is not possible to set a rigid limit for the area of the enclosed waters or for the length of the straight baselines as historic records exist on the matter.

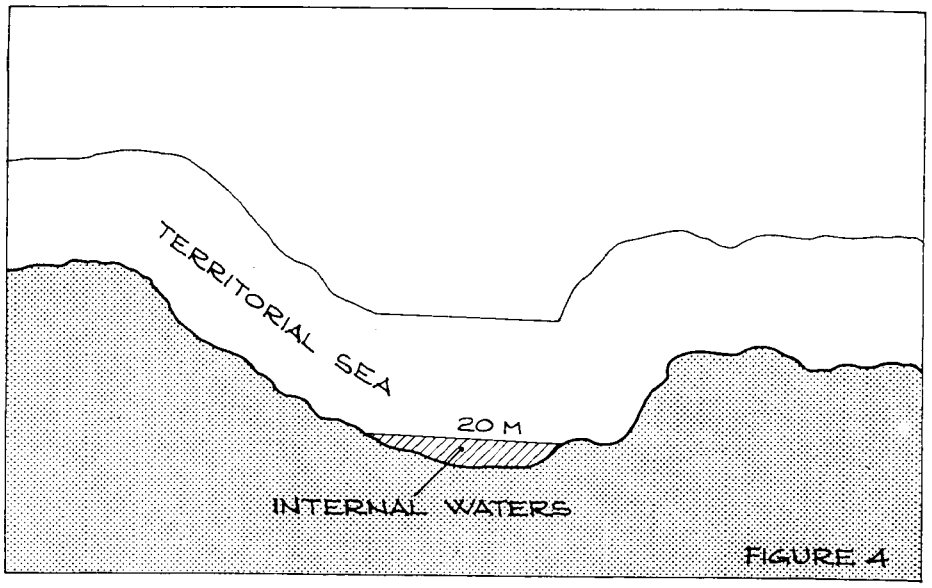

FIG. 4.- Régime of internal waters.

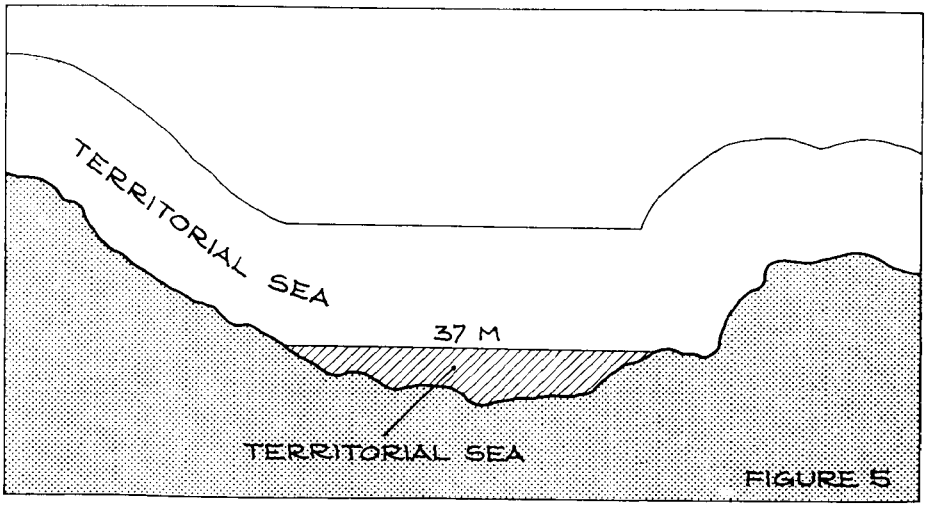

FIG. 5.- Régime of territorial sea.

So, we must choose between an "atlas" of the innumerable cases of indentations and bays and a new simple device which allows the closure of all curvatures of the coast and allowing, at the same time, innocent passage, but which also gives the coastal State the right to establish areas where military, security, environmental or economical reasons imply or reqùire a severe control and limitations of the traffic.

We have again searched for solutions based on geometric parameters, mainly ratios between measures of area and measures of length (closing line - penetration); the result was, in practice, a rather complex method, definitely not applicable to all situations.

Finally, the easiest method suitable for all situations, appears to be the following:

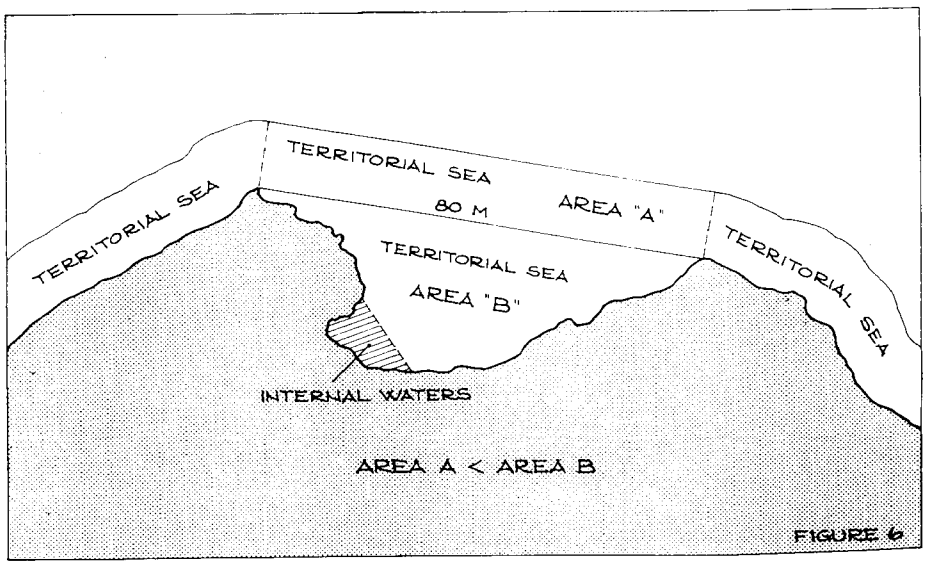

FIG. 6.- Règime of internal waters and territorial sea.

provided that the baselines, from which the breadth of the territorial sea is measured, are

a) the low water line along the coast,
b) the straight baselines connecting the fringes of islands in the immediate vicinity of the coast and/or closing the indentations ot the coast, the bays and the mouth of rivers.

"*The coastal State has the right to close the indentations of the coast by means of straight baselines. The waters on the landward side of the straight baselines will be subject:*

a) to the regime of internal waters if the length of the straight closing line does not exceed 24 nautical miles (Fig. 4);

b) to the regime of territorial sea if the length of the straight closing line exceeds 24 nautical miles. Nevertheless, if the area of the enclosed waters exceeds the area of the territorial sea lying in front of the closing line, the coastal State can establish zones of internal waters whose area will not exceed 10% of the area of enclosed waters." (Fig. 5 and 6).

In the newly established internal waters innocent transit, even if it previously existed, will not be allowed: *"paragraph 2 of Article 8 shall not apply".*

The ratio of 10% is purely indicative and could be modified; it simply means that the zone where innocent traffic is not allowed should be actually small compared with the total area of the indentation or bay.

Forty years of experience in boundary-making demonstrate that the national systems of baselines, established since 1935, have in no way altered the freedom of navigation, if not by conscious, deliberate intention.

The control of the coast is increasingly difficult. As the technological aids for navigation are available to everybody and not only to the Coast Guard, a shortening of the coastline will make controllers' work easier. As the areas deducted from the free navigation are very small, it is useless to look for new detailed rules intended to limit the sovereignty of the coastal States, whereas it would be useful to simplify the existing rules.

The general interpretation of some articles of the Convention would be sufficient to modify the articles accordingly. The new system of baselines established by Japan in 1997 is a good example for this statement.