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Documents:

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Annexes

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume III (First Committee (Territorial Sea and Contiguous Zone))*

DOCUMENT A/CONF.13/C.1/L.86

United States of America: proposal

[Original text : English]
[29 March 1958]

Article 5

HEADING

Amend the heading to read "*Irregular Coasts*".

Comments

The heading "Straight Baselines" adopted by the International Law Commission fails to emphasize that the article can be applied only on irregular coasts and stresses the unimportant fact that the baselines described therein are straight, whereas baselines which are straight may also result from application of the rules in articles 4, 10, and 11, and will result from application of the rules in articles 7 and 13.

PARAGRAPH 1

1. Amend the first clause to read as follows :

"1. Where a considerable length of coast, viewed as a whole, is very broken because of bays and a fringe of numerous islands and low-tide elevations. . . ."

Comments

The above amendment is proposed for the following reasons :

(a) The purpose of this first clause is to describe the geographic conditions which would permit application of a straight baseline system, but the International Law Commission's text fails to describe such geographic conditions with sufficient clarity.

(b) The words "circumstances" and "special régime" in the International Law Commission's text are redundant to the operative words that follow.

(c) The word "necessitated" in the International Law Commission's text indicates incorrectly that a straight baseline system must be used where the described geographic conditions apply, although such use was to be permissive according to the International Court of Justice in the Fisheries case (*I.C.J. Reports, 1951, p. 116*).

(d) The International Law Commission's phrase "deeply indented or cut into" is a repetitive and relative one, without legal meaning. These words were used by the International Court of Justice in the Fisheries case in a very limited context in order to refute the argument that the *tracé parallèle* method of delimitation could be applied without difficulty to "broken" coasts (*ibid.*, pp. 128-129). Replacement of this phrase by the legal term "bay" is in accord with the facts of the Fisheries case, and will lend legal precision to this rule when considered in conjunction with article 7.

(e) The declaration in the International Law Commission's text that bays or islands will permit use of straight baselines is contrary to the facts of the Fisheries case, since both bays and islands appear all along the section of the Norwegian coast at issue in that case. The present wording permits the unwarranted construction that a straight baseline system may be used wherever bays and islands appear on a short sector of coast, whereas this construction cannot be justified on the ruling of the International Court of Justice.

(f) The present text of the International Law Commission fails to refer to the number of bays and islands which must be present to justify a straight baseline system. The text proposed by the United States includes the term "very broken", which was used by the International Court of

Justice to describe the Norwegian coast when "viewed as a whole". (*Ibid.*, pp. 127, 129) The proposed text also refers to the "fringe" of "numerous" insular formations which must exist in order for such a baseline system to be used. The amendment is in strict keeping with the facts of the Fisheries case, since the dominant feature on the north Norwegian coast there considered was the existence of an estimated 120,000 separate off-shore formations in the 600-mile disputed sector. (*Ibid.*, p. 127)

2. Amend the second phrase and second sentence to read as follows :

"... a straight baseline system may be used, joining basepoints on the low-tide line of the mainland, islands and low-tide elevations. . . ."

Comment

The International Law Commission's text of the rule contained between the words "baseline may be independent" and the words "may be employed" would permit baselines between off-shore points on the water although this is not justified under any existing authority. The proposed text is based on the opinion of the International Court of Justice in the Fisheries case.

3. Replace the third and fourth sentences with the following :

"... provided that each such offshore elevation shall be within T-miles (T being the breadth of the territorial sea) of several other offshore elevations and shall be connected to the mainland by a chain of elevations no link of which is greater than T-miles and further provided that each baseline shall be less than 10 n.m. long and no point on such baseline shall be further than 5 n.m. from permanently dry land."

Comments

The above amendment is proposed for the following reasons :

(a) The criteria set forth in this portion of the International Law Commission text are too vague and imprecise to justify inclusion in the text of the international codification work, regardless of whether or not they reflect certain broad statements found in the opinion of the International Court of Justice in the Fisheries case.

(b) The proposed tests to judge the validity of specific baselines in a straight baseline system governing the proximity of base points to other off-shore elevations and the distance between the latter and other elevations leading to the mainland are an accurate reflection of facts pertaining in the Fisheries case.

(c) The ten and five-mile limits proposed as the third test of the validity of specific baselines supply added precision to the proposed rule. Although the longer specific baselines were included in the Norwegian straight baseline system at issue in the Fisheries case such lines were uncontested as they formed the closing lines of admitted historic bays (fjords).

4. Delete the last sentence.

Comment

This sentence is contrary to the holding in the Fisheries case (*I.C.J. Reports, 1951, pp. 121, 128 and 140*) where basepoints numbered 21, 27 and 39 were drying rocks.

PARAGRAPH 3

If the proposals set forth above are accepted for the text of paragraph 1 of draft article 5, it is suggested that paragraph 3 be deleted.

Comment

The fact that the right of innocent passage must be exercised in the sovereign territory of a foreign State makes that right a poor substitute for loss of the freedom of the seas in any given area. The International Law Commission's text of paragraph 3 creates two types of internal waters: the first one where no passage rights exist under traditional international law; the second one covering part of the newly enclosed areas where passage rights would be created. The considerable delimitation and other difficulties raised by the creation of such new judicial areas should be avoided if the limitations proposed for the use of straight baselines in paragraph 1 are adopted. It is believed that the tests proposed in paragraph 1 are of such a nature as to preclude the enclosure of large areas of high seas or territorial seas behind straight baselines and that the protection afforded to the right of innocent passage by paragraph 4 of article 17 would provide a full measure of protection for shipping interests under the circumstances.

Alternative

If the substance of the preceding proposals for para-

graph 1 of draft article 5 are not accepted it is proposed that paragraph 3 of draft article 5 be amended to delete the words appearing after "innocent passage" and insert in their place the following words:

"... as set forth in articles 15 to 25 shall exist in those waters."

Comment

If precise limitations on the use of straight baselines, such as proposed for paragraph 1 of draft article 5, are not adopted it would be desirable to retain paragraph 3 to counteract exaggerated baseline claims. Drafting change is suggested to clarify vague and unworkable terms in the present draft. All of the articles on innocent passage should be incorporated by reference, not merely those in the definition article 15, since articles from 16 through 25 should be equally applicable. The phrase "where the waters have normally been used for international traffic" would give rise to great difficulty of interpretation and the phrase is deleted entirely in the proposed amendment. A similar test offers certain difficulty of application in international straits as witnessed by the Corfu Channel case (*I.C.J. Reports, 1949, p. 4*), and such a test would appear wholly unworkable in the case of undefined waters which are not located in straits.

DOCUMENT A/CONF.13/C.1/L.87

United States of America: proposal

[Original text: English]
[29 March 1958]

Article 4

Amend the heading and text of the article to read as follows:

*" Mainland baseline**" Article 4*

"Subject to the provisions of the present rules, the baseline is the low-tide line on the mainland. The baseline shall be marked on large-scale charts officially recognized by the coastal State."

Comments

The above amendment is proposed for the following reasons:

(a) The use of the adjective "normal" in the International Law Commission's heading for draft article 4 is unjustified since water-crossing baselines approved in articles 5, 7 and 13 are just as "normal" under the geographic conditions described therein.

(b) The title "mainland baseline" is suggested because this is the proper scope of the article. Baselines on islands and drying rocks and shoals are covered in articles 10 and 11.

(c) The first clause in the text of the International Law Commission is designed to except all types of water crossing baselines sanctioned elsewhere in the articles, but it fails to except those permitted in articles 7 and 13.

(d) The second clause in the text of the International Law Commission is intended to set forth the baseline rule, but it fails to identify or define the baseline.

(e) The statement in the second clause of the International Law Commission's text that "the breadth of the territorial sea is measured from the low-water line" can be construed to mean that the outer limit of the territorial sea is measured from that whereas only selected points on that line are so used according to the rule set forth in article 6.

(f) The word "coast" in the second clause is undesirable, since the term was interpreted to include islands and drying rocks and shoals by the International Court of Justice in the Fisheries case (Judgement of 18 December 1951: *I.C.J. Reports, 1951, p. 127*). Such a construction would give an unintentionally wide scope to the draft article.

(g) The third clause qualifies the preceding one in such a way that it could be construed to mean that the baseline rule did not apply unless official charts exist, which is not an intended interpretation.

DOCUMENT A/CONF.13/C.1/L.88**Turkey: proposal**

[Original text : French]
[31 March 1958]

Article 20

ADDITIONAL PARAGRAPH

After paragraph 1, add a new paragraph 2 worded as follows :

“ 2. A coastal State whose penal code makes certain crimes committed abroad punishable, or which receives application for extradition in conformity with an extradition treaty, shall exercise its criminal jurisdiction in such a manner that due regard is paid to the interests of navigation in making the arrest or conducting the investigation.”

DOCUMENT A/CONF.13/C.1/L.90**Spain: proposal**

[Original text : Spanish]
[29 March 1958]

Articles 4 and 6

Replace these articles by the following sole text :

INNER AND OUTER LIMITS OF THE TERRITORIAL SEA

“ 1. The breadth of the territorial sea is measured from the lower low-water line which follows the general direction of the coast as marked on large-scale charts officially recognized by the coastal State.

“ 2. 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.”

DOCUMENT A/CONF.13/C.1/L.91**Spain: proposal**

[Original text : Spanish]
[29 March 1958]

Article 5

PARAGRAPH 1

Replace the text of this paragraph by the following :

“ 1. Notwithstanding the provisions of the foregoing article, the baseline may be independent of the lower low-water mark where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity. In both cases, the

method of straight baselines joining appropriate points may be employed, provided that their length in no case exceeds the width established for bays. The sea areas lying between these lines and the coast should be sufficiently closely linked to land domain to be capable of being governed by the régime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines should not be drawn to and from drying rocks and drying shoals.”

DOCUMENT A/CONF.13/C.1/L.92**India: proposal**

[Original text : English]
[31 March 1958]

Article 18

Rephrase the clause : “ by the coastal State in conformity with the present rules and other rules of international law and, in particular, with the laws and regulations relating to transport and navigation ” as follows :

“ by the coastal State, in particular with the laws and regulations relating to transport and navigation, in conformity with the present rules and other rules of international law.”

DOCUMENT A/CONF.13/C.1/L.93**India: proposal**

[Original text : English]
[31 March 1958]

Article 23

Rephrase as follows :

“The rules contained in sub-sections A and B shall also apply to government ships operated for non-commercial purposes.”

DOCUMENT A/CONF.13/C.1/L.94**Turkey: proposal**

[Original text : French]
[1 April 1958]

Article 4

Add the following new paragraph 2 :

“2. The waters on the coast side of the baseline and internal seas constitute internal waters.”

DOCUMENT A/CONF.13/C.1/L.95**Japan: proposal**

[Original text : English]
[1 April 1958]

Article 5

1. Delete the next to the last sentence of paragraph 1.
2. After paragraph 1, insert the following as new paragraphs 2 and 3 :
“2. As a general rule, the maximum permissible length for a straight baseline shall be ten miles. Such baselines may be drawn, when justified according to paragraph 1, between headlands of the coastline or between any such headland

and an island less than five miles from the coast, or between such islands. Longer straight baselines may, however, be drawn provided that no point on such lines is more than five miles from the coast.

“3. The preceding paragraph shall not apply to those straight baselines which have been effectively applied continuously for a period of long standing, with explicit or implicit recognition of such practice by foreign States.”

3. Renumber the present paragraphs 2 and 3 as 4 and 5 respectively.

DOCUMENT A/CONF.13/C.1/L.96**Federal Republic of Germany: proposal**

[Original text : French]
[1 April 1958]

Article 5

1. Delete the last sentence of paragraph 1.
2. Insert after paragraph 1 the following new paragraph 2 :
“2. As a general rule, the maximum permissible length for a straight baseline shall be ten miles. Such baselines may be drawn, when justified according to paragraph 1,

between headlands of the coastline or between any such headland and an island less than five miles from the coast, or between such islands. Longer straight baselines may, however, be drawn provided that no point on such lines is more than five miles from the coast. Baselines shall not be drawn to and from drying rocks and shoals.”

3. Paragraphs 2 and 3 to be renumbered 3 and 4 respectively.

DOCUMENT A/CONF.13/C.1/L.97**Norway: proposal**

[Original text : English]
[1 April 1958]

Article 5

PARAGRAPH 1

1. Insert the words "In these cases" before the words "Account may nevertheless" at the beginning of the fourth sentence.
2. Delete the last sentence.

Article 7

PARAGRAPH 2

Replace the word : "shall" by the word "may".

Paragraph 3

Replace the word "shall" in the first sentence by the word "may".

Replace the words "that line shall be chosen" in the second sentence by the words "the coastal State may only choose that line."

Article 8

Replace the word "shall" by the word "may".

Article 9

Replace the words "are included" in the first sentence by the words "may be included."

Articles 12 and 14

These two articles should be merged into one article worded as follows :

" Delimitation of the territorial sea between States with opposite or adjacent coasts

"1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line whose demarcation is determined in such a way that every point of the line is equidistant from the nearest points on the baselines from which the breadths of the territorial seas of the two States are measured. This provision shall not apply, however, where one of the States concerned through prescriptive usage has acquired the right to delimit its territorial sea in a way which is at variance with the provision.

"2. If the two States in delimiting the outer boundaries of their territorial seas enclose an area of the sea which would normally be part of the high seas, they may by bilateral agreement divide this area between them and thus give it the character of territorial sea, provided that the breadth of the enclosed area does at no point exceed two miles.

"3. The preceding paragraph shall also be applicable to cases where both coasts belong to one and the same coastal State.

"4. The line of demarcation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on the officially recognized large-scale charts."

DOCUMENT A/CONF.13/C.1/L.98**Philippines: proposal**

[Original text : English]
[1 April 1958]

Article 5

Add a new paragraph, to read as follows :

"The method of straight baselines shall also be applied to archipelagos, lying off the coast, whose component parts are sufficiently close to one another to form a compact whole and have been historically considered collectively as a single unit. The baselines shall be drawn along the coast of the outermost islands, following the general configuration of the archipelago. The waters within such baselines shall be considered as internal waters."

Alternative

Add a new paragraph to article 10, to read as follows :

"When islands lying off the coast are sufficiently close to one another as to form a compact whole and have been historically considered collectively as a single unit, they may be taken in their totality and the method of straight baselines provided in article 5 may be applied to determine their territorial sea. The baselines shall be drawn along the coast of the outermost islands, following the general configuration of the group. The waters inside such baselines shall be considered internal waters."

[If one of these proposals is adopted, the other is automatically withdrawn.]

DOCUMENT A/CONF.13/C.1/L.99**Mexico: proposal**

[Original text : Spanish]
[1 April 1958]

Article 5

PARAGRAPH 1

1. Replace the words "low water mark" by the words "lowest water mark".
2. [Does not affect the English text.]

3. Omit the words "by a long usage" in the penultimate sentence.

4. Amend the last sentence to read as follows :

"Baselines shall not be drawn to and from rocks, shoals or other elevations which are above water at low tide only, unless lighthouses or similar installations which are permanently above sea level have been built on them."

DOCUMENT A/CONF.13/C.1/L.100

Chile: proposal

[Original text : Spanish]
[1 April 1958]

Article 5

PARAGRAPH 1

1. Delete the word "immediate" in the first sentence, before the word "vicinity".
2. [Does not affect the English text.]

DOCUMENT A/CONF.13/C.1/L.101

Portugal: proposal

[Original text : English]
[1 April 1958]

Article 5

1. Insert at the beginning of paragraph 1 the words "Subject to the provisions of paragraph 4,".
2. Insert a new paragraph as follows :
"4. The system of straight baselines may never be drawn by a State in such a manner as to cut off from the high seas the territorial sea of another State."

Article 7

PARAGRAPH 1

1. In the second sentence, replace the words "its area is" by the words "the area circumscribed by the low-water line around the shore of the indentation is".
2. In the same sentence replace the word "mouth" by the following words "line joining the low-water marks of the natural entrance points."

Article 8

Add a new paragraph as follows :

- "2. No State shall ever appropriate as territorial seas or internal waters a practicable band of waters of the high seas forming the only access to a foreign port."

Article 9

Add a new paragraph as follows :

- "2. No State shall ever appropriate as territorial seas or internal waters a practicable band of waters of the high seas forming the only access to a foreign roadstead."

Article 12

PARAGRAPH 1

Replace the second sentence by the following :

- "Failing such agreement, the boundary is the median line every point of which is equidistant from the nearest

points on the low-water line along the coasts of those States."

PARAGRAPH 4

Insert the word "sailing" between the words "large-scale" and "charts".

Article 13

PARAGRAPH 1

Replace the words "line drawn *inter fauces terrarum* across the mouth of the river" by the following text : "line joining the low-water marks of its natural entrance points."

Article 14

PARAGRAPH 1

1. Replace the second sentence by the following : "In the absence of such agreement, the boundary is drawn by application of the principle of equidistance from the nearest points on the low-water line along the coast of the two adjacent States, as marked on their officially recognized large-scale sailing charts."

2. Add a new paragraph 2 as follows :

"2. In cases where the boundary of the two adjacent States is a river, the median boundary line will start at the medium point of the line joining the low-water marks of the natural entrance points of the mouth of the river."

3. Add a new paragraph 3 as follows :

"3. Roadsteads situated close to the boundary between two adjacent States and which are used by both States, will be delimited by agreement between those States."

PARAGRAPH 2

Renumber the present paragraph 2 as paragraph 4, and insert the word "sailing" between the words "large-scale" and "charts".

DOCUMENT A/CONF.13/C.1/L.104**Japan: proposal**

[Original text : English]
[1 April 1958]

Article 7

PARAGRAPHS 2 AND 3

Replace the word "fifteen" by the word "ten"

PARAGRAPH 4

Replace by the following text :

"4. The foregoing provisions shall not apply to historic bays. The term 'historic bays' means those bays over which coastal State or States have effectively exercised sovereign rights continuously for a period of long standing, with explicit or implicit recognition of such practice by foreign States."

DOCUMENT A/CONF.13/C.1/L.107**India: proposal**

[Original text : English]
[1 April 1958]

Article 9

Insert after the first sentence the following :

"The waters between the roadsteads and the coastline, especially when such roadsteads are within the territorial sea, shall be deemed to be the internal waters of the coastal State."

DOCUMENT A/CONF.13/C.1/L.108**Netherlands: proposal**

[Original text : English]
[1 April 1958]

Article 13

Delete this article.

Comments

The above amendment is proposed for the following reasons :

(a) It is not clear what is the exact meaning of the word "estuary", or what is the difference between a river flowing into an estuary on the one hand and a river flowing directly into the sea on the other.

(b) The expression *inter fauces terrarum* in respect of a mouth of a river lacks precision.

DOCUMENT A/CONF.13/C.1/L.109**United States of America: proposal**

[Original text : English]
[31 March 1958]

Article 7

PARAGRAPH 1

Amend the first two sentences to read as follows :

"For the purpose of these articles, a bay is a well-marked coastal indentation with an area at least equal to that of a semi-circle whose diameter is a line drawn across the mouth

of the indentation ; this line is the closing line of the bay and constitutes the baseline."

Comments

This amendment is offered for the following reasons :

(a) The word "diameter" appears in the French and Spanish texts but not in the English text of this rule.

(b) "The closing line" of a bay should be identified as the baseline.

(c) The words "contain land-locked waters and constitute more than a mere curvature of the coast" in the first sentence of the draft article lack legal precision and are unnecessary in view of the requirement relating to the area of a semi-circle.

PARAGRAPHS 2 AND 3

Substitute the word "ten" for the word "fifteen".

Comment

A ten-mile maximum closing line reflects long-established state practice, and this distance is based on the practical and useful consideration that five miles represents about the limit of normal vision at sea, so that on board a vessel situated at about the middle of the line, it would be possible to see both shores of the bay at its mouth.

DOCUMENT A/CONF.13/C.1/L.110

United States of America: proposal

[Original text : English]
[31 March 1958]

Article 9

Amend the last sentence to read as follows :

"The coastal State must clearly demark such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given."

Comment

The proposed text states more precisely the obligations upon a State in order to claim an offshore area as a roadstead. Demarcation with physical markers as well as indication on charts appears to be highly desirable in the case of roadsteads.

DOCUMENT A/CONF.13/C.1/L.111

Spain: proposal

[Original text : Spanish]
[1 April 1958]

Article 9

The article to read as follows :

"Roadsteads situated outside the outer limit of the territorial sea shall nevertheless be considered as included therein if normally used for the loading, unloading and anchoring of ships. The coastal State shall give due publicity to the limits of such roadsteads."

DOCUMENT A/CONF.13/C.1/L.112

United States of America: proposal

[Original text : English]
[31 March 1958]

Article 10

Amend to read as follows :

"An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide. The low-tide line on an island may be used as a baseline."

Comments

The above amendment is offered for the following reasons :

(a) The sentence in the International Law Commission's text which reads "Every island has its own territorial sea" is inaccurate. Islands located behind straight baselines or behind closing lines of bays and rivers do not have their own territorial sea. The permissive use of the verb in the second sentence of the proposed text is designed to care for these exceptions.

(b) The only purpose of article 10 other than to define

"island" is to set forth where the baseline of an island is located. The statement by the International Law Commission that "every island has its own territorial sea" fails to indicate where the baseline of an island is located. The outer limit of the territorial sea around islands, as is true in the case of all land masses, is determined by the provisions of article 6.

(c) The International Law Commission's definition of "island" includes artificially placed land. This permits an undesirable means of extension of the territorial sea and consequent encroachment on the freedom of the high seas.

(d) The requirements in the International Law Commission's definition of an island that it shall be above the high-water mark "in normal circumstances" and "permanently" are conflicting, and since there is no established state practice regarding the effect of subnormal or abnormal or seasonal tidal action on the status of islands, these terms should be omitted.

DOCUMENT A/CONF.13/C.1/L.113

Spain: proposal

[Original text : Spanish]
[31 March 1958]

Article 10

The article to read as follows :

“An island is any area of land, surrounded by water, which is permanently above sea level. Every island has its own territorial sea.”

DOCUMENT A/CONF.13/C.1/L.115

United States of America: proposal

[Original text : English]
[1 April 1958]

Article 11

Amend the heading and text to read as follows :

“LOW-TIDE ELEVATIONS

“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. The low-tide line on a low-tide elevation which is within T-miles of a mainland or an island may be used as a baseline (T being the breadth of the territorial sea).”

Comments

The above proposal is designed to eliminate the following shortcomings of article 11 :

(a) “Drying” is an adjective which does not rule out, as commonly intended, the use for delimitation purposes of “rock awash” at low tide ;

(b) “Rocks” and “shoals” are irrelevant and vague terms in this context, since texture of land is immaterial for delimitation purposes ;

(c) “Rocks” and “shoals” are unqualified terms that do not exclude artificially-placed land. Artificial placement of land is a means of extension of the territorial sea which might be used to encroach on the freedom of the high seas ;

(d) “Rocks” and “shoals”, which may be extensive, cannot be considered logically as “points” ;

(e) “Points of departure for measuring the extension of the territorial sea” is an inadequate phrase because (i) it obscures the main purpose of the rule which is to state that the low-tide line on the designated elevations may be used as a baseline by the coastal States ; and (ii) it confuses the problem of determining the baseline with that of determining the outer line of the territorial sea, which is dealt with in article 6.

DOCUMENT A/CONF.13/C.1/L.116

United States of America: proposal

[Original text : English]
[1 April 1958]

Article 12

PARAGRAPH 2

Delete this paragraph.

Comments

(a) The rule contained in the first sentence of this paragraph is redundant to article 6, which establishes the outer limit of the territorial sea in all cases as 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”.

(b) Assimilation of enclaves of any size serves no useful purpose for the coastal State or for shipping interests and could lead to abuse of the principles of the freedom of the high seas.

PARAGRAPH 3

Delete this paragraph.

Comments

Deletion of paragraph 3 is proposed for the following reasons :

(a) The rule contained in the first sentence of this paragraph is redundant to article 6, which establishes the outer limit of the territorial sea in all cases as 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”.

(b) Assimilation of enclaves of any size serves no useful purpose for the coastal State or for shipping interests and could lead to abuse of the principles of the freedom of the high seas.

PARAGRAPH 4

Substitute the word “delimitation” for the word “demarcation”.

Comment

The word “demarcation” is now generally accepted to mean “. . . the actual laying down of boundary lines on the ground, and its definition by boundary pillars or other physical means.” (Boggs, “Delimitation of seaward areas under national jurisdiction”, *American Journal of International Law* 45 (1951), p. 242) “Delimitation” is the proper word to indicate agreed lines on the sea.

DOCUMENT A/CONF.13/C.1/L.117**Cambodia: proposal**

[Original text : French]
[1 April 1958]

Article 12

PARAGRAPH 1

Amend the second part of the second sentence, following the words "special circumstances", to read as follows :

"the boundary is the line of greatest depth between the two coasts."

DOCUMENT A/CONF.13/C.1/L.118**Ceylon: proposal**

[Original text : English]
[1 April 1958]

Article 3

The article to read as follows :

"The territorial sea shall extend to six nautical miles from the baseline drawn in the manner provided for in articles 4 and 5."

DOCUMENT A/CONF.13/C.1/L.120**Colombia: proposal**

[Original text : Spanish]
[1 April 1958]

Article 12

PARAGRAPH 1

This paragraph to read as follows :

"1. The boundary of the territorial sea between two States, the coasts of which are opposite each other at a distance less than the extent of the belts of territorial sea adjacent to the two coasts, shall be the median line every point of which is equidistant from the nearest points on the baselines from which the breadths of the territorial seas of the

two States are measured. If the two States agree that another boundary line is justified by special circumstances, the boundary shall be fixed by agreement between those States."

PARAGRAPH 3

This paragraph to read as follows :

"3. If the distance between the coasts of one and the same State is greater than the extent of the two belts of territorial sea, the provisions of paragraph 2 of this article shall apply."

DOCUMENT A/CONF.13/C.1/L.123**Chile: proposal**

[Original text : Spanish]
[31 March 1958]

Article 12

PARAGRAPH 3

Delete this paragraph.

Alternative

If the above proposal is rejected, it is submitted as an alternative that the following text be added to paragraph 3 :

"The provisions of this paragraph shall not apply to straits both coasts of which belong to the same coastal State, nor in cases where the waters in question have the character of internal or historic waters."

DOCUMENT A/CONF.13/C.1/L.125

United States of America: proposal

[Original text : English]
[31 March 1958]

Article 13

1. Amend paragraph 1 to read as follows :
“ If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line on the banks.”
2. Delete paragraph 2.

Comments

The above amendment is proposed to eliminate the following shortcomings of article 13 in its present form :

(a) Paragraph 1 fails to identify the line across the river-mouth as the baseline or to state that the line must terminate at points on the low-tide line on the banks.

(b) The statement in paragraph 1 that “ the territorial sea shall be measured from a line . . . ” across the river mouth can be construed to mean that the outer limit of the territorial sea is measured from that line, whereas only

selected points, if any, on that line, are so used according to the rule set forth in article 6.

(c) The phrase in paragraph 1, *inter fauces terrarum*, which means “ between the jaws of the land ”, adds no substance to the rule.

(d) Paragraph 2 is difficult to apply and unnecessary. “ Estuary ” is a term without precise legal or geographic meaning. It is derived from the Latin word for tide or *aestus*, but tidal effects are often present far upstream from the place commonly deemed to be the mouth of the river

(e) The statement in paragraph 2 of the International Law Commission’s text that “ Article 7 shall apply ” is unnecessary and misleading. Article 7 may or may not apply according to its terms which are broad enough to cover certain estuaries without specific reference back in the terms of article 13. A river might just as well flow into a strait or island fringe area in which cases articles 12 or 5 might apply according to their terms, but it seems equally unnecessary to so state.

DOCUMENT A/CONF.13/C.1/L.126

Spain: proposal

[Original text : Spanish]
[31 March 1958]

Article 14

The article to read as follows :

*“ LATERAL DELIMITATION OF THE
TERRITORIAL SEA ”*

- | | |
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| <p>“ 1. The boundary of the territorial sea between two adjacent States shall be determined by agreement between</p> | <p>them In the absence of such agreement, and unless another boundary line is justified by special circumstances, the boundary is the imaginary line equidistant from the nearest point on the baseline from which the breadth of the territorial sea of each State is measured.</p> <p>“ 2. This line shall be marked on the officially recognized large-scale charts.”</p> |
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DOCUMENT A/CONF.13/C.1/L.127

Colombia: proposal

[Original text : Spanish]
[31 March 1958]

Article 14

The article to read as follows :

- “ 1. The boundary of the territorial sea between two adjacent States shall be determined by application of the principle of equidistance from the nearest points on the baseline from which the breadth of the territorial sea of each State is measured. If the two States agree that another boundary line is justified by special circumstances, such boundary line shall be fixed by agreement between them.
- “ 2. The boundary line shall be marked on the officially recognized large-scale charts.”