ML í lögfræði

Straight baselines across Icelandic bays and fjords

Desember, 2018
Nafn nemanda: Helgi Bergmann
Kennitala: 011183-2129
Leiðbeinandi: Dr. Bjarni Már Magnússon
Abstract

The goal of this paper is to examine the history of the establishment of straight baselines in Iceland as well as to evaluate the consequences of this action both on Iceland’s maritime zones and on Iceland’s rights and obligations according to international law. One of the author’s personal objectives in conducting this research was to be able to collect and analyze available data in order to create high quality maps that would be of value for future research on Icelandic maritime zones. In 1952 Iceland established a system of straight baselines around its entire coastline. In the process bays and fjords were closed off, creating large areas of internal waters. The United Kingdom objected to the new baselines and supported its fishing industry in subjecting Iceland to a landing ban. The Cold War and U.S. support of Iceland strengthened Iceland’s hand and may have shielded it from harsher criticism of its baselines. An examination of the baselines drawn in 1952 and their development since then reveals that Iceland’s straight baselines have increased the area of the state’s internal waters considerably more than it has expanded the territorial sea. Newly created computer drawn maps based on official data indicate that the extension of Iceland’s territorial sea from 3 to 4 nautical miles in 1952 resulted in a greater gain of maritime area that the extension from 4 nautical miles to 12 nautical miles in 1958. The rules on straight baselines in international law are analyzed and certain segments of Iceland’s baselines are appraised. The effects of the straight baselines on navigation and maritime delimitation are considered. The potential impact on Iceland’s fisheries were it to join the European Union is examined by studying the intersection of EU fisheries policy and Iceland’s straight baselines.
Útdráttur

# Contents

Abstract ............................................................................................................................................. ii

Útldráttur .......................................................................................................................................... iii

List of images ................................................................................................................................... vi

List of laws....................................................................................................................................... vii

List of European Union legislation ............................................................................................... vii

List of Regulations ........................................................................................................................ viii

Secondary legal sources ............................................................................................................... viii

International treaties ................................................................................................................... viii

Table of cases .................................................................................................................................... x

1. Introduction ......................................................................................................................................... 1

2. The establishment of Icelandic straight baselines ............................................................................... 3

2.1 What are baselines, and why are they important? ............................................................................ 3

2.2 Baselines and different maritime zones ........................................................................................ 4

2.3 The difference between regular and straight baselines ................................................................. 8

2.4 Icelandic baselines from 1901-1952 ............................................................................................... 8

2.5 The background to the establishment of straight baselines ............................................................ 12

2.5.1 World War II and the United States .................................................................................... 13

2.5.2 Legal developments between 1948-1950 ........................................................................... 15

2.5.3 The ICJ judgment in the Anglo-Norwegian Fisheries Case .................................................. 16

2.6 Straight baselines established ...................................................................................................... 22

2.7 Iceland’s arguments and reasons for drawing straight baselines ................................................ 24

3. Reactions of other states to Iceland’s decision to draw straight baselines ....................................... 26

3.1 Statements of protest and negative reactions ............................................................................. 27

3.2 Reasons for the lack of protests by other states .......................................................................... 28

3.2.1 Political climate ................................................................................................................... 28

3.2.2 Geopolitics of the Cold War ................................................................................................ 30

3.2.3 Iceland’s importance as a Western ally .............................................................................. 31

3.2.4 Iceland and the Soviet Union .............................................................................................. 31

3.3 The Landing Ban - Unofficial “protest” by the UK? ...................................................................... 31

4. Baselines across fjords and bays in the Icelandic Baseline system ................................................... 33

4.1 Overview ....................................................................................................................................... 33

4.2 Overview of laws and other legal sources on Iceland’s baselines ............................................. 34

4.2.1 Icelandic legislation ............................................................................................................. 34

4.2.2 International law .................................................................................................................. 34
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3</td>
<td>The impact of the establishment of straight baselines in 1952</td>
<td>35</td>
</tr>
<tr>
<td>4.3.1</td>
<td>Creation of large areas of internal waters</td>
<td>35</td>
</tr>
<tr>
<td>4.4</td>
<td>Evolution of Icelandic straight baselines from 1952 to 2018</td>
<td>36</td>
</tr>
<tr>
<td>4.4.1</td>
<td>1901-1950: Low-water line along the coast with three nautical mile territorial sea</td>
<td>36</td>
</tr>
<tr>
<td>4.4.2</td>
<td>1950: Straight baselines drawn across the coast in the north of Iceland</td>
<td>37</td>
</tr>
<tr>
<td>4.4.3</td>
<td>1952: Straight baselines drawn around the entire coastline with a four-mile territorial sea</td>
<td>37</td>
</tr>
<tr>
<td>4.4.4</td>
<td>1958: Territorial sea expanded from four to twelve nautical miles</td>
<td>38</td>
</tr>
<tr>
<td>4.4.5</td>
<td>2018 Baselines</td>
<td>39</td>
</tr>
<tr>
<td>4.5</td>
<td>Interpretation of rules governing straight baselines</td>
<td>42</td>
</tr>
<tr>
<td>4.5.1</td>
<td>Strict interpretation vs flexible interpretation</td>
<td>42</td>
</tr>
<tr>
<td>4.5.2</td>
<td>Deeply indented and cut into</td>
<td>43</td>
</tr>
<tr>
<td>4.5.3</td>
<td>Fringe of Islands</td>
<td>45</td>
</tr>
<tr>
<td>4.5.4</td>
<td>Proving necessary internal character of enclosed waters</td>
<td>50</td>
</tr>
<tr>
<td>4.5.5</td>
<td>Bays</td>
<td>51</td>
</tr>
<tr>
<td>4.6</td>
<td>Straight baselines across Icelandic bays and fjords</td>
<td>58</td>
</tr>
<tr>
<td>4.6.1</td>
<td>Overview</td>
<td>58</td>
</tr>
<tr>
<td>4.6.2</td>
<td>Western Iceland</td>
<td>59</td>
</tr>
<tr>
<td>4.6.3</td>
<td>Baseline segment 33-35 (Faxaflói)</td>
<td>59</td>
</tr>
<tr>
<td>4.6.4</td>
<td>Northern Iceland</td>
<td>64</td>
</tr>
<tr>
<td>4.7</td>
<td>Similar yet different: Ireland’s straight baseline system</td>
<td>64</td>
</tr>
<tr>
<td>5.1</td>
<td>Navigation</td>
<td>66</td>
</tr>
<tr>
<td>5.1.1</td>
<td>Freedom of navigation</td>
<td>67</td>
</tr>
<tr>
<td>5.1.2</td>
<td>Navigation in Icelandic internal waters</td>
<td>68</td>
</tr>
<tr>
<td>5.1.3</td>
<td>Navigation in Iceland’s territorial sea</td>
<td>68</td>
</tr>
<tr>
<td>5.1.4</td>
<td>Rights of Warships</td>
<td>69</td>
</tr>
<tr>
<td>5.2</td>
<td>Potential impact should Iceland accede to the European Union</td>
<td>69</td>
</tr>
<tr>
<td>5.2.1</td>
<td>History of the EU Common Fisheries Policy</td>
<td>69</td>
</tr>
<tr>
<td>5.2.2</td>
<td>The EU Common Fisheries Policy</td>
<td>74</td>
</tr>
<tr>
<td>5.2.3</td>
<td>Iceland’s main fishing grounds</td>
<td>75</td>
</tr>
<tr>
<td>5.2.4</td>
<td>Coverage of the Common Fisheries Policy</td>
<td>77</td>
</tr>
<tr>
<td>5.2.5</td>
<td>Effect on Icelandic maritime zones</td>
<td>80</td>
</tr>
<tr>
<td>6.</td>
<td>Conclusions</td>
<td>82</td>
</tr>
</tbody>
</table>
List of images

Image 1: The 3 nautical mile territorial sea of Iceland from 1901-1952 ........................................10
Image 2: Map of straight baselines established in the north of Iceland in 1950 ......................16
Image 3: Norwegian Straight Baselines established by 1935 Decree ......................................17
Image 4: The new baselines and the territorial sea of Iceland established by the adoption of Regulations no. 21/1952 ........................................................................................................24
Image 5: The baseline across Faxaflói with a possible headland to headland baseline shown with a broad line ............................................................................................................23
Image 6: The baseline across Faxaflói with a possible headland to headland baseline shown in red ........................................................................................................................................27
Image 7: Areas of internal waters created by the establishment of straight baselines in 1952 35
Image 8: Iceland’s 3 nautical mile territorial sea from 1901-1952 ........................................36
Image 9: Straight baselines drawn across the north of Iceland in 1950 ...................................37
Image 10: Straight baselines established in 1952 ....................................................................37
Image 11: New baselines and territorial sea expanded from 4 nm to 12 nm in 1958 .............38
Image 12: Icelandic baselines and maritime zones in 2018 .....................................................39
Image 13: Changes to Iceland’s straight baselines between 1952 and 2018 .........................40
Image 14: The enlargement of Iceland’s internal waters due to changes in Iceland’s straight baselines from 1952 to 2018 ........................................................................................................41
Image 15: Map showing the evolution of marine spaces under the territorial sovereignty of Iceland from 1901 to 2018 ........................................................................................................42
Image 16: Map of Norway showing the location of Egersund ...............................................70
Image 17: Main fishing grounds for cod in 2015 in tons per square nautical mile (t/nm²) .....75
Image 18: Main fishing grounds for haddock in 2015 in tons per square nautical mile (t/nm²) ........................................................................................................................................76
Image 19: Main fishing grounds for golden redfish in 2015 in tons per square nautical mile (t/nm²) ........................................................................................................................................76
Image 20: Main fishing grounds for herring in 2015 in tons per square nautical mile (t/nm²) ........................................................................................................................................77
List of laws

Lög um landhelgi, aðlægt belti, efnahagslögsögu og landgrunn no. 41/1979.

Stjórnarskrá lýðveldisins Íslands, nr. 33/1944.

List of European Union legislation


Council resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977 (OJ 1981).


Council Regulation (EEC) No 172/83 of 25 January 1983 fixing for certain fish stocks and groups of fish stocks occurring in the Community’s fishing zone, total allowable catches for 1982, the share of these catches available to the Community, the allocation of that share between the Member States and the conditions under which the total allowable catches may be fished (OJ 2983).

Council Regulation (EEC) No 2908/83 of 4 October 1983 on a common measure for restructuring, modernizing and developing the fishing industry and for developing aquaculture (OJ 1983)


**List of Regulations**

Reglugerð nr. 46/1950 um verndun fiskimiða fyrir Norðurlandi

Reglugerð nr. 21/1952 um verndun fiskimiða umhverfis Ísland.

**Secondary legal sources**


Alþt. 1919, 1419, (þskj. 733).

Alþt. 1946, D, þskj. 327 - 281. mál.

Alþt. 1941, 57. löggj. þing, A-deild, þskj. 4 - 1. mál.


**International treaties**


Samningur 24. júni 1901 milli Danmerkur og Bretlands um tilhögun á fiskveiðum danskra þegna og breskra þegna fyrir utan landhelgi í hafinu umhverfis Færeyjar og Ísland (Stjórnartíðindi 1903 A-deild 20-37).

Convention For The Regulation Of The Meshes Of Fishing Nets And The Size Limits Of Fish (adopted 5 April 1946, entered into force 5 April 1953.)
Exchange of messages of 1 July 1941 constituting an agreement between the United States of America and Iceland relating to the defence of Iceland by United States forces (Iceland – United States of America) (adopted 1 July 1941) 405 UNTS 12.


Table of cases

Fisheries Case (United Kingdom v Norway) [1951] ICJ Rep 116 (International Court of Justice).

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Merits) [2001] ICJ Rep 40, 61, para 185.


Aegean Sea Continental Shelf (Judgment) [1978] ICJ Rep 3, 36, para 86.


1. Introduction

The legal order of the oceans is the subject of the international law of the sea. One of the elements of the law of the sea is a set of rules which divide the ocean into separate maritime zones. Each type of maritime zone has a legal regime granting certain rights and obligations to states, depending on their geographical proximity to the maritime zone and other factors. It can therefore be important for states to be able to clearly determine the limits of maritime zones. One of the most important elements for determining these limits are the baselines. A coastal state’s baseline is used to determine the seaward extent and limit of a state’s internal waters, territorial sea, contiguous zone, exclusive economic zone and its continental shelf.

In 1952 Iceland expanded its exclusive fisheries zone from three to four nautical miles. At the same time, straight baselines were drawn around the entire coastline. In many cases straight baselines were drawn across the mouths of the numerous bays and fjords of the oftentimes jagged Icelandic coastline. This resulted in the creation of extensive areas of internal waters on the landward side of the new baselines. The straight baselines drawn across bays and fjords had the effect of extending the seaward limits of other maritime zones such as the territorial sea by much more than the purported expansion from three to four nautical miles would suggest, thereby greatly extending the reach of Iceland’s territorial waters and exclusive fisheries jurisdiction. Another interesting aspect of the straight baselines of 1952 was the selection of basepoints. In some instances, rocks, shoals and low-tide elevations were chosen as basepoints.

Very little has been written about the effects of the decision to draw straight baselines alongside the expansion to a four mile exclusive fisheries zone in 1952. This thesis will seek to examine how the decision to draw straight baselines affected the expansion of Iceland’s maritime zones and whether it was perhaps more impactful than the expansion of the fisheries jurisdiction belt from three to four nautical miles.

This thesis has three main objectives. Firstly, to study the decision to draw straight baselines around Iceland in 1952 from a historical standpoint. Secondly, to discover the effects of the new baselines on Iceland’s maritime claims from 1952 to the present. Thirdly, to examine in

---

1 A nautical mile is 1852 metres
detail the straight baselines drawn across Iceland’s bays and fjords from the perspective of international law.

Chapter two will begin by briefly outlining the rules in international law on baselines and maritime zones. This will be followed by an overview of the historical, political and legal background of the decision to draw straight baselines in 1952. Chapter two will conclude with a synopsis of the developments of the Icelandic baseline system from 1952 to the present day.

In chapter three the reactions of other states to Iceland’s establishment of the straight baselines in 1952 will be explored. The reasons for the lack of official diplomatic protests by other states will be reviewed in detail. Subsequently the so-called “Landing Ban” by the United Kingdom against Icelandic fishing vessels in 1952 will be studied as a possible un-official form of protest by the UK government.

Chapter four will review the Icelandic baseline system in detail, especially those segments which are drawn across bays and fjords. Individual segments will be evaluated in accordance with present developments in the law of the sea. In addition, certain basepoints located on rocks and elevations in the sea will be examined to determine their compatibility with international law. Thereafter, the impact of the straight baselines on maritime zones will be examined, and Iceland’s internal waters and territorial sea will be analysed by inputting official real-world data points and coordinates into a geographic information system application which will then be used to render maps which will be used to visually display the differences in Iceland’s maritime zones before and after the establishment of the 1952 establishment of straight baselines. Current data will then be used to compare the maritime zones established in 1952 with today by means of visual representation of these developments.

Chapter five will build on the previous chapter’s findings to demonstrate the effects of the current baseline system of Iceland on two important issues of international law. First, the baseline system, and perhaps especially their impact on the expansion of Iceland’s internal waters, will be examined considering its potential impact on the navigational rights and freedoms of other states in Icelandic maritime zones. Secondly, the baseline system and its effect on the seaward extension of Iceland’s maritime zones will be studied in light of its significance and impact on Iceland’s fisheries if Iceland were to one day join the European Union and thereby be subject to the EU’s Common Fisheries Policy. Finally, in chapter six the paper’s conclusions will be presented.
2. The establishment of Icelandic straight baselines

The history of Iceland’s baselines will be examined. The historical background to the 1952 decision to draw straight baselines will be covered in detail, and the effects of the new baselines on maritime zones and boundaries will be shown with computer generated maps. The last part of this chapter will provide an overview of the development of Iceland’s baselines from 1952 to the present day.

2.1 What are baselines, and why are they important?

One of the primary purposes of the law of the sea is to divide the ocean into multiple jurisdictional zones. The marine spaces thus distributed fall into two categories: marine spaces under national jurisdiction and marine spaces outside of national jurisdiction. The lines from which the seaward limits of marine spaces under national jurisdiction are measured are called baselines. Therefore the location of the basepoints from which a state’s baselines are drawn has a profound effect on the extent and area of a state’s marine claims. In turn, a coastal state’s marine claims affect the delimitation of the state’s marine spaces with neighbouring states.

The baseline is also the line separating a state’s internal waters from its territorial sea. The baseline is the starting point of a state’s territorial sea. The waters on the landward side of a baseline are however categorized as internal waters. This distinction is important as the rules for the territorial sea and for internal waters are different. Unlike the territorial sea, coastal states have full sovereignty over internal waters just as it has over its land territory. In the territorial sea, a coastal state’s sovereignty is subject to international law. Article 17 of The United Nations Convention on the Law of the Sea provides that foreign ships enjoy a right to innocent passage through the territorial sea, subject to certain conditions detailed in Articles 18 to 23 of the treaty. If a coastal state establishes a system of straight baselines with the method set forth in Article 7 of UNCLOS, the seaward extension of the baselines may result in the creation of areas of internal waters which were previously not considered as such. As Paragraph

---

3 ibid 5.
4 ibid 44.
2 of Article 8 of UNCLOS provides, when internal waters are created in this manner, a right of innocent passage as provided in UNCLOS shall exist in those waters.

2.2 Baselines and different maritime zones

Historically, there were two main methods recognized for determining the breadth of a coastal state’s territorial sea.6 The first method was the so-called ‘cannon-shot rule’. This rule stated that a coastal state had the right to a territorial sea as far seaward as landbased cannon could fire a cannonball. The second method was the fixed limit rule used by Scandinavian countries. Denmark and Sweden had by the 18th century claimed a territorial sea extending four miles seaward from their coastlines. Britain and the United States however had by the early 19th century both adopted three miles as the maximum limit for the territorial sea.7

In 1930, the League of Nations convened the Hague Conference for the Codification of International Law.8 The aim of this Conference was to attempt to codify international law on three subjects. One of the three subjects was territorial waters. A majority of the states which attended the Conference supported the principle that coastal states had territorial sovereignty over a belt of sea around its coasts. However, the states attending the Conference disagreed on what the limit of the territorial sea should be. The United States and Britain maintained that the territorial sea was three miles, but met with fierce opposition from other coastal states, who advocated for a larger territorial sea.9 The end result of the Hague Conference was that the states could not agree on the limit of the territorial sea, and no convention on the territorial sea was agreed upon.

In 1935 Norway issued a royal decree establishing a system of straight baselines along the northern part of its coastline. This section of the coast is rather long and is both jagged and uneven. A huge number of islands, reefs, rocks and islets line a large part of the area where the straight baselines were drawn. By drawing these straight baselines Norway made claims which extended their fisheries jurisdiction seaward. British trawlers had been fishing in the now-contested maritime area for some time at this point and wanted to continue to do so. This led to a number of British trawlers being arrested by Norway. The dispute between the two states

---

7 Tanaka (n 2) 21.
8 ibid 20.
9 ibid 21.
ended up before the International Court of Justice (hereafter ICJ). The United Kingdom government claimed that the Norwegian claims were in violation of international law. In 1951 the Court issued it judgment in the case. The Court found in favour of Norway, stating that when a coast was deeply indented and cut into, such as that of Norway, the baseline did not have to follow the low-water mark but had to be constructed on the basis of certain criteria. Norway was found to have drawn its baselines in a sound manner considering the geographical circumstances involved, and so the ICJ had pronounced that a system of straight baselines could be established without violating international law. In its judgment the Court cited certain requirements for the establishment of straight baselines. Of these, three were most important. Firstly, the baselines drawn by the coastal state could not depart to any appreciable extent from the general direction of the coast. Second, the certain sea areas lying within the proposed baselines had to be sufficiently closely linked to the land domain to be subject to the regime of internal waters. The third requirement was different from the first two in that it was not of a geographical nature. The Court stated that in evaluating the legality of straight baselines one consideration which should not be overlooked which is that of certain economic interests peculiar to a region, the reality and and importance of which are clearly evidence by a long usage.

In 1958 the United Nations, following preparatory work by the International Law Commission, held the First United Nations Conference on the Law of the Sea. One of the conventions adopted at the conference was the Geneva Convention on the Territorial Sea and the Contiguous Zone. The Convention codified the rules on coastal state rights to a territorial sea and the rules for the drawing of baselines. The provisions about straight baselines contained in The Convention were based on the ICJ’s ruling in the Fisheries case, and the TSC provisions are nearly identical to the wording from the Fisheries case. The rules on baselines, straight baselines and the territorial sea have since then been superseded by the United Nations Convention on the Law of the Sea. The provisions on baselines in UNCLOS are very similar to the ones in the TSC, and are also based on the judgment from the Fisheries case. However, there are some differences.

10 Fisheries Case (United Kingdom v Norway) [1951] ICJ Rep 116 (International Court of Justice).
11 ibid 128–129.
12 ibid 133.
13 Tanaka (n 2) 22.
The uncertain and vague language on the limits of the territorial sea in the ICJ’s judgment in the Fisheries case, later codified by the TSC and UNCLOS made it inevitable that disputes would arise about straight baselines.\textsuperscript{15}

UNCLOS was adopted in 1982 and came into force in 1994.\textsuperscript{16} At the time of writing, 168 states have ratified the convention.\textsuperscript{17}

As previously stated, the law of the sea provides coastal states the right to claim jurisdiction of marine spaces in accordance with established rules of international law. In order to determine the seaward extent of maritime zones under national jurisdiction they are measured from baselines.\textsuperscript{18}

Internal waters are defined by paragraph 1 of Article 8 of UNCLOS as those waters which lie on the landward side of a state’s baseline. More specifically the regime of internal waters includes those parts of the ocean which surround the coastline down to the low-water mark, ports and harbours along the coast, estuaries, waters lying landward from the closing line of bays and waters enclosed by straight baselines.\textsuperscript{19} A coastal state enjoys full sovereignty within its internal waters as well as the adjacent maritime zone called the territorial sea.\textsuperscript{20}

As previously mentioned, Article 17 of UNCLOS provides that if a coastal state establishes a system of straight baselines with the method set forth in Article 7 of UNCLOS, when internal waters are created in this manner, a right of innocent passage as provided in UNCLOS shall exist in those waters.

The legal regime of the territorial sea is defined in Part II of UNCLOS.\textsuperscript{21} Paragraph 1 of Article 2 of UNCLOS provides that the sovereignty of a coastal state extends beyond its land territory and internal waters to an adjacent belt of sea described as the territorial sea. As provided in Article 3 of UNCLOS states have the right to a territorial sea whose breadth may at most be twelve nm measured from the state’s baselines. Although coastal states have sovereignty over


\textsuperscript{16} UNCLOS.


\textsuperscript{18} Tanaka (n 2) 44; UNCLOS Article 3.

\textsuperscript{19} Tanaka (n 2) 78; UNCLOS Articles 8-12.

\textsuperscript{20} UNCLOS Article 2(1).

\textsuperscript{21} ibid Part II Territorial Sea and Contiguous Zone.
their territorial sea, that sovereignty is subject to certain limitations. Article 17 of UNCLOS provides ships of all states the right of innocent passage through a coastal state’s territorial sea. Innocent passage is further defined in Arts. 18-26 which establish the rights and obligations of both the coastal state and the foreign ship seeking to exercise its right to innocent passage. Articles 27 and 28 contain provisions on a coastal state’s criminal and civil jurisdiction in relation to the travel through the coastal state’s territorial seas of foreign merchant ships or government ships operated for commercial purposes. Articles 29-32 contain rules regarding the rights and obligations of a coastal state towards warships and non-commercial government ships passing through the territorial sea.

Article 33 of UNCLOS allows a coastal state to claim a contiguous zone, extending 24 nm from its baselines. Within the contiguous zone a coastal state may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea as well as having the right to punish infringement of laws and regulations committed within the state’s territory or territorial sea.

Part V of UNCLOS contains the provisions on the exclusive economic zone (EEZ). As stated in Article 57 of UNCLOS, the EEZ has a maximum breadth of 200 nm and is measured from a coastal state’s baselines. The EEZ gives a state sovereign rights regarding the exploitation of natural resources.

Part VI of UNCLOS contains provisions concerning the continental shelf. The continental shelf, as defined in paragraph 1 of Article 76 is comprised of the seabed and subsoil of the submarine areas that extend beyond a coastal state’s territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the coastal state’s baselines if the edge of the state’s continental margin does not extend up to 200 nm. States enjoy sovereign rights to their continental shelf when it comes to the obtainment and use of natural resources found there.
2.3 The difference between regular and straight baselines

As provided for in both Article 3 of the Territorial Sea Convention\textsuperscript{22}, and in Article 5 of the Law of the Sea Convention\textsuperscript{23}, normally baselines are measured from the low-water line of a coast.

The rules on baselines are found in section 2 of UNCLOS. Article 5 states that a ‘normal’ baseline is situated at the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state. Such a baseline follows the shape of the coastline and therefore a state which draws normal baselines has a territorial sea in the shape of the coastline. The breadth of the territorial sea is hard-capped by Article 3 of UNCLOS which allows states to establish a territorial sea whose seaward limit is a distance not exceeding twelve nautical miles (nm) from the baseline.

Article 7 of UNCLOS provides an alternate method for drawing baselines. Paragraph 1 of Article 7 allows for the drawing of straight baselines joining appropriate points in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. Paragraph 2 of Article 7 allows for drawing straight baselines subject to certain conditions if the coastline in question contains a delta or other natural conditions which cause the coastline of a state to be highly unstable. Paragraph 3 of Article 7 further states that when states draw straight baselines the lines must not depart to any appreciable extent from the general direction of the coast, and that the sea areas on the landward side of the baselines must be sufficiently linked to the land domain to be subject to the regime of internal waters. Paragraph 4 of Article 7 restricts the use of low-tide elevations as basepoints for straight baselines unless the elevations either have had lighthouses or similar installations permanently above sea level built on them, or in the instances where the use of such elevations as basepoints has received general international recognition. Finally, Paragraph 6 of Article 7 proscribes that a state may not establish a system of straight baselines in such a way as to cut off the territorial sea of another state from the high seas or an exclusive economic zone.

2.4 Icelandic baselines from 1901-1952

In 1901 an agreement was concluded between Britain and Denmark on the fishing rights of Danish and British ships outside of territorial waters around the Faroe Islands and Iceland.

\textsuperscript{22} TSC.
\textsuperscript{23} UNCLOS.
(hereafter the 1901 agreement). This agreement marked a turning point in history for development of the Icelandic fisheries zone jurisdiction. The 1901 agreement established a so-called ‘North Sea Territorial Sea’ around Iceland. This meant that the fisheries jurisdiction was three nautical miles seaward from a line drawn at the low-water mark along the coast. An exception from this general rule was that a line was drawn straight across bays and fjords which measured less than ten nautical miles wide at the mouth. Scholars have pointed out that this agreement was in accordance with the law on fisheries jurisdiction in most of Northern Europe at this time.

24 Samningur 24. júní 1901 milli Danmerkur og Bretlands um tilhögun á fiskveiðum danskra þegna og breskra þegna fyrir utan landhelgi í hafinu umhvefis Færeyjar og Ísland (Stjórnartíðindi 1903 A-deild 20-37).
26 Ibid 10–11.
27 Ibid 9.
Although members of the Icelandic parliament had greeted the 1901 agreement enthusiastically, as time went on Icelanders’ disposition toward the agreement soured. The primary reason was that foreign ships still had direct access to the state’s primary fisheries zones and fish stock spawning and feeding grounds were not sufficiently protected. The 1901 agreement had disastrous effects on Iceland’s fishing grounds due to the overfishing by foreign trawlers—a recent invention at the time—which threatened the Icelandic nations livelihood.

29 Jón P. Þór (n 25) 9.
The dissatisfaction with the 1901 agreement grew, and by the 1920’s gave rise to the view that Icelanders should attempt to reach new terms with the British and other nations which fished in Icelandic waters. The changes sought by Icelanders were an expansion of the state’s exclusive fisheries zone, the closing of bays and fjords, and the preservation of spawning grounds.31

In 1919 when the Icelandic parliamentary committee on fisheries suggested that the government should make strides to expand the fisheries jurisdiction one of their main objectives was that the fisheries jurisdiction zone should encompass all bays and fjords, and all primary fishing grounds.32

In 1926, again in 1929 and again in 1936, members of the Icelandic parliament urged the government to expand the fisheries jurisdiction to protect the fish stocks from overfishing by foreign trawlers. The 1936 parliamentary proposal by Ólafur Thors, later prime minister, and Pétur Ottesen, one of the main champions of fisheries conservation, advocated for expanding the fisheries jurisdiction to include the entirety of Faxaflói bay, thereby enabling the government to close off the bay from trawling and conserve its marine life.33

In 1937 an international conference was held in London on fishing net mesh size and the minimum size of allowable catch. On the basis of the 1936 parliamentary proposal and its preservation arguments the Icelandic government sent a delegation to advocate for a resolution for the conservation of Faxaflói bay until the necessary research had been conducted on whether the closing off of the bay from fishing might increase sustainability and the size of fish stocks around Iceland and even in other marine zones.34

The Icelandic delegation’s resolution was agreed upon at the conference and submitted to the International Council for the Exploration of the Sea (ICES). At the ICES a special Faxaflói bay committee was set up, which drew up a research plan and met a few times in 1938 and 1939, intending to submit a final report in 1940. The outbreak of the Second World War delayed the completion of the committee’s work until 1946, when its final report was submitted at the ICES conference in Stockholm. In its report the committee proposed, among other things, that

31 Jón P. Þór (n 25) 9.
32 Alþt. 1919, 1419, (þskj. 733).
33 Jón P. Þór (n 25) 25–33.
34 ibid 33.
Faxaflói bay would be closed off for ten years, as an international experiment on the viability of closing off fish stock spawning grounds in the Icelandic fishing waters.\(^\text{35}\)

The ICES approved the proposals, apart from a sub-clause about damages for illegal fishing. Then, in 1949, the Icelandic government invited the member states of ICES to a conference in Reykjavik. The Nordic nations, Denmark, Sweden and Norway accepted the invitation, the French agreed to send an Ad Hoc representative, but the British refused to attend, as they felt the matter should be discussed in a committee of advisors, in accordance with an agreement on mesh sizes which had been signed in London in 1946.\(^\text{36}\) Other states were unwilling to discuss the matter at that time, and therefore the conference was canceled.\(^\text{37}\)

Scholars have postulated that despite the failure of the proposal for international conservation of Faxaflói bay it was not all for naught. The research conducted by the Faxaflói bay committee would prove useful later on when Iceland sought to argue for the expansion of its territorial waters after the Second World War. In addition, the proposal at the 1937 conference by the Icelandic delegation brought these issues to the attention of other states.\(^\text{38}\)

When two members of the Althing, Hermann Jónasson and Skúli Guðmundsson proposed a parliamentary resolution in 1946\(^\text{39}\) to unilaterally terminate the 1901 treaty on fisheries limits their main rationale was that due to the treaty’s stipulations about 90% of all fishing grounds around Iceland were outside the limits of its territorial sea. Therefore, it was extremely difficult to protect the fish stocks from overfishing.\(^\text{40}\)

2.5 The background to the establishment of straight baselines

When Iceland prepared to establish straight baselines in the aftermath of the Second World War in the late 1940’s the Cold War had begun and this affected the atmosphere in the international community. Therefore, it is pertinent to consider the impact of geopolitical

---

36 *Convention For The Regulation Of The Meshes Of Fishing Nets And The Size Limits Of Fish* (adopted 5 April 1946, entered into force 5 April 1953.
37 *North-Western Area Committee Report of the Sub-Committee on Faxa Bay / Edited by Á. Vedel Tåning* (Høst & Fils 1948); ‘Ráðstefnan Út Af Friðun Faxaflóa Verður Ekki í Sumar’ *Alþýðublaðið* (10 August 1949) 8.
38 Jón þ. þór (n 25) 35.
39 Alþt. 1946, D, þskj. 327 - 281. mál.
developments in this timeframe on Iceland’s relationships with key allies and the state’s political status, and how this influenced the establishment of straight baselines.

Bernard H. Oxman, paraphrasing Jean-Francois Revel, states that “[T]he history of international law since the Peace of Westphalia is in significant measure an account of the territorial temptation.”41 This tendency used to be descriptive of international law on land, but the inverse applied to the Law of the Sea since Grotius.42 In the middle of the 20th century as co-operation and trade diminished the possibilities for States to compete for territory. At the same time, ‘territorial temptation’ towards the oceans began.43 States started to make claims to maritime areas with great speed and largeness of scope. The Truman Proclamation44 of 1945 started this process, as other coastal states accepted the validity of coastal states’ claim to their continental shelf so quickly that this derogation to the *mare liberum* of Grotius has been described as an example of instant customary law.45

Oxman argues that the triumph of the theory favouring increased coastal state sovereignty and jurisdiction over both living and material natural resources over the opposing view of maximum freedom of the high seas was the result of numerous reasons.46 He cites a diverse list of factors, including the ambitions of political power, protection from competition against other States, lack of patience, a desire to maximize tax revenues and other financial windfall from ocean resources, a frustration towards international organizations, the classic domino effect, and a measure of xenophobia.

### 2.5.1 World War II and the United States

Prior to World War II, the United States did not pay much attention to Iceland. This changed once war broke out. U.S. attention was turned to Iceland when the British occupied Iceland in 1940. The U.S. became interested in Iceland as a strategic outpost in the North Atlantic.47 The

---

41 Oxman (n 15) 3.
42 ibid 4.
43 ibid 5.
44 ‘Presidential Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 10 Fed. Reg. 12,203 (1945) [Hereinafter Truman Proclamation]’.
45 Oxman (n 15) 5.
46 ibid 7.
Icelandic government at the time, a wartime National Unity government, was reluctant to abandon the national policy of “eternal neutrality.”

In 1941 U.S. president Franklin Roosevelt gave in to pressure from the UK for support and he agreed to replace the British occupation force in Iceland with U.S. troops. Roosevelt didn’t want to occupy Iceland against its will, so he wanted the Icelandic government to formally “request” the military protection of the United States. The Icelandic government was unwilling to do so, but did issue a statement that confirmed that U.S. troops coming to Iceland was compatible with Iceland’s national interests. Not long after this the U.S. and the Icelandic government concluded a Defense Treaty, which not only paved the way for the arrival of U.S. troops in Iceland, but also included generous trade benefits to Iceland.

The Defense treaty stipulated that the U.S. had to provide Iceland with its total import needs, and that the U.S. would buy Iceland’s fish exports as part of the Lend-Lease agreement with the UK. The economic benefits for Iceland of the treaty were enormous. In 1939 Iceland had been the poorest country in Northern Europe. By 1945 it had become one of the richest, on a per-capita basis. By 1943 the U.S. completed construction of a large airfield in Keflavík. From 1942 to 1945 this airfield was used to ferry thousands of bombers and fighters to the war in Europe. The military base in Keflavík was also a vital part of the Allies’ submarine operations in the North Atlantic and in keeping the sea lanes open to Britain and the Soviet Union. After the war ended, the Joint Chiefs of Staff of the U.S. Armed Forces were very keen to acquire permanent military rights in Iceland. By this time the attention had shifted from the now defeated Nazis to the Soviet Union and their threat to the U.S. Iceland would be an important part of a U.S. plan to counter potential Soviet attacks on the United States.

---

48 ibid.
49 ibid 12.
50 Exchange of messages of 1 July 1941 constituting an agreement between the United States of America and Iceland relating to the defence of Iceland by United States forces (Iceland – United States of America) (adopted 1 July 1941) 405 UNTS 12.
51 Álþt. 1941, 57. löggj. þing, A-deild, þskj. 4 - 1. mál.
52 Valur Ingimundarson (n 47) 13.
53 ibid.
2.5.2 Legal developments between 1948-1950

In 1948 the Icelandic parliament passed a law on the scientific conservation of the fishing grounds of the continental shelf, law nr. 44/1948.\textsuperscript{54} In Article 1 of the law it said that the ministry of fisheries should determine the limits of fisheries protection zones within the continental shelf of Iceland by issuing regulations. Within these protective zones all fishing would be subject to Icelandic statutes and supervision. The Article stated further that the ministry of fisheries should in addition establish all rules that were necessary for the protection of the fishing grounds in these areas. The regulations were to be re-evaluated based on future scientific research. In Article 2 of the law, it says that regulations established on the basis of Article 1 should always be adhered to in accordance with international treaties Iceland would be party to at any time.\textsuperscript{55}

In late 1949 the Icelandic government began exploring avenues for the expansion of the fisheries jurisdiction. A committee was formed to make suggestions and submitted its report in February of 1950.\textsuperscript{56} In its report the government committee stated that due to foreseeable opposition from states which conducted fishing around Iceland it would be for the best to tread carefully and exercise caution to begin with in expanding the fisheries jurisdiction. Therefore, the committee suggested that the first step would be to enact rules on the ban of fishing by foreigners in all bays and fjords in northern Iceland, as well as four nm beyond that. The committee felt this was necessary to protect the herrings stock in the seas of northern Iceland from overfishing.\textsuperscript{57}

In 1950 the Icelandic government published regulations on the basis of the 1948 Conservation law.\textsuperscript{58} These regulations concerned the protection of fisheries only in the north of Iceland. These regulations established straight baselines in the north of Iceland. When the regulations came into effect all boat seine and bottom trawling were banned within a line drawn four nm from the outermost points of land, islands, reefs and the mouths of bays and fjords of the north of Iceland.\textsuperscript{59} Additionally the regulations restricted herring fishing to Icelandic citizens and

\textsuperscript{54} Alþt. 1947, A-deild, þskj. 679- 182. mál.
\textsuperscript{55} ibid, 840.
\textsuperscript{58} Reglugerð nr. 46/1950 um verndun fiskimiða fyrir Norðurlandi.
\textsuperscript{59} ibid.
Icelandic ships within the new baseline. In Article 5 of the regulation it said that the regulation should always be in accordance with international treaties Iceland was party to. At the time this regulation was published the 1901 Fisheries Treaty with the UK was still in effect. Davíð Ólafsson states in his Saga Landhelgismálsins (The History of the Territorial Waters Dispute) that the clause in Article 5 on adherence to international treaties was the reason the UK did not protest when the 1950 regulation was enacted.

Image 2: Map of straight baselines established in the north of Iceland in 1950

2.5.3 The ICJ judgment in the Anglo-Norwegian Fisheries Case
On December 18th 1951 the International Court of Justice in the Hague delivered its judgment in a case involving a dispute over fishing rights between the United Kingdom and Norway. The dispute between the two states had begun in 1935 when Norway issued a royal Decree delimiting its fisheries zone. Although the Decree did not mention the Territorial Sea the ICJ stated in its judgment that it was certain that the fisheries zone mentioned in the Decree was considered to be its Territorial Sea by Norway, and treated it as such. The Norwegian Decree drew straight baselines along the uneven and jagged northern coastline of Norway between basepoints situated on the mainland, on islands or on rocks in the sea. The new baselines expanded the fisheries jurisdiction of Norway seaward due to the basepoints chosen. The UK challenged the validity of the new baselines under international law, claiming that Norway’s baselines should be the low-water mark on permanently dry land. The proceedings of this

60 ibid.
61 Davíð Ólafsson and Sumarliði R. Ísleifsson (n 56) 62.
62 Jón Þ. Þór (n 25) 79.
63 Fisheries Case (United Kingdom v. Norway) (n 10).
64 ibid 125.
65 ibid 9.
case were watched closely by the Icelandic authorities, as their plan was to follow Norway in drawing straight baselines to protect their fisheries from fishing by foreign ships.66

Image 3: Norwegian Straight Baselines established by 1935 Decree67

![Norwegian Straight Baselines established by 1935 Decree](image)

In the case the UK was willing to grant that Norway could, on historic ground, claim as internal waters all fjords and sunds which fell under the conception of a bay as defined in international law, whether the proper entrance to the indentation was more or less than 10 nm wide. Furthermore, the UK submitted that a bay in international law is “…a well marked indentation, whose penetration inland is in such proportion to the width of its mouth as to constitute the indentation more than a mere curvature of the coast.”68

The ICJ described the Norwegian coastline as having a very distinctive configuration, as it was “…very broken along its whole length.”69 Also, the Court noted that the distinctive nature of the “skærgaard”, comprising thousands of islands, islets, rocks and reefs, was that it was in

---

67 Reisman and Westerman (n 6) 25.
68 *Fisheries Case (United Kingdom v. Norway)* (n 10) 120.
69 ibid 127.
truth but an extension of the Norwegian mainland. Due to this, the Court noted that the coast of mainland Norway did not constitute, as it does in practically every other country, a clear dividing line between land and sea. The Court found that of utmost importance in this particular case was the fact that due to the peculiar nature of this geography, the outer line of the “skjærgaard” constituted the actual coastline of Norway.

The court found that where a coast was deeply indented and cut into, or where it was bordered by an archipelago such as the “skjærgaard” the base-line became independent of the low-water mark, and could only be determined by means of a geometrical construction.

In the *Fisheries case* the UK conceded that Norway could on historic grounds claim as internal waters all fjords and sunds which fell within the conception of a bay as defined in international law. However the UK did claim that straight baselines drawn between two points could not exceed ten nm. The Court did not agree that such a rule had gained recognition as international law.

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

The Court went on to elucidate its position on straight baselines further. It emphasized the close dependence of the territorial sea upon the land domain. Therefore, the Court argued, although coastal States should be granted some leeway in adapting their delimitation to practical needs and local requirements, “…the drawing of base-lines must not depart to any appreciable extent from the general direction of the coast.” Scholars have been critical of the ambiguity of the Court’s language on the requirement that a straight baseline may not depart to any appreciable extent from the general direction of the coast. Not only is the term “general direction of the coast” quite vague, it is used in the context of “practical needs and local requirements”, an

---

70 ibid.
71 ibid.
72 ibid 129.
73 ibid 131–133.
74 ibid 132.
75 ibid.
76 Reisman and Westerman (n 6) 33.
enigmatic expression, and subject to the cryptic limitation that the deviation must not exceed an “appreciable extent”, itself an entirely opaque phrase.

On the subject of internal waters and baselines a portion of the Court’s comments warrant being quoted in full:

Another fundamental consideration, of particular importance in this case, is the more or less close relationship existing between certain sea areas and the land formations which divide or surround them. 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. This idea, which is at the basis of the determination of the rules relating to bays, should be liberally applied in the case of a coast, the geographical configuration is as unusual as that of Norway.77

One of Norway’s arguments for the legitimacy of its straight baselines was the fact that they had consistently claimed these lines for a long time. In 1812 Norway issued a Royal Decree on the method for determining the limits of Norwegian territorial sovereignty at sea. The Decree stated that “…that limit shall be reckoned at the distance of one ordinary sea league from the island or islet farthest from the mainland, not covered by the sea.” The Decree does not mention how baselines should be drawn between islands or islets, but the ICJ noted that drawing straight baselines between these points was the accepted interpretation and method used in Norway from the 19th century onward.78

In 1869, and again in 1889, the Norwegian government issued Decrees on the delimitation of certain marine zones, whereby straight baselines where drawn. In the 1869 Decree a straight line 26 nm in length was drawn between the two outermost points of the “skjærgaard”. In the 1889 Decree four straight lines were drawn in the delimitation of Romsdal and Nordmøre, varying in length from 7 to 23,6 nm. Statements of Reason for, based on principles laid out in an 1812 Royal Decree. In the three Statements the government was, in the view of the International Court of Justice, consistent in applying the principles of the 1812 Decree as a definite system applicable to the entire Norwegian coastline.79

In diplomatic correspondence with the French government in 1869-1870 due to the delimitation rules established in the 1869 Decree the Norwegian ministry of Foreign Affairs was clear in its

77 Fisheries Case (United Kingdom v. Norway) (n 10) 133.
78 ibid 134.
79 ibid 135.
message of a) the straight baselines drawn according to the Decree were necessary due to the
geography of the Norwegian coast line, and b) that these baselines were compatible with
international law.80

Despite protests from the British, the Court found that Norwegian authorities had applied the
system of delimitation featuring straight baselines consistently from 1869 until the time of the
dispute with the UK. Reisman and Westerman claim the Court was very lenient in its appraisal
of the validity of Norway’s claims of historic usage.81

Furthermore, the Court found that no States had objected to this delimitation until the UK did
so, over 60 years after it had begun.82 The Court stated that:

The Court is thus led to conclude that the method of straight lines, established in the
Norwegian system, was imposed by the peculiar geography of the Norwegian coast;
that even before the dispute arose, this method had been consolidated by a constant and
sufficiently long practice, in the face of which the attitude of governments bears witness
to the fact that they did not consider it to be contrary to international law.83

The Court also stated the importance of the Norwegian governments assurances that they
agreed with the idea that legal baselines must be drawn in such a way as to respect the general
direction of the coast, and be drawn in a reasonable manner.84

Due to the UK governments protests against certain basepoints the ICJ was forced to consider
the validity of baselines drawn across the entrance points of bays. The UK government was
particularly critical of how Norway had drawn its baselines in two sectors, Sværholtshavet and
Lopphavet. The 44 mile baseline across Lopphavet cut off several hundred square miles of
theretofore high seas.85

In the view of the UK, the baselines of these sectors were extreme deviations from the general
direction of the coast. In the case of the Sværholt baseline segment, (between basepoints 11
and 12), a line drawn between two capes at the end of a basin or bay, the UK felt that the 38.6
nm baseline drawn across the mouth of the basin was unlawful. Their reasoning was that the
basin did not have the character of a bay due to the fact that if one considers the tip of the
Sværholt peninsula as the limit of the landward penetration of the basin, its length only is only
11.5 nm inland. The Court disagreed and felt that despite a peninsula jutting out from the bay,

80 ibid 136.
81 Reisman and Westerman (n 6) 34.
82 Fisheries Case (United Kingdom v. Norway) (n 10) 128.
83 ibid 139.
84 ibid 140–141.
85 Reisman and Westerman (n 6) 36.
the two fjords on either side of the peninsula, being contained within the bay, were to be considered part of the bay. These fjords were deep enough, 50 and 75 nm respectively to give Svaerholtshavet the dimensions necessary for having the character of a bay.86

The other baseline most criticized by the UK was the Lopphavet baseline, (between basepoints 20 and 21). In this case the UK felt that the baseline did not respect the general direction of the coast. The Court felt that the Lopphavet basin was an ill-defined geographic whole, and that it could not be considered as having the character of a bay, as it was a large area of water containing large islands which were separated by inlets. The Court however felt that when examining whether a baseline was inconsistent with the coastline one could not rely on just the fact that the baseline did not follow the coastline in one specific section of the coast. To ascertain whether a specific baseline was inconsistent with the coast line, one had to compare it to the general direction of the coastline, unless the baseline of a specific sector constituted a manifest abuse.87

The Norwegian government supported its claim of legitimacy of the Lopphavet baseline partly on the grounds that they had historic title to these waters since the 17th century. The Court felt that the documents and arguments in support of these historic rights tended to confirm the Norwegian government’s claims. Regarding historic or traditional rights in general the Court stated that such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage could legitimately be taken into account in drawing baselines.88

Of the eight judges who formed the majority in the Fisheries Case, one issued a declaration clarifying his vote, and one issued a separate opinion in favour of Norway. Judge Hackworth made a declaration that he supported the operative part of the Judgment on the basis that Norway had in fact proven the existence of historic title to the disputed waters.89 Reisman and Westerman state that Hackworth’s declaration reduces the precedential value of the Judgment and that Judge Hackworth’s opinion neither endorsed the usage of straight baselines in general nor the Norwegian Government’s application of the straight baselines method in the case at hand.90 Judge Hsu issued a separate opinion91 finding in favour of Norway due to her special geographical conditions and consistent state practice, stating that in the absence of these

86 Fisheries Case (United Kingdom v. Norway) (n 10) 141.
87 ibid 142.
88 ibid.
89 ibid 116.
90 Reisman and Westerman (n 6) 35.
91 Separate Opinion of Judge Hsu Mo, Fisheries Case (United Kingdom v. Norway) (n 10) 116, 154.
physical and historical conditions the Norwegian baselines of 1935 would have been contrary to international law. Judge Hsu found the baselines across Svaerholtshavet and Loppehavet to be in violation of international law in general and in violation of Norway’s claim that the baselines followed the general direction of the coast.92

2.6 Straight baselines established

The expansion of the territorial sea in the north of Iceland in 1950 was only the testing ground for what was to come. The Icelandic government began preparations to expand their marine jurisdiction along the entire coastline. When preparing the planned new fisheries zone regulations the Icelandic government sent two experts on the matter to Paris to meet with two specialists in this field, professor Bourquin from Switzerland and the Norwegian Supreme court attorney Arntzen, who served as advisors to the Icelandic government on the intended expansion of the fisheries zone with the UK government. In 1951, Bourquin and Arntzen had successfully pleaded the case for Norway in the Fisheries case at the International Court of Justice.93 During the discussions with Bourquin and Arntzen both indicated that they felt that Iceland should be entitled to the same right that Norway had received in the Fisheries case judgment. Additionally the Icelandic representatives met with attorney Jens Evensen, who had worked on the Fisheries case for Norway prior to its submittal to the ICJ. Evensen expressed the opinion that the Icelandic proposals for drawing new baselines were in complete accordance with the judgment in the Fisheries case. Additionally, he stated that Icelanders should be confident that the UK government would not take Iceland to court on account of the proposed baselines.94

During discussions between the Icelandic delegation, led by the minister for industrial affairs, and representatives from the UK government in January 1952 the British representative stated that the UK was of the opinion that the judgment in the Fisheries case did not confer any specific rights on Iceland.95 When informed of the Icelandic proposals for changes in baselines the British delegate Mr Johns allegedly said that Icelanders were trying to claim large areas of the high seas.96

92 ibid 155–156.
93 Davið Ólafsson and Sumarlíði R. Ísleifsson (n 56) 63.
94 ibid 64.
96 ibid 165.
According to the biography of Ólafur Thors, the Icelandic minister for industry who led the Icelandic delegation, one of the British delegates said that while Iceland was perhaps within its rights in claiming the disputed marine zone they should keep in mind that the UK could in a perfectly legal way close off all Icelandic access to British fish markets.97

In 1952, on March 19th, the Icelandic government issued regulations nr. 21/195298, which expanded the straight baselines in the north of Iceland to include the entire coastline of the island, with straight baselines drawn across all bays and fjords. In addition, the fisheries jurisdiction was expanded to four nm as it had previously been in the north.99

97 ibid.
98 Reglugerð nr. 21/1952 um verndun fiskimiða umhverfis Ísland.
2.7 Iceland’s arguments and reasons for drawing straight baselines

In his 1948 treatise on Iceland’s territorial waters, Hans G. Andersen, a Harvard-educated lawyer who was an expert on international law and worked as a special legal advisor to the Icelandic Ministry for Foreign Affairs, claimed that because of great technical advancements in fisheries the lack of protection of the Icelandic fish stocks would result in their utter destruction, if nothing were to be done about it.

---

Andersen’s view in 1948 was that from a legal standpoint, any unilateral action to expand the territorial waters would be useless unless Iceland could prove that their proposals were in accordance with international law. Andersen argued that Iceland had to demonstrate that according to international law Iceland was entitled to larger territorial waters than it enjoyed in 1948 — and that no established rules existed in international law which limited the extent of territorial waters, so each state could expand its territorial waters without violating international law.102

In a 1958 memorandum on the Icelandic fisheries question the government of Iceland claimed that it had been considered natural to base the 1952 Regulations issued on the basis of statute 44/1948 on the geography of the continental shelf, as its outlines roughly followed those of the coast. In addition, the government stated that a topographical map chart made it abundantly clear that the continental shelf was really the platform of the country and had to be considered a part of Iceland itself.103

In its 1958 memorandum to the UN on the fishery dispute with the UK at that time concerning the proposed 12 nm expansion of Iceland’s fisheries jurisdiction, the Icelandic Government, when discussing the issuing of the Regulations establishing straight baselines for the first time in Icelandic law in 1952, said the following: “In these shallow areas are to be found some of the most valuable spawning grounds and nursery areas in the world and these provide the basis for the great offshore fisheries in Iceland.”104

In the 1958 Memorandum the Icelandic Government discussed criticism for having proceeded unilaterally with issuing the 1958 Regulations and that negotiations with other nations should have been conducted instead. In its defense the Government stated that it had always taken an active part in international cooperation of fisheries problems. As a case in point the Government mentioned the attempt to obtain an international solution to the Faxaflói bay question. However, this process had not borne much fruit and therefore Iceland had taken the initiative and closed off the bay with the Regulations of 1952. The Government went on to say:

[T]he crux of the matter is that Iceland has for a long time been trying to safeguard her legitimate and vital interests. In that process the experience has invariably been that foreign nations fishing in Icelandic waters have never shown any cooperation but always opposition. […] The nations concerned consider that the fact that they have been

102 ibid 7–8.
104 ibid.
fishing in Icelandic waters for a long time – which incidentally would have brought about the ruin of the Icelandic fishing grounds if appropriate steps had not been taken by the Government – gives them a right to go on fishing there forever. Since the Icelandic Government obviously has the opposite point of view the agreement procedure becomes, if not quite unrealistic, at least extremely difficult. 105

The Conclusions of the Memorandum were that 1) The fishing industry was of vital importance to the national economy of Iceland, 2) The development of catches in Icelandic waters clearly showed the danger of overfishing as regards the most important stocks of fish and that the new Regulations which aimed at protecting these fish stocks were therefore urgently required, 3) Iceland had for a long time had the initiative and participated in the work inside the United Nations aimed at finding a solution to the problem of coastal jurisdiction, which had not met with success, 4) The Regulations were clearly not contrary to international law, 5) Taking into consideration the vital importance of the fishing industry to the national economy of Iceland and the failure to find a solution on the international level as regarded the extent of coastal jurisdiction the Icelandic Government had no other alternative than to issue the Regulations which came into force on September 1st 1958. 106

In a 1963 article, Icelandic law professor Gunnar G. Schram stated that:

A recognition in law of coastal state jurisdiction over a fairly extensive area beyond its territorial sea would better solve the problems of allocation and conservation, and bring benefits to a great number of developing coastal nations whose fishing industries are still in infancy. 107

3. Reactions of other states to Iceland’s decision to draw straight baselines

105 ibid 25.
106 ibid 27.
3.1 Statements of protest and negative reactions

When the Conservation Regulations of 1952 were announced, British officials felt that the 78 mile baseline across Faxaflói Bay was excessive.\textsuperscript{108}

Icelanders were aware that the Faxaflói line was debatable. In January of 1952 Hans G. Andersen had showed the American Chargé d’Affaires in Reykjavík a map with different possibilities for the closure of the bay. The most conservative line had been from headland to headland, while the most radical one was from outermost headland to islet. The latter line was the one used when the Regulations were announced. Three legal experts whom the Icelanders had consulted abroad warned that some of the proposed baselines had seemed ‘daring’, which historian Guðni Th. Jóhannesson believes shows the seriousness of these admonitions.\textsuperscript{109}

\textbf{Image 5: The baseline across Faxaflói with a possible headland to headland baseline shown in red}\textsuperscript{110}

As seen in the above image, a baseline straight across Faxaflói would have resulted in the loss of a considerable area of internal waters, shown in blue.

\textsuperscript{108} Guðni Th. Jóhannesson (n 66) 88.
\textsuperscript{109} ibid 89.
\textsuperscript{110} Computer drawn map based on map found in ibid.
In April of 1952 the British Ambassador in Reykjavík delivered protests to the Icelandic Regulations from the UK government to Icelandic authorities.\textsuperscript{111}

In May of 1952, the UK government stationed a Fishery Protection vessel off Iceland, but, in secret, the UK authorities had given orders to the vessel not to use force or threats to resist an arrest of a British trawler caught fishing within the proposed four-mile limit.\textsuperscript{112}

On May 2, 1952 UK authorities lodged an official protest with the Icelandic government against the upcoming extension of the territorial sea. The Icelandic government formally rejected the protests. The United Kingdom government sent another note of protest in June, but Icelandic authorities did not answer the note. In July the first British trawler was arrested for fishing within the new limits, which had taken effect on May 15.\textsuperscript{113}

As for other states, France, Belgium and the Netherlands delivered notes of protest.\textsuperscript{114}

3.2 Reasons for the lack of protests by other states

3.2.1 Political climate

To understand the factors at play in the dispute between Iceland and Britain the political context at the time must be taken into account. The pro-Soviet Socialist Party in Iceland was a deterrence to Britain in reacting harshly to Icelandic actions, as the near-bankrupt and almost destitute country could, according to Icelandic politicians speaking to their colleagues abroad, conceivably be in danger of being overtaken by communists.\textsuperscript{115} These fears appear to have been widespread in Iceland, where newspapers carried many stories on the threat from communist sympathizers and underground “fifth columnists” seeking to overthrow the government.\textsuperscript{116}

\begin{thebibliography}{116}
\bibitem{footnote111} ibid 93.
\bibitem{footnote112} ibid 94.
\bibitem{footnote113} ibid.
\bibitem{footnote114} ibid 96.
\bibitem{footnote116} Some examples of newspaper writings during this era: an editorial in \textit{Morgunbladid}, the most popular newspaper in Iceland stating in 1952 that “Icelanders […] want to see the same situation in this country. For Iceland to become one of Stalin’s oppressed satellite states” (5 October 1952, page 9); another quote from the same publication in 1953, “If the reign of terror will be established here in this country, based on the Communist role paradigm, the leaders of the Communist squadron wish and hope for, the Icelandic Communists surely know what fate awaits them” (‘Sovět-Ísland, hvenær kemur þú?’ 26 June 1953, page 6); a quote from a
\end{thebibliography}
In 1950 when the Icelandic Government issued the Regulations establishing straight baselines in the north of Iceland the American ambassador in Reykjavik, Edward Lawson, registered formal complaints to the move on behalf of the U.S. State Department. After discussions with Foreign Minister Benediktsson Lawson, who was sympathetic to Benediktsson’s argument that U.S. protests would only serve to bolster the Socialist cause, suspended the note. Lawson again delivered a formal note of protest in 1951 but it was withdrawn immediately when the U.S. received similar pushback from Icelandic authorities as the year before.117

In the uncertain political climate of the late 1940’s, Icelandic Foreign Minister Bjarni Benediktsson was worried that Communists would seek to overthrow the Icelandic government and take over. Benediktsson believed that a U.S. military presence in Iceland would dissuade the Socialists from staging a revolution from within. However, Benediktsson was even more worried about the threat emanating from the Soviet Union. James Forrestal, the U.S. Secretary of Defense shared Benediktsson’s fears, although he and other U.S. officials were more concerned with the threat from a potential Socialist Coup than a potential Soviet invasion. So serious in fact was the Socialist threat to Icelandic sovereignty in the eyes of U.S. military officials that Forrestal ordered contingency plans drawn up in 1948, for the U.S. capture of Iceland in the event of a Communist coup d’etat.118

The North Korean invasion of South Korea which began the Korean War in 1950 led to increased fears of potential Soviet aggression towards Europe. Stalin was believed to be behind the North Korean invasion, and to have his eyes set on the West. These security concerns led to a softening of Icelandic attitudes towards the possibility of permanent U.S. military presence. Discussions began in secret between U.S. officials and the Icelandic government on a bilateral defense treaty in 1950. U.S. officials wanted the treaty to leave out any mention of the defense of Iceland and to be focused on NATO general security. Icelandic Foreign Minister Benediktsson was adamant that a treaty would not be signed unless it included a clause requiring the U.S. to ensure Icelandic security. In 1951, after protracted negotiations, during which Benediktsson’s hard-nosed attitude forced the U.S. to agree to a number of concessions,

---

117 Guðni Th. Ólafsson (n 66) 58.
118 Valur Ingimundarson (n 47) 37.
A Defense Agreement was signed, on May 5. The first U.S. troops arrived in Iceland two days later.\textsuperscript{119}

3.2.2 Geopolitics of the Cold War

A new government relied on the support of the Socialist Party which was fervently opposed to continued U.S. military presence in Iceland. Despite pleadings from Prime Minister Ólafur Thors to postpone discussion on a military base lease treaty, in August 1945 the U.S. government, now led by President Harry Truman asked for a long-term lease of three bases in Iceland. This move by the U.S., whether motivated by ignorance or antipathy towards the delicate political landscape in Iceland, was met with a decidedly frosty reception by the Icelandic government.\textsuperscript{120} The Socialists made it clear that they would withdraw from the government if the U.S. received post-war military rights in Iceland.\textsuperscript{121} Opposition in Iceland killed any hope of a deal for a U.S. long-term base lease, and a compromise was reached with the U.S. receiving landing rights for their military aircraft in Iceland for six years, while all U.S. military forces were withdrawn from Iceland in exchange.\textsuperscript{122} The withdrawal of the U.S. military forces, coupled with the effects of the U.S. no longer subsidizing and guaranteeing Icelandic exports hurt Iceland economically. Due to these difficulties Iceland entered into an advantageous barter trade agreement with the Soviet Union in 1946-47. Nevertheless, trade balance was still negative and the government was forced to introduce import and export controls as well as rationing.\textsuperscript{123}

The U.S. stepped in to help, providing subsidies for Icelandic fish exports to Italy and Greece in 1947, and together with the British government, buying Icelandic fish for allied troops stationed in post-war occupied Germany in 1948. Yet Iceland was still in dire straits economically, and Icelandic politicians made the point to U.S. officials that if the situation deteriorated further, Iceland could become too dependent on its trade agreement with the Soviet Union. The U.S. felt Iceland was too important an ally in the Cold War against the Russians to allow that to happen, and the U.S. put pressure on the Icelandic government to become a member of the Marshall Plan.

\textsuperscript{119} ibid 42–43.
\textsuperscript{120} ibid 16–19.
\textsuperscript{121} ibid 20.
\textsuperscript{122} ibid 23.
\textsuperscript{123} ibid 24–25.
3.2.3 Iceland’s importance as a Western ally

Attitudes toward Iceland in the UK had been shaped by the two countries’ shared experiences in the Second World War. Some felt that the Icelanders had behaved selfishly in the War when they suspended deliveries of fish to the UK due to fear of German attacks. Others felt that the Icelandic had been valuable allies to the UK in the War and should be helped. Not only did the British help Icelanders to build trawlers, in April of 1949, like the United States, Britain agreed to buy fish from Iceland at high prices, following Icelandic threats of disrupting the negotiations for the formations of NATO.\(^{124}\)

3.2.4 Iceland and the Soviet Union

When Iceland expanded its fisheries zone from three to four nautical miles, the leaders of the British Trawlers association attempted to negotiate with delegates from the Icelandic Federation of Trawler captains. Due to the inflexibility of the Icelandic delegation, and the anger of the British Trawler leaders, the British fishing industry instituted and embargo on the landing of fresh fish by Icelandic vessels in Britain.\(^{125}\) The British decision not to intervene with the embargo was to have unintended consequences, much to the dismay of the British government. Cut off from selling their fish in Britain, their largest market, Icelanders were forced to seek other buyers for their most important trading product. Some of the Icelandic catch could be sold to Italy and Portugal, and exports to the United States of frozen fish increased but by far the most momentous deal was the one the government of Iceland made with the Soviet Union in 1953. This deal was a long-term trade deal whereby the Soviet Union would buy a great deal of Icelandic fishing products, while supplying Iceland with many different kinds of goods in return. These goods included products the Icelanders were very interested in such as lumber, oil, machinery and cars.\(^{126}\)

3.3 The Landing Ban - Unofficial “protest” by the UK?

Although political concerns prevented the UK government from taking overt measures against Iceland, a UN and NATO ally, UK officials were in favour of using unofficial methods to put pressure on the Icelanders to back down. Retaliation from British trawler owners against

\(^{124}\) Guðni Th. Jóhannesson (n 66) 61.


\(^{126}\) Guðmundur J Guðmundsson, "The Cod and the Cold War" 31 Scandinavian Journal of History 98.
Iceland was viewed favourably by the Foreign Office, as it allowed them to exercise power while officially not taking steps to punish their North Atlantic ally.\textsuperscript{127}

The fishing ports in Grimsby and Hull were the biggest markets for Icelandic fisheries. The trawler owners who controlled the landing gear there declared on October 2 1952 that Icelandic ships would not be allowed to land their catches in Grimsby until the Icelandic government gave satisfactory answers to British objections to the new fishing limits.\textsuperscript{128} Shortly afterwards the ports of Hull, Fleetwood and Aberdeen were likewise closed to Icelandic vessels by their trawler owners.\textsuperscript{129}

In 1953 Britain and Iceland tried to come to an agreement on how to solve the dispute. British authorities did not want to refer the matter to the ICJ because they felt certain that they would lose, both on the four-mile limit question and on the issue of the straight baselines. However, a compromise of sorts was reached between the two governments to refer to the International Court only the highly disputed baseline outside of Faxaflói bay. The Icelandic government made it a condition of their approval of this plan that once both parties had agreed on the exact terms of the submission to the International Court of Justice, the landing ban would be lifted. The UK government was willing to accept these terms, but the whole plan was scuttled by the British trawler owners. They would not agree to end the ban unless Icelanders were willing to modify the four-mile limit. The UK government was unable to convince the trawler owners to change their position, a position the Icelanders would never accept. Therefore, the British government was deprived of this chance to potentially solve the dispute with Iceland due to the intransigency of local economic powers.\textsuperscript{130}

The June 1956 elections resulted in a significant shift in Icelandic politics. A new government was formed, a leftist government coalition between the Progressives, the Social Democrats, and the People’s Alliance. The U.S.-friendly Independence Party and its Anglophile leader Ólafur Thors were out of power.

By autumn 1956 the UK government had had enough of the ineffective and internationally unpopular landing ban. The trawler owners were told in no uncertain terms to back off and accept an agreement allowing for controlled Icelandic landings. The trawler owners reluctantly

\begin{itemize}
\item \textsuperscript{127} Guðni Th. Jóhannesson (n 66) 98–99.
\item \textsuperscript{128} ibid 99.
\item \textsuperscript{129} ibid 99–100.
\item \textsuperscript{130} ibid 108.
\end{itemize}
agreed to end the embargo. The terms of the agreement were favourable to Iceland and the 
British had to de facto conceded the 4-mile delimitation.131

4. Baselines across fjords and bays in the Icelandic Baseline system

4.1 Overview

This chapter will begin by providing an overview of the legal situation, both domestic and 
international, surrounding straight baselines in Iceland. Domestic legislation and international 
law rules applicable to straight baselines will be reviewed.

As previously mentioned in chapter two, Iceland established a system of straight baselines in 
1952.132 In doing so, Iceland closed off all bays and fjords, resulting in the creation of large 
areas of internal waters on the landward side of these baselines. In certain cases, baselines 
closing off bays and fjords were drawn from basepoints not at the entrance points to the 
indentations, but from low-tide elevations and rocks. A number of the baselines drawn across 
bays and fjords were considerably long, some were longer than the longest baseline segment 
approved by the ICJ in the Fisheries case.133

In international law there are specific rules for drawing straight baselines that close off bays 
and other indentations. The rules for juridical bays provide that bays that meet certain 
prerequisites may have closing lines drawn across them, subject to certain limitations. One of 
the limitations for closing off juridical bays is the length of the closing line, which has a hard 
limit. Bays or indentations which qualify as Historic waters may similarly be closed off in 
certain cases, depending on various factors. Some of the bays and fjords enclosed by straight 
baselines in Iceland are very large. These indentations and the baselines across them must be 
examined on the basis of international law on straight baselines, historical waters and juridical 
bays. It is important to clarify what specific rules of international law apply to these baselines 
and to analyse whether they are in accordance with international law.

131 ibid 147–148.
132 Reðlugerð nr. 21/1952 um verndun fiskimiða umhverfis Ísland (n 98).
133 The Geographer, Office of the Geographer, Bureau of Intelligence and Research, Limits in the Seas No. 34 - 
Straight Baselines: Iceland (United States Department of State 1974) 8; JRV Prescott and Clive H Schofield, 
The Maritime Political Boundaries of the World (2nd ed, M Nijhoff 2005) 149–150; Lewis M Alexander, 
‘Baseline Delimitations and Maritime Boundaries’ in Donald Rothwell (ed), Law of the sea (Edward Elgar 
Publishing Limited 2013) 82.
Rocks and low-tide elevations used as basepoints in baseline segments across bays and fjords will be analysed according to the appropriate provisions of international law as well as from the writings of academics and from jurisprudence on the topic.

4.2 Overview of laws and other legal sources on Iceland’s baselines

4.2.1 Icelandic legislation
The current Icelandic law on baselines and other maritime zones is law no. 41/1979, which was recently updated by law no. 58/2017, which was adopted on 21 June 2017 and law no. 44/2018, which was adopted on 26 May 2018. Article 1 of law no. 41/1979 provides that the Icelandic territorial sea is 12 nautical miles measured from baselines drawn between 48 basepoints listed in the provision.

4.2.2 International law
Iceland was a signatory to the TSC, but did not ratify the treaty. Iceland was also a signatory to UNCLOS, which it subsequently ratified. The treaty took effect on 16 November 1994.\textsuperscript{134}

\textsuperscript{134} UNCLOS.
4.3 The impact of the establishment of straight baselines in 1952

4.3.1 Creation of large areas of internal waters

Image 6: Areas of internal waters created by the establishment of straight baselines in 1952\textsuperscript{135}

\textsuperscript{135} Reglugerð nr. 21/1952 um verndun fiskimiða umhverfis Ísland (n 98).
4.4 Evolution of Icelandic straight baselines from 1952 to 2018

4.4.1 1901-1950: Low-water line along the coast with three nautical mile territorial sea

Image 7: Iceland’s 3 nautical mile territorial sea from 1901-1952
4.4.2 1950: Straight baselines drawn across the coast in the north of Iceland

Image 8: Straight baselines drawn across the north of Iceland in 1950

4.4.3 1952: Straight baselines drawn around the entire coastline with a four-mile territorial sea

Image 9: Straight baselines established in 1952
4.4.4 1958: Territorial sea expanded from four to twelve nautical miles

Image 10: New baselines and territorial sea expanded from 4 nm to 12 nm in 1958
4.4.5 2018 Baselines

Image 11: Icelandic baselines and maritime zones in 2018
Image 12: Changes to Iceland’s straight baselines between 1952\textsuperscript{136} and 2018\textsuperscript{137}

\textsuperscript{136} ibid.
\textsuperscript{137} Lög um landhelgi, aðlægt belti, efnahagslögsögu og landgrunn no. 41/1979.
Image 13: The enlargement of Iceland’s internal waters\textsuperscript{138} due to changes in Iceland’s straight baselines from 1952\textsuperscript{139} to 2018\textsuperscript{140}

\textsuperscript{138} Increases to internal waters are shown in red.
\textsuperscript{139} Reglugerð nr. 21/1952 um verndun fiskimiða umhverfis Ísland (n 98).
\textsuperscript{140} Law no. 41/1979, paragraph 1, sub-paragraph 1.
4.5 Interpretation of rules governing straight baselines

4.5.1 Strict interpretation vs flexible interpretation

As previously mentioned, the main legal sources for straight baselines are the TSC and UNCLOS. The definitions and requirements of the establishment of straight baselines are to be found in Article 7 of the treaty. Reisman and Westerman argue for a strict interpretation of the rules for establishing straight baselines found in paragraph 1 of Article 4 of the TSC and Article paragraph 1 of Article 7 of UNCLOS. The procedure for determining the possibility of drawing straight baselines is a sequential procedure.¹⁴² The first step is to apply two geographical tests.

¹⁴¹ The areas in white are the waters subject to the 3 nautical mile territorial sea in effect from 1901 to 1952. The internal waters and territorial sea shown are correct as of 12 December 2018, as provided by law no. 41/1979
¹⁴² Reisman and Westerman (n 6) 77.
A coastal segment must pass one or both of these tests in order to reach the next step in the procedure. A failure to meet either of the two tests results in immediate disqualification of the area in question from consideration for establishing straight baselines.

4.5.2 Deeply indented and cut into

The first test is whether the coastal segment has “localities where the coastline is deeply indented and cut into.”143 To pass this test a number of issues must be examined closely. To begin with, the term ‘coastline’ must be clarified. Reisman and Westerman argue that the coastline cannot extend beyond the terra firma, as that would unfairly deprive other states of marine claims as the extension of the term coastline would extend the baselines and therefore maritime claims of the State in question seaward. For these reasons the term coastline must be interpreted narrowly as referring to the mean low-water mark of the most landward interface of the hydrosphere and terra firma. Simply put, Reisman and Westerman reject any intellectual or juridical conceptual model of the term coast while advocating for a strict dictionary definition of the term.

4.5.2.1 Localities

The second term which must be examined is the term ‘localities.’144 Localities refers to particular segments of the coastline. Reisman and Westerman argue that the use of the plural ‘localities’ is by design. The plural sense is used to clarify the original drafters’ intention that a State was required to every condition of one of the two geographical tests for each and every locality, or segment of the coastline where the State wanted to establish straight baselines. Therefore, it is insufficient for a State to demonstrate that a part, or segment of a coastline meets the geographical test, and then on that basis to draw straight baselines for other localities (segments) of the coastline in question. Using a coastline locality’s passing of the geographical test to then draw straight baselines along the entire coastline would be an even greater violation of the rules. The ICJs use of the term ‘localities’ supports this interpretation. When using the word in the singular, it has done so in reference to a single place or region. In Tunisia v. Libya, the Court referred to ‘La Skira’ as a locality. On the other hand, in the North Sea Continental Shelf case, the court used the plural, ‘localities’ to define the areas which would be used to delimit the continental shelf.

143 ibid.
144 ibid 78.
4.5.2.2 Deep indentation

The third term which must be examined in order to administer the geographical test is the origin of the terms ‘deeply indented and cut into’. The word deeply is the key part of this sentence. On the basis of the configuration of the coast of Eastern Finnmark being disputed in the *Anglo-Norwegian Fisheries* case, where the term ‘deeply indented and cut into’ originated, it can be argued that as that coast includes very deep indentations, some as deep as 75 nm that the Court’s use of the words “deeply indented” were not meant to refer to any coastal indentations or irregularities in a coastline’s configuration.

Reisman and Westerman disagree with the UN Group of Experts’ opinion that a State may choose either an absolute or relative definition of the term ‘deeply indented’, at their leisure. The Expert Group’s example of the different interpretation possible of the depth of a four nautical mile indentation in a large territorial area on the one hand and in a small island eight miles in diameter on the other. This subjective or contextual interpretation advocated by the UN’s Expert Group is in the view of Reisman and Westerman not supported by any textual, historical or legislative sources or arguments.

To pass the geographical test a section of coastline must have more than one deep indentation, as is supported by the requirement that the coastline must also be ‘cut into’. If only one deep indentation exists, the indentation should be evaluated on the basis of the semi-circle test to test if it qualifies as a bay and the 24 nm maximum closing line for juridical bays would apply, should the indentation pass the semi-circle test, as per Article 10 of UNCLOS.

4.5.2.3 Cut into

Reisman and Westerman interpret ‘cut into’ as reinforcing the requirement for deep indentations to be more than one. In order for a coastline to appear to be cut-into, there must be a number of deep indentations in it. This is supported by the ICJs use of the term ‘cut into’ to describe the coast of Eastern Finnmark in the *Anglo Norwegian Fisheries* case.

---

145 ibid 80.
146 ibid 81.
147 ibid.
148 ibid 82.
4.5.3 Fringe of Islands

The other possibility for a State to establish straight baselines is based on passing an alternative geographic test. The condition for passing that test is that when a coastline is not deeply indented and cut into, straight baselines may be drawn if there is a ‘fringe of islands along the coast in its immediate vicinity’. The phrase ‘a fringe of islands along the coast in its immediate vicinity’ is interpreted by Reisman and Westerman as consisting of three tests.\(^{149}\) The first test is a quantitative and spatially distributional one. There must be a number of islands and they must be located in such a way that together as a whole they can be described as a ‘fringe’. The second test is another spatial test, concerning the islands and the coast. To qualify as being distributed “along” the coast, the islands must follow the coast at an approximately parallel angle and not form a vertical angle against the coast. The third test is a test of the relational proximity of the islands and the coast. The fringe of islands must be in the ‘immediate vicinity’ of the coast.

4.5.3.1 Islands and fringes

In Article 10 of the TSC, an island is defined as a naturally formed area of land, surrounded by water, which is above water at high-tide. The definition of the term ‘island’ was changed somewhat in UNCLOS, where Article 121 provides that:

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

Reisman and Westerman claim that the Article differentiates between islands and rocks, and that rocks as defined by Article 121(3) are not islands. Therefore a fringe of rocks, as defined by Article 121(3) cannot pass the second test of Article 7(1) of UNCLOS which requires that a fringe of islands must be present.\(^{150}\) Reisman and Westerman’s interpretation is that taking into account UNCLOS as a whole, Article 121 means that islands that form part of a fringe in

\(^{149}\) ibid.
\(^{150}\) ibid 85.
the meaning of Subparagraph 2 of Article 7(1) must be able to ‘sustain human habitation or economic life of their own.’

The definition of a ‘fringe’

For islands to be said to be ‘fringing’ there must be more than a few of them and they must be aligned continuously along the coast. Despite acknowledging that the phrase ‘fringe of islands along the coast in its immediate vicinity’ in Article 4(1) of the TSC and Article 7(1) of UNCLOS is not directly derived from the *Fisheries case*, which spoke of a coastline “…bordered by an archipelago such as the “skjaergaard””, and stating regarding the change in language between the *Fisheries case* and Articles 4(1) and 7(1) that

In the interpretation of legal instruments, changes in language as marked as this must be provisionally presumed to have been made for some reason and, at the very least, they should be examined on their own terms.

Reisman and Westerman come to the conclusion regarding the term ‘fringe’ that

In view of the purpose of this additional requirement, we think that an approximate interpretation must require a distribution of islands approximating that found in the Norwegian skjaergaard, the inspiration, if not the direct source, of the term. In short, the quantitative test for the number of islands here should be very high.

The islands constituting a ‘fringe of islands’ should have to be close enough geographically that they produce a barrier between the actual coast and the open sea.

The alternative tests of "deeply indented and cut into" and "fringe of islands" are preliminary to the other procedures and tests for the drawing of straight baselines. If a claimant for a putative straight baseline cannot establish that its coastline in the locality in which the straight baseline is sought is deeply indented and cut into or fringed with islands in the immediate vicinity, it may not proceed any further under Article 4 of the 1958 Convention or Article 7 of the 1982 Convention. Rather, it must use as a baseline in that locality either its low-water mark or, if conditions are appropriate, a baseline derived from the arcs of circles method.
4.5.3.2 Selection of basepoints

As evidenced by the phrase ‘the method of straight baselines joining appropriate points’, each proposed basepoint must pass a juridical test.\footnote{ibid 91.} Despite the language of Article 14 of UNCLOS, which provides:

The coastal State may determine baselines in turn by any of the methods provided for in the foregoing articles to suit different conditions.\footnote{UNCLOS Article 14.}

Reisman and Westerman argue that because Article 7 of UNCLOS is an exception to the normal baseline regime provided by Article 5 of the Convention, the starting basepoint of any straight baseline system must always be the low-water line, and the same applies to the ultimate basepoint of the system.\footnote{Reisman and Westerman (n 6) 92.}

4.5.3.3 Low-tide elevations

Article 7(4) of UNCLOS provides that:

Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in circumstances where the drawing of baselines to and from such elevations has received general international recognition.\footnote{UNCLOS Article 7(4).}

The UN’s Group of Experts stated regarding Article 7(4) of UNCLOS that “There appears to be little ambiguity about this provision”\footnote{The Law of the Sea : Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea. (New York : Office for Ocean Affairs and the Law of the Sea, United Nations, 1989 1989) 25.} The Group argued that “…a lighthouse is unmistakeable.”\footnote{ibid 25.} The group found that there were two different groups of structure that would qualify as ‘installations similar to lighthouses’. The first group would be towers and buildings which had the appearance of a lighthouse but which did not serve any purpose specifically connected with navigation. The second group was structures which were similar to lighthouses in their function or purpose, which is to provide warning and to navigators regarding potential hazards and assisting them in establishing their relative position at a given time. The Group provides a non-exhaustive list of potential features which could fulfill these criteria, including
foghorns, beacons and radar reflectors, while clarifying that the general assumption would be that any such features should always be clearly visible during all different tidal conditions. Reisman and Westerman disagree with the Group as to whether a non-functional lighthouse could fulfil the requirement of Article 7(4). They decry the possibility that a State might create lawful baespoints by creating “Potemkin Village” lighthouses.

As Article 121(1) of UNCLOS states, “[a]n island is a naturally formed area of land, surrounded by water, which is above water at high tide”. Article 121(2) goes on to state that islands have the capacity to generate maritime areas just like any other land territory. From this there is however an exception, as stated in Article 121(3), “[r]ocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf”. When paragraphs (1), (2) and (3) of Article 121 are read together the conclusion is that rocks as defined by Article 121(3) are islands as the concept is defined in Article 121(1). Therefore, in addition, scholars have claimed that all references in the Law of the Sea Convention to ‘islands’ should, unless otherwise stated, be deemed to also include rocks. And although rocks are excluded from having an exclusive economic zones or a continental shelf, as islands they can generate other maritime zones, namely internal waters, territorial sea and contiguous zone.

Low-tide elevations, as defined in Article 13(1) of the Convention are, like islands, naturally formed areas of land that are surrounded by water. The main difference in geography between the two is that islands are always above sea-level, while low-tide elevations are by definition above water at low tide but become submerged at high tide. If certain conditions are met, an elevation may generate territorial sea according to Article 13(1). It is unclear whether a low-tide elevation may generate any other maritime areas, as Article 13(1) only mentions the territorial sea.

165 ibid.
166 Reisman and Westerman (n 6) 93.
167 A “Potemkin village” is a reference to an apocryphal tale that Russian statesman Grigory Aleksandrovich Potemkin erected artificial villages for Empress Catherine II of Russia’s tour of the Ukrainian countryside in 1787. The dictionary definition of the phrase is ‘any pretentious façade designed to cover up a shabby or undesirable condition.’ Grigory Aleksandrovich Potemkin’, , Encyclopedia Britannica (2018) <https://hrproxy.hir.is:2135/levels/collegiate/article/Grigory-Aleksandrovich-Potemkin/61055> accessed 7 December 2018.
168 UNCLOS 63.
170 ibid 45.
Article 7 of UNCLOS provides two ways for elevations to be used as basepoints for straight baselines. The first method, and the general rule, is that they may be so used if they feature lighthouses or similar installations which are themselves permanently above sea level. The second method, an exception to the first, is that elevations may be used as basepoints if their use “has received general international recognition.” Therefore according to UNCLOS, apart from elevations containing lighthouses or similar structures which are permanently above sealevel, only elevations which have received general international recognition for that purpose may be used as basepoints. This rule is problematic for many reasons. Establishing baselines is by definition a unilateral act by a state, recognition can only follow in the aftermath of such a decision. For a new basepoint, international recognition can therefore not be assumed prior to its establishment.\textsuperscript{171}

The rule allowing the use of elevations as basepoint if they contain lighthouses or similar installations provides the possibility that a state might seek to circumvent this requirement by erecting a lighthouse or similar installation that serves no purpose other than to fulfill the requirements of the rule. In such a case Roberto Lavalle believes the basepoint would surely be an invalid one as such deceptive conduct would violate the principle of international law that treaties are to be performed in good faith, as laid down in Article 26 of the Vienna Convention on the Law of Treaties.\textsuperscript{172}

If proximate elevations could, as has been theorized, generate on their own not just territorial sea but also EEZ and continental shelf areas then the result would be that rocks, according to Article 121(3), would be less able to autonomously generate maritime zones than proximate elevations. Such a result would be rather strange as rocks are considered to be land territory and normally have the same status as islands.\textsuperscript{173}

Another issue to consider is the requirement in the second part of Article 7(3) which states that “…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.” Lavalle points out that since rocks are islands a fringe of rocks would be considered to be the same as a fringe of islands. However, Lavalle agrees with the contention that a fringe of rocks could not support a straight baseline system as the fringe would not comply with the close link requirement. He concludes that since a rock or an elevation is on its own less likely to comply with the close link requirement than a regular

\textsuperscript{171} ibid 50.
\textsuperscript{172} ibid 51.
\textsuperscript{173} ibid 53.
island the consequence is that for a straight baseline system to be valid it is necessary that the rocks do not, at least in certain cases, considerably outnumber the regular islands. In addition, the greater the ratio of rocks to islands within a specific fringe, the less likely it would be for the fringe to fulfill the second requirement of Article 7(3).174

Elevations which fulfill the requirements of Article 7(4) of UNCLOS must have some human presence, due to their installations. Rocks usually do not have any such presence. Therefore an elevation which fulfills the requirements of Article 7(4) will usually have a connection to the mainland, while rocks will generally not have any such connection. Lavalle therefore concludes that elevations supporting straight baselines will “…as a rule, make a greater contribution to fulfilment of the close link requirement than rocks also used to support those lines.”175

It is important to note that the limits imposed on the ability of rocks to generate maritime zones by Article 121(3) do not apply to rocks serving as basepoints in a straight baseline system. A distinction must be made between two concepts which should not be confused. On one hand a rock or other geographical feature may be able to generate certain maritime zones autonomously. On the other, a geographical feature may generate maritime zones due to its status as a basepoint in a straight baseline system.176

4.5.4 Proving necessary internal character of enclosed waters

Reisman and Waterman claim that in order to meet the requirement that ‘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’, the burden of proof is on the claimant State to prove that the waters being enclosed have the character of internal waters independently of the proposed straight baselines that have been drawn up.177 As demonstrated by the International Court of Justice’s reasoning in the Fisheries case, the historical relationship between the waters and the social operations of the land area facing them is important for evaluating whether purported internal waters are sufficiently linked to the land domain.

174 ibid 53–54.
175 ibid 54. From the context is seems clear that here Lavalle is referring only to those elevations used for supporting straight baselines which are in accordance with the requirements laid out in Article 7(4).
176 ibid.
177 Reisman and Westerman (n 6) 98–99.
The UN’s Expert Group stated that the spirit of the rule found in Article 7(3) is that the proposed internal waters must be in fairly close proximity to land, either islands or promontories.178

4.5.5 Bays

The Gulf of Taranto, which is 60 nm wide at its mouth, is the major indentation along the Ionian coast of Italy.179 When Italy claimed a 60 nm baseline drawn across the bay in 1977, on the basis of the bay being an historic bay, the United States protested the claim. Prior to 1977, Italy had not claimed the status of historic bay for the Gulf of Taranto, which the U.S. stated was a violation of the requirements for claiming an historic bay, namely that the coastal state must have had a long-standing claim, expressed openly, and to have continually exercised sovereignty over the bay, and that such claims must not have been protested by other states, thereby showing their acquiescence on the matter.180

Natalino Ronzitti has claimed that the baseline across the Gulf of Taranto may be legal despite the 60 nm baseline drawn across the entrance of the bay being in excess of the 24 nm maximum set forth in Article 7(5) for closing a bay at the mouth. According to Ronzitti, when Articles 4 and 7 of the Territorial Sea Convention are read together, Article 7 must be interpreted as lex specialis in the context of Article 4, as Article 7 allows a state to draw straight baselines even when the conventional criteria found in Article 4 are not present. Therefore, Article 7, when viewed as lex specialis toward Article 4, can be interpreted to mean that a state may draw a straight closing baseline across a bay even when it is more than 24 nm across, if it does so according to the criteria found in Article 4(2), so therefore if an indentation meets the semi-circle test a straight baseline may be drawn across it, providing the indentation penetrates a coast deeply indented and cut into.181

If a state chooses to close off an entire bay with a baseline longer than 24 nm it must conform with Article 5(2) of the Territorial Sea Convention by granting other states the right of innocent

181 Ronzitti (n 179) 288–290.
passage in those parts of the internal waters landward of the baseline which were formerly either territorial waters or high seas.\textsuperscript{182}

Ronzitti, writing in 1984, mentions Iceland as an example of a state which has drawn straight baselines which do not conform to the general direction of the coastline. To quote his comments in full:

Finally, in 1972, Iceland drew a system of straight baselines with segments which in some points diverge quite clearly from the general direction of the coastline. An example is the line joining Geirfuglasker and Eldeyjardrangur, which is 70.30 nautical miles.\textsuperscript{183}

Gayl Westerman replied to Ronzitti’s article in the next issue of the Syracuse Journal of International Law and Commerce. She disagreed with Ronzitti’s interpretation of the rules for juridical bays. Westerman argued that Article 7 of the Territorial Sea Convention sets forth four conditions for juridical bays. The first condition is that a bay must be a well-marked indentation. The second is that the indentation must have a depth in such proportion to its width that it contains landlocked waters. The third condition is that the bay must pass the semi-circle test. And the fourth condition is that the line drawn across the juridical bay enclosing internal waters must not exceed 24 nm in width.\textsuperscript{184}

The TSC includes only two clear options for drawing straight baselines across a bay. The first option is to make a claim for the indentation as a juridical bay on the basis of Article 7. If an indentation fails to meet any of the four unambiguous requirements of Article 7 of the TSC a coastal state has another option, which is to claim the bay as an historic bay. This second option would however be extremely difficult to accomplish due to the extraordinary high standard of proof required to claim a bay as an historic bay.\textsuperscript{185}

Westerman heavily disagrees with Ronzitti’s description of the portion of the Ionian coastline where the Gulf of Taranto is located. Apart from the Gulf itself, Westerman states that the

\textsuperscript{182} ibid 290.
\textsuperscript{183} ibid 293–294.
\textsuperscript{185} ibid 302–304.
segment of coastline is neither deeply indented nor cut into, and that those indentation which may be found are merely curvatures of the coast.\textsuperscript{186}

Westerman argues that Ronzitti’s claim that Articles 7 and 4 of the TSC may be read together in such a way as to allow the use of Article 4 to enclose the mouths of bays is a dangerous error. She also chastizes Ronzitti for stating that the Gulf of Taranto is a juridical bay because it conforms to the semi-circle test. As mentioned earlier, Westerman believes it is clear that all four requirements of Article 7 must be met in order to claim a juridical bay, and the Gulf of Taranto fails the requirement that a line drawn across the entrance of a bay may not be greater than 24 nm. Therefore the Gulf of Taranto is not a juridical bay, and so the baseline drawn across the entrance of the bay is not in accordance with international law.\textsuperscript{187}

4.5.5.1 Historic waters

The United States has protested many claims to historic waters by States. These protested claims include:

a) Canada’s claim for Hudson Bay in 1906
b) Libya’s claim for the Gulf of Sidra in 1973
c) Panama’s claim to the Gulf of Panama in 1956
d) The Soviet Union’s claim to the Peter the Great Bay in 1957
e) Thailand’s claim to the Gulf of Thailand in 1959
f) Vietnam’s claim to part of the Gulf of Thailand and to the Gulf of Tonkin in 1982.\textsuperscript{188}

In 1977 Italy claimed the Gulf of Taranto as historic waters. The United States protested this in 1984.\textsuperscript{189} During discussions with Italian government officials the United States stated regarding the claim to the Gulf of Taranto that:

… a coastal state claiming such status for a body of water must over a long period of time have openly and continually claimed to exercise sovereignty over the body of water, and its claims must have resulted in an absence of protest of foreign States, amounting to acquiescence on their part.\textsuperscript{190}

\textsuperscript{186} ibid 305.
\textsuperscript{187} ibid 306.
\textsuperscript{188} Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, \textit{Limits in the Seas No. 112 - United States Responses to Excessive National Maritime Claims} (United States Department of State 1992) 10–12.
\textsuperscript{189} ibid 11.
\textsuperscript{190} ibid 14.
4.5.5.2 Juridical bays

The rationale behind the exceptions to the regime of normal baselines is not to extend the territorial sea of the coastal state. The reason for these provisions is to be able to include within a state’s internal waters maritime areas which are closely related to and reliant on the land regime. In Westerman’s view, Article 7 of the TSC is a special rule intended for determining the existence of juridical bays and to establish their baselines.

The term internal waters is both a geographical one and a juridical one. If a bay or indentation passes the semi-circle test, but the distance between its entrance points is greater than 24 nm then the bay would exceed the accepted international community’s concept of water areas more intimately related to land than open sea. A bay of this nature would however likely be closely and inherently affiliated with the State’s economic and defensive interests. The areas of the bay lying closest to the coast would be most strongly categorized in such a manner. Westerman states that these interests and arguments are in favour of a certain portion of such a large bay being internal waters. However:

…to enclose the bay in its entirety would encroach on equally legitimate inclusive community interests which favor the maintenance of maximum open sea areas.

The 24 nm closing line maximum for juridical bays was approved by a narrow margin at the United Nations conference on the Law of the Sea in 1958, with 31 votes in favour and 27 votes against, with 13 abstentions.

Costa Rica issued a Decree in 1988 establishing straight baselines. The United States protested the segments. The basis of the US protests was that several segments closing off geographical access 8 December 2018.

---

192 ibid 80.
193 ibid 161.
194 ibid.
195 ibid.
bays were longer than 24 nm and were therefore longer than the maximum closing line for juridical bays in international law.\footnote{197}

Another example of US protest against an overly large claim over a bay or gulf is the claim of Libya over the Gulf of Sidra, a claim made in 1973. Libya’s arguments for the legality of these lines were that Libya had historic control over the area, and the geographical location of the gulf necessitated this action. In 1986 the US Department of State published a report where it argued that these lines were completely illegal under international law, and listed the actions taken by the US to protest the Libyans’ claim, including naval activities by armed vessels which had on at least two occasions led to fighting between the armed forces of the two nations. The US in its report stated that apart from lawfully closed-off bays and other areas along their coast, nations could only claim a territorial sea of 12 nm from either their low-water line or from a legal straight baseline.\footnote{198}

Argentina drew straight baselines across the mouths of the San Jorge and San Matias gulfs in 1966. The US State department Geographer analysed these baselines and came to the conclusion that they did not conform to the requirements of a juridical bay as they cannot be closed by 24 nautical mile closing lines. They however did both meet the semi-circle test, and could qualify as oversize bays. The closing lines for the two gulfs were 65 nm for San Matias and 123 nm for San Jorge.\footnote{199}

Mauritania adopted an ordnance in 1988 which established a straight baseline from Cap Blanc and Cap Timiris. The US protested the claim in a diplomatic note stating that the coastline between the two points was neither deeply indented nor bounded by a fringe of islands. In addition the enclosed waters did not meet the requirement for a juridical bay, the closing line was almost 90 nm in length.\footnote{200}

\footnote{198} ibid 129.  
\footnote{199} ibid.  
\footnote{200} ibid 130.
4.5.5.3 United States policy on Straight baselines

The United States have been critical of straight baselines drawn by many coastal states. These purportedly illegal baselines have resulted in the creation of large areas of internal waters which the U.S. claims are still legally territorial seas or areas where the rights of freedom of navigation or overflight exist.201

The United States maintain that “Properly drawn, straight baselines do not result in extending the limits of the territorial sea significantly seaward from those that would result from the use of normal baselines.”202

The official U.S. position on the requirements for a coastline to be deeply indented and cut into according to Article 7 UNCLOS is that to qualify, a segment of coastline must fulfill a number of conditions. First, the segment of coastline must include at least three deep indentations. Second, the deep indentations must be close to each other. Third, each deep penetration, measured from the proposed straight baseline at the mouth of the indentation, must have a depth greater than at least half the proposed baseline segment.203

The U.S. policy on straight baselines arising from a fringe of islands on the coastline also includes a number of requirements. The islands in question must firstly not contain any landward point extending more than 24 miles from the mainland coastline. Second, each island a straight baseline is drawn towards must lie not more than 24 miles from the island said baseline originates from. Third, the islands contained in the fringe must, in total area, mark at least 50% of the mainland coastline.204

The United States position on straight baseline segments is that to fulfill the legal requirements of Article 7(3) of UNCLOS each segment must not exceed 24 miles in length.205

The United States acknowledge that straight baselines may be drawn across bays if they are deemed to be so-called “juridical bays.”206 If a bay meets certain requirements it can be classified as a “juridical bay.” The primary requirements are:

202 ibid 49.
203 ibid 50.
204 ibid.
205 ibid.
206 ibid 52.
The bay’s coastal penetration must be in adequate proportion to the width of its mouth so that it can be deemed to contain landlocked waters.

The bay must be an indentation that is more than a mere curvature of the coast.

The area of the bay must be equal or greater than that of a semicircle whose diameter is a line drawn across the mouth of the bay.

A straight baseline may be drawn across a juridical bay, however the baseline’s position is different depending on the size of the bay. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 nautical miles, a straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

When Japan established straight baselines in 1996 the United States protested segments of the baselines, claiming they were not drawn in accordance with Article 7 of UNCLOS. In its protests the U.S. noted “with concern” that 46 of the 162 straight baseline segments exceeded 24 nautical miles in length.207

4.5.5.4 Jurisprudence since the Fisheries Case

In the Qatar v Bahrain case The International Court of Justice stated that it has on numerous occasions made it clear that maritime rights derive from a coastal State’s sovereignty over the land.208 This principle has been summarized by the Court as ‘the land dominates the sea.’209

The ICJ stated in the Qatar v Bahrain case that:

The Court observes that the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are

---

207 ibid 65.
208 Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Merits) [2001] ICJ Rep 40, 61, para 185.
primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in its immediate vicinity.\textsuperscript{210}

The ICJ in its order for interim measures in the UK v Iceland case stated that:

\begin{quote}
...it is also necessary to bear in mind the exceptional dependence of the Icelandic nation upon coastal fisheries for its livelihood and economic development as expressly recognized by the United Kingdom in its Note addressed to the Foreign Minister of Iceland dated 11 March 1961.\textsuperscript{211}
\end{quote}

\section*{4.6 Straight baselines across Icelandic bays and fjords}

\subsection*{4.6.1 Overview}

The Icelandic baselines contained four segments which exceed the length of the longest baseline approved by the International Court of Justice (ICJ) in the Anglo-Norwegian Fisheries Case, when surveyed by the US geographer in 1974. The ICJ on December 18, 1951, approved a Norwegian straight baseline 44 n.m. long. The four extensive Icelandic baselines are: 1 - 2 (56.75 n.m.), 9 - 10 (57.7 n.m.), 29 - 30 (70.3 n.m.), and 31 - 32 (74.1 n.m.).\textsuperscript{212}

Reisman and Westerman describe the Icelandic coastline thusly:

\begin{quote}
Much of the coast of Iceland is similar to that of Norway, with abundant deep fjords and offshore skerries.\textsuperscript{213} The southern coast, however, from segments 19-30 (see Fig. 5.11), is remarkably smooth. Although there are some indentations, the southern coast would not qualify as deeply indented because the indentations are relatively shallow and are not sufficient in number to create a "cut into" appearance. In addition, the offshore islands cannot be termed either "fringing" or "in the immediate vicinity" because they are not spatially related to each other, they move in a perpendicular direction away from the coast, and they lie further than the distance of the territorial sea from the coast. Thus, the use of straight baselines cannot be justified in this locality. Segments 19-22 and 28-30 are extremely long and consequentially exorbitant. Since
\end{quote}

\begin{footnotes}
\begin{enumerate}
\item Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Merits) (n 208), para 212.
\item Fisheries Jurisdiction (United Kingdom of Great Britain and Northern Ireland v Iceland) (Interim Protection, Order) [1972] ICJ Rep 12, 16, para 23.
\item The Geographer, Office of the Geographer, Bureau of Intelligence and Research (n 133) 8.
\item Here Reisman and Westerman say: "Even in areas which are deeply indented and cut-into or fringed with islands, it is questionable whether the basepoints chosen are appropriate, closing off as they do oversized gulfs such as Hunafloi and Breidhafjorhur, as well as the enormous water area between Geirfugladrangur and Skalasnagi.”
\end{enumerate}
\end{footnotes}
the length of segment 29-30 alone is 71.53 n.m., the increase in continental shelf area and exclusive economic zone gained from this claim is significant.\textsuperscript{214}

\subsection*{4.6.2 Western Iceland}

\subsection*{4.6.3 Baseline segment 33-35 (Faxafloi)}

In 1974 the U.S. Department of State published a report on Iceland’s baselines at the time. In the report it is stated that the baselines of Breiðafjörður and Faxafloi bay that were created with the 1952 Regulations were delimited with straight baselines on the basis that the duo were historic bays.\textsuperscript{215}

In 1982 Cambodia and Thailand jointly made a claim to the Gulf of Thailand as historic waters.\textsuperscript{216} In support of their claim the two States asserted that the waters in question had belonged to them for a very long time due to their special geographical conditions and importance for the national defense and economy of Cambodia and Thailand. The United States protested the claims for several reasons. Firstly, the claims were recent and had not been made before 1982, and therefore did not meet the criterion of effective authority over a marine space required by a claim to historic waters. Second, without prejudice to the validity of the arguments about the special geographical conditions and the significance of the waters to the States’ defense and economy, the United States asserted that these reasons did not meet any of the accepted conditions in customary international law for making a claim to historic waters.

The U.S. Geographer in 1974 stated that:

\begin{quote}
The line connecting the two points form the closing line for the Faxafloi, which is an historic bay. The two basepoints are not headlands of the Faxafloi. This segment of the straight baselines is the \textit{longest} in the system.\textsuperscript{217}
\end{quote}

Article 5(4) of the TSC provides that the maximum closing line for a juridical bay is 24 nm. Iceland signed the TSC in 1958. This was six years after Iceland had issued the Regulations drawing straight baselines across Faxafloi and Breiðafjörður. The closing line drawn in 1952 across Faxafloi, between basepoint 31 (Geirfugladrangur) and 32 (Skálasnagi) was 74,10 nm.

\footnotesize
\begin{flushleft}
\textsuperscript{214} Reisman and Westerman (n 6) 125.
\textsuperscript{215} The Geographer, Office of the Geographer, Bureau of Intelligence and Research (n 133) 4.
\textsuperscript{216} Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs (n 188) 13.
\textsuperscript{217} The Geographer, Office of the Geographer, Bureau of Intelligence and Research (n 133) 7.
\end{flushleft}
The closing line across Breiðafjörður, between basepoints 32 and 33 (Bjargtangar) was 40.30 nm. The baseline between Geirfuglasker (29) and Eldeyjardrangur (30) is 70.3 nm long.

This segment of the baseline trends in a northwesterly direction returning closer to the mainland than Point 29.218

The baseline between Eldeyjardrangur and Geirfugladrangur (31) is 8.50 nm long. Geirfugladrangur is described in the report as a rock.

The question arises as to why Point 30 was designated a basepoint when in view of the Icelandic method of delimiting baselines it seems they would have connected Geirfuglasker (29) directly to Geirfugladrangur (31).219

At a length of 74.10 nm the longest baseline according the the State Department report is the one connecting Geirfugladrangur (31) and Skalasnagi (32). This baseline forms the closing line for Faxafloi bay. The report mentions that “[T]he two basepoints are not headlands of the Faxafloi.”220

Geirfugladrangur

In a newspaper interview in 2012 the Chief Navigation Officer of the Icelandic Coast Guard admitted that the rock no longer existed.221 He added that if a court case were to arise due to a dispute concerning hypothetical action by the Coast Guard against a vessel operating within the line drawn to the basepoint the result could be that Iceland’s jurisdiction would decrease. The officer went on to explain that foreign fishing vessels were often caught fishing behind the line of the territorial sea at Geirfugladrangur but that the Coast Guard tended to resolve such incidents by issuing warnings rather than taking stronger action.

In 1959 the Icelandic Parliament adopted a Resolution that a lighthouse should be built on Geirfugladrangur.222 In the commentary of the bill for the resolution specific mention was made of the fact that rich and plentiful fishing grounds were located in the waters surrounding the rock. Newspapers stated when reporting this news that the cause of the Resolution was that there were widespread worries that the rock would soon fall below sea level, both due to natural erosion from sea waves as well as due to the weakening of the rock as a result of British and

---

218 ibid.
219 ibid.
220 ibid.
American armed forces having used the rock for target practice by shooting at it with missiles and bombs. In one newspaper editorial it was argued that if the rock would collapse below sea level Iceland would no longer have the right according to international law to use it as a basepoint for the territorial sea, which would result in the loss of hundreds of square miles of territorial sea.

In March 1972 it was reported that Geirfugladrangur had disappeared into the sea. News articles speculated that the Icelandic territorial sea would diminish as a result of the loss of the rock as a basepoint.

In 1972 Guðmundur Kærnested, a captain in the Icelandic Coast Guard stated that Geirfugladrangur had become one of the most dangerous sunken rocks in the waters around Iceland.

In a 1972 news article it was calculated that the loss of Geirfugladrangur as a basepoint would result in the loss of 10-15 thousand square kilometers of territorial sea, as the baseline would have to be drawn straight across between Eldeyjardrangur and Svörtuloft on the Snaefellsnes peninsula (see accompanying map). The darkened area which would be lost contained the rich fishing grounds called Eldeyjarbankinn.

---

223 ‘Alþingi Ákveður Að Reistur Skuli Viti á Geirfugladrangi’ Pjööðviljinn (Reykjavík, 15 May 1959) 1; ‘Alþingi Ákveður Að Reistur Skuli Viti á Geirfugladrangi’ Nýi Þiminn (Reykjavík, 21 May 1959) 12.
224 ‘Áki Og Landhelgismál’ Mjólnir (Siglufjörður, 27 May 1959) 3.
225 ‘Geirfugladrangur Horfinn!’ Visir (Reykjavík, 23 March 1972) 16.
227 ‘Nú Vandast Málið! Er Landhelgin Orðin Minni?’ Alþýðublaðið (Reykjavík, 24 March 1972) 1.
In response to reports that Geirfugladrangur had disappeared into the sea the director of the Icelandic Coast Guard stated that the Coast Guard’s view on the matter was unchanged.\textsuperscript{228} Geirfugladrangur was still considered a valid basepoint according to already made agreements, and that notwithstanding no agreements were necessary for Iceland to decide where this basepoint should be situated.

In 1979 the Icelandic Coast Guard spotted Geirfugladrangur peeking above sea level and took photographs of it.\textsuperscript{229} This was thought to be a special occasion as since 1972 the rock had been

\textsuperscript{228} ‘Geirfugladrangurinn Horfni: Eitt Hættulegasta Blindsker Við Landið’ (n 226).

\textsuperscript{229} ‘Geirfugladrangur Sjaldgef Sjón’ Morgunblaðið (Reykjavík, 29 July 1979) 48.
nearly constantly below sea level, and it could only be seen above water during low tide when
the seas were exceptionally calm and placid.

In a newspaper interview in 2012 Bjarni Már Magnússon, a specialist in the Law of the Sea at
the University of Reykjavik argued that the validity of Geirfugladrangur as a basepoint
according to UNCLOS was in doubt. Magnússon stated that the main issue was that
UNCLOS did not allow using low-tide elevations as basepoints in a straight baseline system
unless a lighthouse or similar installation located above water at all times were built on the
elevation, or if the basepoint in question had received general recognition in international law.

Tómas H. Heiðar, a specialist in international law at the Icelandic Foreign Ministry stated in
response to the news of the rock’s total submersion that he believed that Geirfugladrangur still
qualified as a low-tide elevation according to UNCLOS, and was a valid basepoint, although
he conceded that the rock had shrunk due to the passage of time.

In 2012 a newspaper article stated that Geirfugladrangur is no longer above sea level at low
tide, and that therefore it does not qualify as a low-tide elevation in the understanding of
UNCLOS.

4.6.3.1 Baseline segment 35-37 (Breiðafjörður)
The line closing Breidafjordur, between points 32 and 33 is 40.3 nm long.

Scholars have voiced thoughts that do not support the possibility that Breidafjordur could be
considered a historical bay.

To meet the international legal standard for establishing a claim to historic waters, a
state must demonstrate its open, effective, long term, and continuous exercise of
authority over the body of water, coupled with acquiescence by foreign states in the
exercise of that authority. The United States has taken the position that an actual
showing of acquiescence by foreign countries in such a claim is required, as opposed to
a mere absence of opposition.

231 ‘Geirfugladrangur Telst Enn Flæðisker’ Morgunbladid (Reykjavik, 16 June 2012) 8.
232 Viðar Guðjónsson (n 221).
233 The Geographer, Office of the Geographer, Bureau of Intelligence and Research (n 133) 7.
234 Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs (n 188) 8.
4.6.4 Northern Iceland

4.6.4.1 Baseline segment 1-2 (Húnaflói)
Baseline between basepoints 1 (Horn I) and 2 (Ásbúðarrif)

The U.S. Geographer described this baseline as:

Closes Hunafloi by connecting the western headland, Horn (1), with Asbudarif (2), which is a chain of drying and above water rocks that extend northward about 5/8 n.m. from the mainland.235

4.6.4.2 Baseline segment 18-20
The U.S. Geographer described Ystiboði as a submerged rock, lying about 7 nm from the mainland.

Because Ystibodhi is a submerged feature it should not be used as a basepoint for constructing the straight baselines.236

In 1974 the U.S. Geographer stated that as Hvitingar, lying about 1 and ¾ nm from the mainland, was a low-tide elevation, a rock awash, it should not be used as a basepoint.237

4.7 Similar yet different: Ireland’s straight baseline system

In the period following the Second World War the Republic of Ireland was interested in expanding their maritime zone jurisdiction under the law of the sea. As with Iceland, the primary motivation for Ireland was to preserve their fisheries. Large stretches of the Irish coastline, apart from the eastern side of the island, are either deeply indented or have clusters of islands adjacent to the coast. The Irish government therefore wanted to explore the adoption of as expansive a straight baseline system as allowed by international law.238

The International Court of Justice’s judgment in the Anglo-Norwegian Fisheries case in 1952 was the impetus for the Irish government deciding to conduct an extensive study on the

---

235 The Geographer, Office of the Geographer, Bureau of Intelligence and Research (n 133) 18.
236 ibid 6.
237 ibid.
feasibility of applying a baseline system similar to the ones drawn by Norway which had been deemed legal by the International Court. This study was conducted through most of the 1950’s. The endorsement of a straight baseline system by Article 4 of the Territorial Sea Convention of 1958 further legitimized the Irish proposals.239

In 1959 Ireland passed the Maritime Jurisdiction Act (MJA) which authorized the Government to prescribe, by order, straight baselines in relation to any part of its territory. Prior to issuing orders on the baselines, a committee was formed comprising experts from different government departments, including the Fisheries Division, the Department of Lands, the Department of Defence, the Geological Survey and the Department of External Affairs. The committee was given the task of studying the Irish coastline to determine the parts of the coastline which would be eligible for drawing straight baselines in accordance with international law. This work was followed by the publication of regulations establishing straight baselines along the Irish coast from the north-west to the south-east later in 1959.240

The Irish saw the dispute between Iceland and the UK over fisheries limits in the early 1950’s as important for their own plans to establish straight baselines as it provided information on how the UK interpreted the ICJ’s decision in the Anglo-Norwegian Fisheries case.241

The broad-based committee of experts delivered a memorandum to the Irish government outlining a proposal for establishing straight baselines. In the memorandum the committee examined the Irish coastline from a geographical standpoint to establish whether it complied with the geographical requirements of international law for drawing straight baselines. The committee found no problem drawing straight baselines from the basepoint of Malin Head in the north-west and running all the way down the western coastline to Cape Clear in the south-west. This part of the coastline was deemed to fulfill the requirements for drawing straight baselines as it was all either deeply indented or bordered by offshore islands. As for the remainder of the Irish coastline, the committee felt that it did not fulfill the requirements for drawing straight baselines, as the coast was not sufficiently indented, in particular the south coast of the island.242 However, the government disagreed with the committee’s conclusions

239 ibid 48.
240 ibid 48-49.
241 ibid 53.
242 ibid 55.
regarding the southern coast and overruled their findings, in a move that was in the view of scholar Clive Symmons a political action, with weak legal justification.  

With regard to the eastern coast of Ireland, there was widespread consensus among experts and government officials that the low-tide water mark baseline, what would now be called ‘normal baseline’ should be retained on the east coast, as it was not analogous to the Norwegian coast.

The Irish government felt it was important to try to get approval from the UK of the proposed straight baselines prior to their adoption. There were three primary reasons for this approach. Firstly, the Irish had seen how badly the British had reacted to Iceland’s unilateral decision and wanted to avoid a similar reaction. Secondly, the Irish felt it was significant for practical reasons to notify the British fishing interests ahead of time of the pending changes as they might be affected by them. Lastly, the government felt that British approval would legitimize the baselines in the eyes of other European states and increase the chances of their acceptance of the new limits. Of these three reasons, the first one was definitely the most critical one to the government at that time.

The Irish government was aware that the straight baselines on the south coast were possibly illegal under international law. The move was felt to be necessary however, to ensure that Ireland retained exclusive fisheries in the Dunmore area.

5. The current baseline system and its impact on Iceland’s rights and obligations under international law

5.1 Navigation

The United States have since 1979 promoted a program called the U.S. Freedom of Navigation (FON) program, with the aim of peacefully promoting and exercising the rights and freedoms of navigation and overflight provided for under international law.
The U.S. formal position on navigation and overflight is to not accept unilateral actions by other states which have the aim of restricting the rights and freedoms of navigation and overflight on the high sea.248

The United States actively protest unilateral claims by other states which establish what the U.S. believe to be maritime zones inconsistent with international law. From 1948 to 1992 the U.S. filed more that 140 such protests.249

The United States only recognizes the use of low-tide elevations as basepoints for straight baselines in two circumstances. The first one is an elevation upon which a lighthouse or other similar installation which is permanently above sea level has been built. The second one is when the elevation in question has received general international recognition as a basepoint for straight baselines.250

Excessively drawn straight baselines produce claims which inhibit other states from their legal right to use the oceans.251

Excessive straight baseline claims have resulted in the creation of substantial areas of internal waters which should be territorial sea or within which other states should be able to exercise their rights to freedom of navigation and overflight. Two such claims are Burma’s claim to internal waters of about 14,300 square nautical miles landward of a 222 nm straight baseline across the Gulf of Martaban, and Colombia’s claim to 1,500 square nm landward of their 130 nm straight baseline drawn along a section of the Colombian coastline which is neither deeply indented nor spotted by a fringe of islands.252

5.1.1 Freedom of navigation

The principle of freedom is one of the three governing principles of the law of the sea.253 In 1603 Dutch jurist Hugo Grotius published his Mare Liberum, which advocated for the freedom

---

248 ibid.
249 ibid.
250 ibid 23.
251 ibid 24.
252 ibid.
253 Tanaka (n 2) 16.
of the high seas. Today, the principle of the freedom of the high seas has been consolidated through state practice.

5.1.2 Navigation in Icelandic internal waters

As stated in Article 2 of UNCLOS, the sovereignty of a coastal State extends beyond its land territory and internal waters up to the baselines of its territorial sea. Therefore Iceland has full sovereignty over its internal waters. This includes the entirety of the many fjords, bays and other indentations on the landward side of Iceland’s straight baselines.

Article 8(2) of UNCLOS provides that:

Where the establishment of a straight baseline in accordance with the method set forth in Article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

5.1.3 Navigation in Iceland’s territorial sea

The right of innocent passage through a state’s territorial sea has its basis in the idea that the freedom of navigation is essential to ensure freedom of trade. Scholars believe that in international law the right of innocent passage through the territorial sea became accepted in the mid-nineteenth century. The first treaty to codify the right of innocent passage was the Territorial Sea Convention in 1958. This was followed by UNCLOS, where innocent passage is provided for in Article 17. The Article states that:

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

The straight baselines of Iceland’s territorial sea have the effect of extending the territorial sea seaward beyond all bays, fjords and coastal indentations.
5.1.4 Rights of Warships

Article 17 of UNCLOS allows ships of all states to enjoy the right of innocent passage through Iceland’s territorial sea. Article 20 contains a special rule for submarines, which under this rule must navigate on the surface and show their flag when traveling through the territorial sea. Article 20 of UNCLOS is very similar to Article 14(2) of the TSC. As Tanaka explains, Article 14(2) is addressed mainly, if not only, at military submarines. Therefore, the same logic could be applied to Article 20 of UNCLOS. Article 30 of UNCLOS provides that if warships do not comply with the laws and regulations of the coastal state concerning passage through the territorial sea and disregard any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately. From the wording of this provision, the counter-argument may be made that since unlawful passage through the territorial sea is forbidden, then a lawful passage of warships is allowed. Tanaka argues that the above-mentioned provisions hint at the right of innocent passage of foreign warships through a state’s territorial sea.

5.2 Potential impact should Iceland accede to the European Union

5.2.1 History of the EU Common Fisheries Policy

The first EU Regulations establishing a Common Fisheries Policy were adopted in 1970. These regulations were adopted shortly before the original six Member States of the European Community began accession negotiations with four applicant States, Denmark, Ireland, Norway and the UK. One provision of the new Regulations in particular was unfavourably received by the applicants. Article 2(1) of Regulation No 2141/70 provided that Member States should ensure equal conditions of access to and use of the fishing grounds situated in maritime waters under their sovereignty or jurisdiction, a provision known as the ‘equal access principle’. After tough negotiations a compromise was reached. Article 100(1) of the Accession

---

258 ibid 90.
259 ibid 91.
260 At this time the organization was called the European Community. The European Community restructured itself into the European Union with the Treaty of Amsterdam in 1992.
262 The original six Member States of the European Community were Belgium, France, Italy, Luxembourg, The Netherlands and West Germany.
264 ibid.
Treaty\textsuperscript{265} provided that Member States were authorized to restrict fishing, until 31 December 1982, in waters under their sovereignty or jurisdiction situated within a limit of six nm calculated from the baselines of the coastal Member States, to vessels which fish traditionally in those waters and which operate from ports in the geographical coastal area. Article 101 of the Treaty extended the limit of six nm to twelve nm in certain specified areas. In the case of Norway, Article 101(4) provided that the area was the coast between Egersund in the south and the border between Norway and the USSR in the far north. This area covers nearly the entire coastline of Norway, as seen on the accompanying image.

Image 15: Map of Norway showing the location of Egersund

Despite this concession to Norway’s fisheries, a majority of Norwegians voted against EC membership in a referendum following the Accession Treaty of 1972. Scholars have stated that worries about the fisheries provisions of the Accession Treaty are widely believed to have been one of the main causes of rejection of EC membership by the Norwegian public.\textsuperscript{266}

In 1973 the first session of the Third United Nations Conference on the Law of the Sea was held. The conference, and the treaty it delivered in 1982, the United Nations Convention on the

\textsuperscript{265} Treaty of Accession of Denmark, Ireland and the United Kingdom 1972 (OJ L 73).

\textsuperscript{266} Churchill and Owen (n 264) 6.
Law of the Sea, were to have a great impact on the European Community’s Common Fisheries policy. Developments at the treaty negotiations at the Conference indicated by 1976 that a 200 nm Exclusive Economic Zone would be agreed to were the Conference to produce one. States such as Canada, Norway and the USA, as well as Iceland had by 1976 unilaterally claimed EEZs of 200 nm. EC Member States adopted a resolution providing that all Member States would extend their fisheries limits from 12 nm to 200 nm from 1 January 1977.

After years of discussions, the EC adopted a system of fisheries management in 1983 by issuing a number of Regulations. Article 1 of Regulation 170/83 laid out the objectives of the system. Its main goals were to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions. Four main measures were undertaken for this purpose. Firstly, the Council would each year adopt total allowable catches (TACs) for the main fish stocks of commercial interest found in Community waters. Second, the TACs would be divided into quotas for individual Member States on the basis of relative stability of fishing activities for each of the stocks concerned. The term ‘relative stability of fishing activities’ was establish on the basis of past catches, preferential treatment for regions particularly dependent on fishing and losses of catch sustained due to Community vessels being excluded from the waters of third States following the extension of fishing limits to 200 nm. The third main measure was a set of technical conservation measures such as the establishment of zones where fishing was prohibited or restricted to certain periods, types of vessel, fishing gear or certain end-users; the setting of standards as regarded fishing gear; the setting of a minimum fish size or weight per species and the restriction of fishing effort, in particular by limits on catches. The fourth main measure of the new fisheries management system was a plan for economic assistance to Member States to restructure the fishing industry and to react

267 ibid.
268 ibid.
269 ibid. 264)
270 Council resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977 (OJ 1981).
271 Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources 1983 (OJ L); Council Regulation (EEC) No 171/83 of 25 January 1983 laying down certain technical measures for the conservation of fishery resources 1983 (OJ L); Council Regulation (EEC) No 172/83 of 25 January 1983 fixing for certain fish stocks and groups of fish stocks occurring in the Community’s fishing zone, total allowable catches for 1982, the share of these catches available to the Community, the allocation of that share between the Member States and the conditions under which the total allowable catches may be fished (OJ 2983).
272 Regulation 170/83 Article 3.
273 ibid Article 4(1).
274 Churchill and Owen (n 264) 9.
275 Regulation 170/83 Article 2.
to the effects of the new 200 nm fisheries limits, and to adapt the Community fleet’s capacity to the resources now available. These financial measures were adopted with legislation enacted in late 1983, after the three previous Regulations of the Common Fisheries Management system had already come into effect.\textsuperscript{275}

In 1983 the ten-year derogation from the equal access principle found in the 1972 Act of Accession would expire. Many Member States did not want the equal access principle to apply to their coastal waters.\textsuperscript{276} In 1983 the EC adopted a new Regulation which provided that the derogation to the equal access principle was extended for another ten years, as well as now covering the waters out to 12 nm from all baselines.\textsuperscript{277} In 1992 the EC again adopted a Regulation extending the derogation originally found in Article 100 of the 1972 Act of Accession for another ten years, until 31 December 2002.\textsuperscript{278} At the same time the Member States were authorized to generalize up to 12 nm for all the waters under their sovereignty or jurisdiction the limit of six nm from Article 100. In 2002 the now re-christened European Union adopted a Regulation extending the derogation to the equal access principle for another ten years, until 31 December 2012.\textsuperscript{279} In 2013 the EU adopted a Regulation extending the derogation from the equal access principle up to 12 nm from Member States’ baselines until 31 December 2022.\textsuperscript{280} The wording of the derogation is as follows:

In the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction, Member States shall be authorised, until 31 December 2022, to restrict fishing to fishing vessels that traditionally fish in those waters \textit{from ports on the adjacent coast}\textsuperscript{281}, without prejudice to the arrangements for Union fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member States and the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where

\textsuperscript{276} Churchill and Owen (n 264) 8.
\textsuperscript{277} Regulation 170/83.
\textsuperscript{281} Emphasis of the author.
fishing activities are pursued and the species concerned. Member States shall inform the Commission of the restrictions put in place under this paragraph.282

Prior to the adoption of the Lisbon treaty in 2008 fisheries were included under the Agriculture title of Community law as defined by The Rome Treaty.283 Article 32(1) TEC provided that ‘Agricultural products’ was defined as products of the soil, of stockfarming and of fisheries.284

The phrase ‘on the territory of Member States’ refers to those parts of the Member State where the State enjoys territorial sovereignty. This encompasses the State’s land territory, its internal waters, and the territorial sea.285

Article 3(a) of Regulation 2371/2002 defines ‘Community waters’ as waters under the sovereignty or jurisdiction of the Member States with the exception of waters adjacent to the territories mentioned in Annex II to the Treaty. This meant that the CFP did not apply to the so-called OCTs, such as Greenland, Cayman Islands and other non-European territories.

Article 4(1)(1) of Regulation 1380/2013 defines ‘Union waters’ as waters under the sovereignty or jurisdiction of the Member States, with the exception of the waters adjacent to the territories listed in Annex II to the Treaty on the Functioning of the European Union. Those territories, so-called Overseas Countries and Territories (OCTs)

Articles 198 to 204 of the TFEU provide the relationship between the listed territories and EU legislation. (Paragraph 1 of the preamble to the TFEU lists the Member States of the Union). As the Articles make no mention of the CFP, and the waters surrounding the territories are specifically excluded from the term ‘Union waters’, the CFP does not apply to these territories.

The word ‘jurisdiction’ in Article 4(1)(1) refers to those waters beyond the territorial sea under Member State jurisdiction. Those waters are the exclusive economic zone and/or exclusive fishing zones of the Member States.286

Article 5(2) of Regulation 1380/2013 restricts fishing within 12 nm from Member States baselines to fishing vessels that traditionally fish in those waters from ports on the adjacent coast. This wording is the same as in Article 17(2) of Regulation 2371/2002. Scholars have claimed that the phrase ‘adjacent coast’ is unclear, as it is unknown whether it might be limited.

282 EU Regulation No 1380/2013 Article 5(2).
284 ibid.
285 Churchill and Owen (n 264) 61.
286 ibid 63.
to the coast of a single Member State, or whether the term could be understood as an area of coast stretching across the coast of two or more Member States. Furthermore, the definition of the word ‘traditionally’ in the provision has been questioned. Churchill and Owen have pointed out that it is unclear how long a vessel must have fished in the waters for tradition to have become reality. Also, they ruminate on whether an individual vessel must have fished in applicable waters for a set period of time, or if it is sufficient for a vessel to belong to a category of vessels which have a history of fishing.

In the case *Commission v United Kingdom* the European Court of Justice decided that the baselines from which the 12 nm limit for restricting fishing was to be measured from should be the baselines in force at the time the then-operative Regulation 170/83 had been adopted in 1983. In the case the Court was dismissive of the notion of ‘ambulatory baselines’.

### 5.2.2 The EU Common Fisheries Policy

The Union is a contracting party to UNCLOS (6) and, pursuant to Council Decision 98/414/EC (7), to the United Nations Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks of 4 December 1995 (8) (UN Fish Stocks Agreement) and, pursuant to Council Decision 96/428/EC (9), to the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas of 24 November 1993 of the Food and Agriculture Organisation of the United Nations (10).

Existing rules restricting access to resources within the 12 nautical mile zones of Member States have operated satisfactorily, benefiting conservation by restricting fishing effort in the most sensitive part of Union waters. Those rules have also preserved the traditional fishing activities on which the social and economic development of certain coastal communities is

---

287 ibid 198.
288 ibid 199.
290 ibid paras 22-25.
highly dependent. Those rules should therefore continue to apply. Member States should endeavour to give preferential access for small-scale, artisanal or coastal fishermen. 291

In their 12 nautical mile zones, Member States should be empowered to adopt conservation and management measures applicable to all Union fishing vessels, provided that, where such measures apply to Union fishing vessels from other Member States, they are non-discriminatory, prior consultation of other Member States concerned has taken place and the Union has not adopted measures specifically addressing conservation and management within the 12 nautical mile zone concerned. 292

5.2.3 Iceland’s main fishing grounds

In this section maps of the fishing grounds of Iceland’s most important fishing stocks are shown with the outline of the 12 mile territorial sea superimposed on the maps.

Image 16: Main fishing grounds for cod in 2015 in tons per square nautical mile (t/nmi²) 293

---

291 EU Regulation No 1380/2013 Preamble para 19.
292 ibid Preamble para 41.
Image 17: Main fishing grounds for haddock in 2015 in tons per square nautical mile (t/nmi²)\textsuperscript{294}

Image 18: Main fishing grounds for golden redfish in 2015 in tons per square nautical mile (t/nmi²)\textsuperscript{295}

\textsuperscript{294} ibid 34.
\textsuperscript{295} ibid 42.
5.2.4 Coverage of the Common Fisheries Policy

Article 1(1a) of EU Regulation No 1380/2013 provides that the Common Fisheries Policy shall cover the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources.

Article 1(2) of EU Regulation No 1380/2013 provides that the Common Fisheries Policy (CFP) shall cover fisheries carried out in Union waters, including by vessels flying the flag of, and registered in, third countries; by Union fishing vessels outside Union waters and by nationals of Member States, without prejudice to the primary responsibility of the flag State.

Article 4(1) of Regulation No 1380/2018 defines ‘Union waters’ as waters under the sovereignty or jurisdiction of the Member States, with the exception of the waters adjacent to the territories listed in Annex II to the Treaty.

Article 2(2) provides that the precautionary approach shall be applied to fisheries management by the CFP, and that the CFP shall aim to ensure that exploitation of living marine resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.

---

Image 19: Main fishing grounds for herring in 2015 in tons per square nautical mile (t/nmi$^2$)\textsuperscript{296}

\textsuperscript{296} ibid 95.
Article 2(5f) provides that the CFP shall in particular contribute to a fair standard of living for those who depend on fishing activities, bearing in mind coastal fisheries and socio-economic aspects. Article 2(5i) provides that the CFP shall promote coastal fishing activities, taking into account socio-economic aspects.

Part II of EU Regulation No 1380/2013 is titled Access to Waters. This part contains Article 5, titled General rules on access to waters. The Article reads as follows:

1. Union fishing vessels shall have equal access to waters and resources in all Union waters other than those referred to in paragraphs 2 and 3, subject to the measures adopted under Part III.

2. In the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction, Member States shall be authorised, until 31 December 2022, to restrict fishing to fishing vessels that traditionally fish in those waters from ports on the adjacent coast, without prejudice to the arrangements for Union fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member States and the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where fishing activities are pursued and the species concerned. Member States shall inform the Commission of the restrictions put in place under this paragraph.

3. In the waters up to 100 nautical miles from the baselines of the Union outermost regions referred to in the first paragraph of Article 349 of the Treaty, the Member States concerned shall be authorised, until 31 December 2022, to restrict fishing to vessels registered in the ports of those territories. Such restrictions shall not apply to Union vessels that traditionally fish in those waters, in so far as those vessels do not exceed the fishing effort traditionally exerted. Member States shall inform the Commission of the restrictions put in place under this paragraph.

4. The measures which are to apply after the expiry of the arrangements set out in paragraphs 2 and 3 shall be adopted by 31 December 2022.

The European Union’s competence to establish a Common Fisheries Policy is provided by Article 38 of the Treaty on the Functioning of the European Union. Article 38(1) provides that the European Union shall define and implement a common agriculture and fisheries policy. The internal market shall extend to agriculture, fisheries and trade in agricultural products. The products of fisheries are deemed to fall under the term ‘agricultural products’, and any references to the common agricultural policy, or to agriculture, and the use of the term ‘agricultural shall be understood as also referring to fisheries.

---

EU Regulation No 1380/2013 lays out the Union’s Common Fisheries Policy. Article 1 of the Regulation defines the scope of the CFP. Paragraph 1(1a) provides that the CFP shall cover the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources. Article 1(2) provides that the CFP shall cover the activities referred to in paragraph 1 where they are carried out on the territory of Member States to which the Treaty applies; in Union waters, including by fishing vessels flying the flag of, and registered in, third countries; by Union fishing vessels outside Union waters; or by nationals of Member States, without prejudice to the primary responsibility of the flag state.

Article 4 of the Regulation is titled ‘Definitions’. Paragraph 1(1) provides that ‘Union waters’ is defined as the waters under sovereignty or jurisdiction of the Member States, with the exception of the waters adjacent to the territories listed in Annex II to the Treaty.

Access to waters is covered by Article 5 of the Regulation. Article 5(1) provides that Union fishing vessels shall have equal access to waters and resources in all Union waters other than those referred to in paragraphs 2 and 3, subject to the measures adopted under Part III.

Article 5(2) provides that in the waters up to 12 nautical miles from baselines under their sovereignty or jurisdiction, Member States shall be authorised, until 31 December 2022, to restrict fishing to fishing vessels that traditionally fish in those waters from ports on the adjacent coast, without prejudice to the arrangements for Union fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member States and the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where fishing activities are pursued and the species concerned. Member States shall inform the Commission of the restrictions put in place under this paragraph.

The arrangements contained in Annex I, mentioned in Article 5(2), provide a list of a number of specific rights to specific Member States to access coastal waters of other Member States. For instance the United Kingdom grants access certain Member States to conduct fishing at certain places along its coastline, in the zone between 6 and 12 nautical miles from the United Kingdom’s baselines. Among these arrangements the United Kingdom allows France to fish for herring in the area between Berwick-upon-Tweed east and Coquet Island east. Another example is that the Irish Republic allows Belgium to fish for demersal in the area between Cork

298 EU Regulation No 1380/2013.
South and Carnsore Point South, within the band of 6 to 12 nautical miles from the Irish Republic’s baselines. Denmark for instance allows Germany to fish for Flatfish in the Kattegat region, between 3 and 12 miles from Denmark’s baselines.

Article 5(3) provides that in the waters up to 100 nautical miles from the baselines of the Union outermost regions referred to in the first paragraph of Article 349 of the Treaty, the Member States concerned shall be authorised, until 31 December 2022, to restrict fishing in those waters, in so far as those vessels do not exceed the fishing effort traditionally exerted. Member States shall inform the Commission of the restrictions put in place under this paragraph.

Article 5(4) provides that the measures which are to apply after the expiry of the arrangements set out in paragraphs 2 and 3 shall be adopted by 31 December 2022.

5.2.5 Effect on Icelandic maritime zones

In a report on Iceland and the European Union to parliament in 2000, the Icelandic minister for foreign affairs acknowledged in one sentence the derogation in effect from the equal access principle in the ‘maritime areas between 6 and 12 nautical miles’. The report is unclear on the landward limit of these maritime areas, and no mention is made of baselines or the effects of Iceland’s straight baselines. The EU law proding this derogation is for some reason not cited in the report. In the report it is stated that this derogation would most likely be renewed when it expired in 2002. Curiously, this extensive report, published in book form, did not mention in its chapter on the origin and development of the EU’s CFP the fact that a derogation from the equal access principle had been first agreed to in 197X and had been continually renewed until then. A reader not familiar with the history of the derogation and the terms of the Accession Act of 1970 could reasonably presume from the report’s chapter on the CFP that the then-current derogation in effect was a recent or temporary provision, which de facto, it was not.

The report cites Article 10 of Regulation 3760/92 which provides a limited competence to Member States to enact rules regarding limited fish stocks which only the Member State’s local fishermen have an interest in fishing. The report cites Article 6 of the same Regulation, stating that it contains a derogation between 6-12 nm (from?) but will expire on 31 December 2002 if nothing will be done. Article 6 provides that Member States could generalize the

301 ibid 223.
302 ibid 228–229.
limit of 6 miles from the 1970 Act of Accession up to 12 miles. This change meant that all
Member States could limit access to their own vessels in the area between their baselines and
a seaward limit of 12 miles from the baselines. This Regulation came into effect in 1993, and
therefore from 1993 all EU Member States had control over their fisheries in an area between
their baselines and 12 nm, unlike what the report states erroneously.

In a recent book on the effects of Iceland’s potential accession to the EU, an Icelandic professor
of European Law stated that the derogation to equal access found in Regulation 1380/2013 was
a temporary one which could be changed by the EU when it expired in 2022 if the Union found
that to be in their best interests.303

The professor states that the equal access principle has been a cornerstone of the EU’s fisheries
policy since the adoption of Regulation 2141/70.304 In his telling, the next development was
the creation of the CFP in 1983. He does not mention the provision establishing the derogation
in the Accession Act, nor does he mention the fact that when his book was published, the
derogation had been in effect continually for 42 years, and was by statute guaranteed to be in
effect at least until 2022, by which time it will have been law for 50 years. The professor, at
the time of writing in December 2018, is a professor emeritus at the University of Iceland.

303 Stefán Már Stefánsson, Evrópusambandsréttrur: Lissabon-Sáttmálinn Með Áherslu á Fiski- Og Auðlindamál
Og Ríkjahugtakið (Lagastofnun Háskóla Íslands 2014) 206–207.
304 ibid 205.
6. Conclusions

This paper has sought to explain and clarify the history and impact of Iceland’s decision to draw straight baselines in 1952. In chapter two, the background of that decision was explained, providing the reasons for Iceland’s rather bold choice, namely that it was the belief of many Icelanders at the time that extension of the state’s fisheries jurisdiction was a case of almost life or death for the nation due to its reliance on coastal fisheries. The rules on baselines and their impact on all maritime zones were covered, and the concept of straight baselines explained. Next the historical and political context at the time was briefly examined to provide necessary background to the decision taken by the Icelandic authorities. The development of international law on baselines by the International Court of Justice was covered and the core elements of that judgment were analyzed. In chapter three the reactions of other states to the new baselines were examined, and explained why rather surprisingly most states did not protest the decision at all, because Iceland was backed up by the United States and the Cold War was at the forefront of the thoughts of most states. The only protest of note to the baselines, the un-official landing ban by the UK on Icelandic fish is covered as it is the only real example of a state showing its displeasure towards the new baselines, albeit in a rather roundabout manner. In chapter four the current Icelandic baselines are examined and the evolution of Iceland’s maritime zones is shown by new maps created for this paper. The effects of the straight baselines are shown clearly, and strong indication provided by the visual data that Iceland enclosed large areas of internal waters in drawing its baselines, areas seemingly quite larger than the increases to the territorial sea, even the increase from 4 to 12 nm in 1958. In chapter five the effects of the baselines on navigational rights of foreign ships are covered and an examination of the effects of potential EU accession by Iceland done both by data collated and visual data created for this project show firstly that, one, should Iceland join the EU all signs point to Iceland enjoying sole access to all its fisheries within its 12 mile territorial sea, and two, that the effects of joining the EU’s Common Fishery Policy would have some effect on some of Iceland’s main fish stocks, as those stocks are partly caught outside the territorial sea. More research on this last subject, the effects on fish stocks, is however warranted, although this paper has demonstrated a data driven fact-based overview of the intersection of the EU’s Common Fisheries Policy and Iceland’s rights to control their fisheries within a substantial part of Iceland’s fishing grounds, were Iceland to join the Union.
<table>
<thead>
<tr>
<th>Reference</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Áki Og Landhelgismálíð’ <em>Mjölnir</em> (Siglufjörður, 27 May 1959)</td>
<td>3</td>
</tr>
<tr>
<td>‘Alþingi Ákveður Að Reistur Skuli Viti á Geirfugladrangi’ <em>Þjóðviljinn</em> (Reykjavík, 15 May 1959)</td>
<td>1</td>
</tr>
<tr>
<td>——— <em>Nýi Tíminn</em> (Reykjavík, 21 May 1959)</td>
<td>12</td>
</tr>
<tr>
<td>Andersen HG, <em>Greinargerð Um Landhelgismálíð</em> (1948)</td>
<td></td>
</tr>
<tr>
<td>Churchill RR and Owen D, <em>The EC Common Fisheries Policy</em> (Oxford University Press 2010)</td>
<td></td>
</tr>
<tr>
<td>‘Geirfugladrangur Horfinn!’ <em>Visir</em> (Reykjavík, 23 March 1972)</td>
<td>16</td>
</tr>
<tr>
<td>‘Geirfugladrangur Sjaldgæf Sjón’ <em>Morgunblaðið</em> (Reykjavík, 29 July 1979)</td>
<td>48</td>
</tr>
<tr>
<td>‘Geirfugladrangur Telst Ënn Flæðisker’ <em>Morgunblaðið</em> (Reykjavík, 16 June 2012)</td>
<td>8</td>
</tr>
<tr>
<td>‘Geirfugladrangurinn Horfni: Eitt Hættulegasta Blindsker Við Landið’ <em>Morgunblaðið</em> (Reykjavík, 26 March 1972)</td>
<td>2</td>
</tr>
<tr>
<td>Helgi Ás Grétarsson, <em>Rettarsaga Fiskveiða Frá Landnámi Til 1990</em> (Lagastofnun Háskóla Íslands 2008)</td>
<td></td>
</tr>
</tbody>
</table>

Jón Þ. Þór, Landhelgi Íslands 1901-1952 (Sagnfræðistofnun Háskóla Íslands 1991)

Jónsson J, Hafrannsóknir við Ísland / Jón Jónsson (Menningarsjóður 1988)


North-Western Area Committee Report of the Sub-Committee on Faxa Bay / Edited by Å. Vedel Tâning (Høst & Fils 1948)

‘Nú Vandast Málið! Er Landhelgin Orðin Minni?’ Alþýðublaðið (Reykjavík, 24 March 1972) 1

Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas No. 112 - United States Responses to Excessive National Maritime Claims (United States Department of State 1992)

‘Óljóst Lögmæti Geirfugladrangs í Hafréttarsamningi’ Morgunblaðið (Reykjavík, 19 June 2012) 9


‘Presidential Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 10 Fed. Reg. 12,203 (1945) [Hereinafter Truman Proclamation]’

‘Ráðstefnan Út Af Friðun Faxaflóa Verður Ekki í Sumar’ Alþýðublaðið (10 August 1949) 8


Stefán Már Stefánsson, Evrópusambandsrétthur: Lissabon-Sättnálinn Með Áherslu á Fiski-Og Auðlindamál Og Ríkjahugtakið (Lagastofnun Háskóla Íslands 2014)


The Geographer, Office of the Geographer, Bureau of Intelligence and Research, Limits in the Seas No. 34 - Straight Baselines: Iceland (United States Department of State 1974)

The Icelandic Fishery Question: Memorandum Submitted by the Government of Iceland to the General Assembly of the United Nations September 1958 (The Icelandic Government 1958)


United States Department of State Office of Ocean Affairs, Smith RW and Roach JA, United States Responses to Excessive National Maritime Claims (US Department of State, Office of Ocean Affairs 1992)


Viðar Guðjónsson, ‘Gæti Haft Áhrif á Hafsvæði Íslands’ Morgunblaðið (Reykjavík, 15 June 2012) 6


Westerman GS, The Juridical Bay (Oxford University Press; Clarendon Press 1987)
Ægæan Sea Continental Shelf (Judgment) [1978] ICJ Rep 3

Case C-146/89 Commission v United Kingdom, [1991] ECR I-03533

Fisheries Case (United Kingdom v Norway) [1951] ICJ Rep 116 (International Court of Justice)

Fisheries Jurisdiction (United Kingdom of Great Britain and Northern Ireland v Iceland) (Interim Protection, Order) [1972] ICJ Rep 12

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Merits) [2001] ICJ Rep 40

North Sea Continental Shelf (Judgment) [1969] ICJ Rep 3

Álþt. 1919, 1419, (þskj. 733)
Álþt. 1941, 57. löggj. þing, A-deild, þskj. 4 - 1. mál
Álþt. 1946, D, þskj. 327 - 281. mál
Álþt. 1947, A-deild, þskj. 679- 182. mál


Reglugerð nr. 21/1952 um verndun fiskimiða umhverfis Ísland

Reglugerð nr. 46/1950 um verndun fiskimiða fyrir Norðurlandi

Convention For The Regulation Of The Meshes Of Fishing Nets And The Size Limits Of Fish (adopted 5 April 1946, entered into force 5 April 1953)

Convention on the Territorial Sea and the Contiguous Zone (adopted 29 April 1958, entered into force 10 September 1964) (516 UNTS 205)


Council Regulation (EEC) No 172/83 of 25 January 1983 fixing for certain fish stocks and groups of fish stocks occurring in the Community’s fishing zone, total allowable catches for 1982, the share of these catches available to the Community, the allocation of that share between the Member States and the conditions under which the total allowable catches may be fished (OJ 2983)


Council Regulation (EEC) No 2908/83 of 4 October 1983 on a common measure for restructuring, modernizing and developing the fishing industry and for developing aquaculture (OJ 1983)


Council resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977 (OJ 1981)


Exchange of messages of 1 July 1941 constituting an agreement between the United States of America and Iceland relating to the defence of Iceland by United States forces (Iceland – United States of America) (adopted 1 July 1941) 405 UNTS 12

Lög um landhelgi, aðlægt belti, efnahagslögsögu og landgrunn no. 41/1979


Samningur 24. júní 1901 milli Danmerkur og Bretlands um tilhögun á fiskveiðum danskra þegna og breskra þegna fyrir utan landhelgi í hafinu umhvefis Færeyjar og Ísland (Stjórnartíðindi 1903 A-deild 20-37)

Treaty Establishing the European Community (Consolidated Version), Rome Treaty (OJ)

Treaty of Accession of Denmark, Ireland and the United Kingdom 1972 (OJ L 73)