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## China's Straight Baseline Claim: Senkaku (Diaoyu) Islands

By J. Ashley Roach



ASIL *Insights*, international law behind the headlines, informing the press, policy makers, and the public.

### Introduction

On September 10, 2012, the People's Republic of China issued a Government Statement setting forth the coordinates of straight baselines in the East China Sea (see Annex 1).[1] China's newly published baseline coordinates enclose two groups of maritime features that are claimed by China, Japan, and Taiwan. They are known variously as the Senkaku (by Japan), Diaoyu (by China), Tiaoyutai (by Taiwan), or Pinnacle (by the United Kingdom) Islands.[2] On September 21, 2012, China deposited with the United Nations a list of these coordinates and an illustrative chart.[3] On September 24, 2012, Japan protested the Chinese straight baseline claim.[4]

Japan formally claimed the islands in 1895, and, with the exception of the 1945-1972 U.S. civil administration of the area after World War II, Japan continues to administer these islands with *de facto* U.S. recognition.[5] Japan did not draw straight baselines around these features when it promulgated its Territorial Sea Law in 1996.[6]

China's September statement said that the baselines were "in accordance with the 'Law of the People's Republic of China on Territorial Sea and Its Contiguous Zone' of 25 February 1992." Article 2 of that law claims Diaoyu Island (and associated islands) as part of China's land territory. Article 3 of the same law provides that "the method of straight baselines composed of all the straight lines joining the adjacent basepoints shall be employed in drawing the baselines of the territorial sea of the People's Republic of China." [7] Four days later, China stated that these baselines were "consistent with relevant provisions of the UN Convention on the Law of the Sea ("UNCLOS")." [8]

This *Insight* analyzes the Senkaku (Diaoyu) claims and the use of straight baselines,[9] an exception to the normal rules for determination of baselines (see below).[10]

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### DOCUMENTS OF NOTE

[Statement of the Government of the People's Republic of China On the Baselines of the Territorial Sea of Diaoyu Dao and Its Affiliated Islands](#)

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China is a party to the 1982 Law of the Sea (“LOS”) Convention, which provides in Article 5, “except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” China’s 1992 law makes no mention of the normal baseline.

Straight baselines are never mandatory, but may be elected by a State under Articles 7 and 46 of the LOS Convention. Article 7 provides for two distinct geographical situations where a State may employ straight baselines in drawing the baseline from which the breadth of the territorial sea<sup>[12]</sup> is measured: (1) “in localities where the coastline is deeply indented and cut into,” and (2) “if there is a fringe of islands along the coast in its immediate vicinity.”

The LOS Convention, Article 46, also permits an archipelagic State<sup>[13]</sup> to draw “straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago,” provided certain criteria are met. The use of archipelagic straight baselines by archipelagic States is not mandated by the LOS Convention, but if used must be so claimed with due publicity (Article 47(9)).

### Straight Baselines

The purpose of authorizing the use of straight baselines is to allow the coastal State, at its discretion, to enclose those waters which, as a result of their close interrelationship with the land, have the character of internal waters. By using straight baselines, a State may also eliminate complex patterns, including enclaves, in its territorial sea, that would otherwise result from the use of normal baselines.<sup>[14]</sup> 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.<sup>[15]</sup>

The International Court of Justice has made it clear 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 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.<sup>[16]</sup>

If the portion of the coast being examined does not meet either criterion, then no straight baseline segment may lawfully be drawn in that locality, and the associated rules (on permissible basepoints, the vector of the putative straight baseline in relation to the coast, and the requisite quality of the waters that would be enclosed) may not be invoked.<sup>[17]</sup> Further, the coastal State must fulfill all the requirements of either test and may not mix the requirements. For example, a State may not claim that, because a locality is indented, though not deeply, and that it has some islands, though they do not constitute a fringe, it may draw straight baselines there. Either test selected must be met entirely on its own terms. If a coastal State 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 to identify appropriate straight baselines, for none are authorized to be drawn there. Rather, it must use as a baseline in that locality its low-water mark. Failure to meet this preliminary geographical test in one locality does not preclude establishing it in another.

*“Localities Where the Coastline Is Deeply Indented and Cut into”*

“Deeply indented and cut into” refers to a very distinctive coastal configuration. The United States has taken the position that such a configuration must fulfill all of the following characteristics:[18]

- in a locality where the coastline is deeply indented and cut into, there exist at least three deep indentations;
- the deep indentations are in close proximity to one another; and
- the depth of penetration of each deep indentation from the proposed straight baseline enclosing the indentation at its entrance to the sea is, as a rule, greater than half the length of that baseline segment.[19]

The term “coastline” is the mean low-water line along the coast; the term “localities” refers to particular segments of the coastline.[20]

*“Fringe of Islands along the Coast in Its Immediate Vicinity”*

“Fringe of islands along the coast in its immediate vicinity” refers to a number of islands and not to features that do not meet the definition of an island contained in Article 121(1) of the LOS Convention.[21] The United States has taken the position that such a fringe of islands must meet all of the following requirements:[22]

- the most landward point of each island lies no more than twenty-four miles from the mainland coastline;
- each island to which a straight baseline is to be drawn is not more than twenty-four miles apart from the island from which the straight baseline is drawn; and
- the islands, as a whole, mask at least 50% of the mainland coastline in any given locality.[23]

The Senkaku (Diaoyu) Islands do not meet either criterion, according to these requirements. Hence, the straight baselines described below are inconsistent with the LOS Convention.

### **Archipelagic States**

The LOS Convention, Article 46, describes an archipelagic State as one “constituted wholly by one or more archipelagos” and may include other islands. It defines an “archipelago” as “a group of islands, including parts of islands, inter-connecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.”

China has correctly not claimed status as an archipelagic State, since an archipelago must consist wholly of islands. As a continental State that claims offshore groups of islands, China may not claim archipelagic waters.[24]

Criteria for archipelagic baselines are specified in the LOS Convention, Article 47. For example, the length of the baselines may not exceed 100 miles, except that up to three percent of the total number of baselines may be drawn to a maximum length of 125 miles.

The baselines must be drawn such that the ratio of water to land area enclosed by the baselines is between 1:1 and 9:1.[25] The Chinese straight baselines enclosing the two groups of the Senkaku (Diaoyu) Islands do not meet the water:land ratio.[26] Thus, these baselines could not satisfy the criteria for archipelagic straight baselines even if the group

pertained to an archipelagic State.

## **Geographic Characteristics**

The Chinese statement claims straight baselines around two separate groups of uninhabited features: those associated with the Uotsuri Shima (Diaoyu Dao) and with Taisho To (Chiwei Yu). These two groups are about forty-seven miles apart. Taken together they are located in the East China Sea, about 177 miles east of China's mainland, ninety-three miles northeast of Taiwan's northern coast, and 118 miles west of Kume Jima, Japan (see Map 1). While the 200-mile EEZ/continental shelf claims of China and Japan overlap in this area, there is no agreed maritime boundary between them.<sup>[27]</sup> None of the baseline segments exceeds twenty-four miles in length.

The features associated with Uotsuri Shima (Diaoyu Dao) are: Hokusei Kojima (Haitun Dao), Kita Kojima (Xaihuya Dao), Hokuto Kojima (Haixing Dao), Kuba Shima (Huangwei Yu), Haigui Dao (no Japanese name), Changlong Dao (no Japanese name), Minami Kojima (Nanxiao Dao), and Changyu Dao (no Japanese name). Their characteristics are as set out in Tables 1 and 2, reproduced below.

The features associated with Taisho To (Chiwei Yu) are: Wangchi Dao (no Japanese name), Xiaochiwei Dao (no Japanese name), Kita Kojima (Chibeibei Dao), and Chibeidong Dao (no Japanese name). This small group lies about forty-seven miles to the northeast of the main group described above. The characteristics of these features are as set out in Tables 3 and 4, reproduced below.

There are three other small features enclosed within the straight baselines of the Uotsuri (Diaoyu Dao) group: Tobise (Fei Yu/Fei Jiao Yan), Okino Minami Iwa (Nan Yu/Da Nan Xiao Dao), and Okinokita Iwa (Bei Yu/Da Bei Xiao Dao).<sup>[28]</sup>

## **Maritime Zones of Islands and Rocks**

Article 121, the sole separate article in the LOS Convention on islands that constitutes Part VIII on the regime of islands, reads:

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.

International courts have not agreed as to which features meet the criteria of paragraph three.<sup>[29]</sup> With the exception perhaps of Uotsuri Shima (Diaoyu Dao),<sup>[30]</sup> the largest feature in the two groups, all other features seem to be uninhabitable, unable to sustain human habitation or to have an economic life of their own, and thus would not be entitled to more than a twelve-mile territorial sea.

Neither China nor Japan have explicitly claimed an EEZ or continental shelf from the Senkaku (Diaoyu) Islands, perhaps because they lie within 200 miles of the nearest Chinese and Japanese coastlines, that is, within their overlapping EEZ/continental shelf claims.<sup>[31]</sup> Accordingly, concerns about potential oil and gas deposits and fishing would be relevant to these features only within the twelve-mile territorial sea generated from them.<sup>[32]</sup>

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**Table 1**

No. of Basepoint	Chinese name	Japanese name	Coordinates	Area (km <sup>2</sup> )	Highest elevation (m)
1-4	Diaoyu Dao	Uotsuri Shima	25°46'N 123°31'E	4.32	383
5	Haitun Dao	Hokusedi Kojima	25°55.8'N 123°40.7'E		
6	Xaihuya Dao	Kita Kojima	25°55.8'N 123°41.1'E	0.3267	135
7	Haixing Dao	Hokuto Kojima	25°55.6'N 123°41.3'E		
8	Huangwei Yu	Kuba Shima	25°55.4'N 123°41.4'E	1.08	117
9	Haigui Dao	--	25°55.3'N 123°41.4'E		
10	Changlong Dao	--	25°43.2'N 123°33.4'E		
11	Nanxiao Dao	Minami Kojima	25°43.2'N 123°33.2'E	0.4592	149
12	Changyu Dao	--	25°44.0'N 123°27.6'E		

**Table 2**

Baseline segment	Segment length (miles)
1-2	0.14
2-3	0.20
3-4	0.31
4-5	16.22
5-6	0.36
6-7	0.27
7-8	0.22

8-9	0.10
9-10	14.06
10-11	0.19
11-12	5.13
12-1	0.14

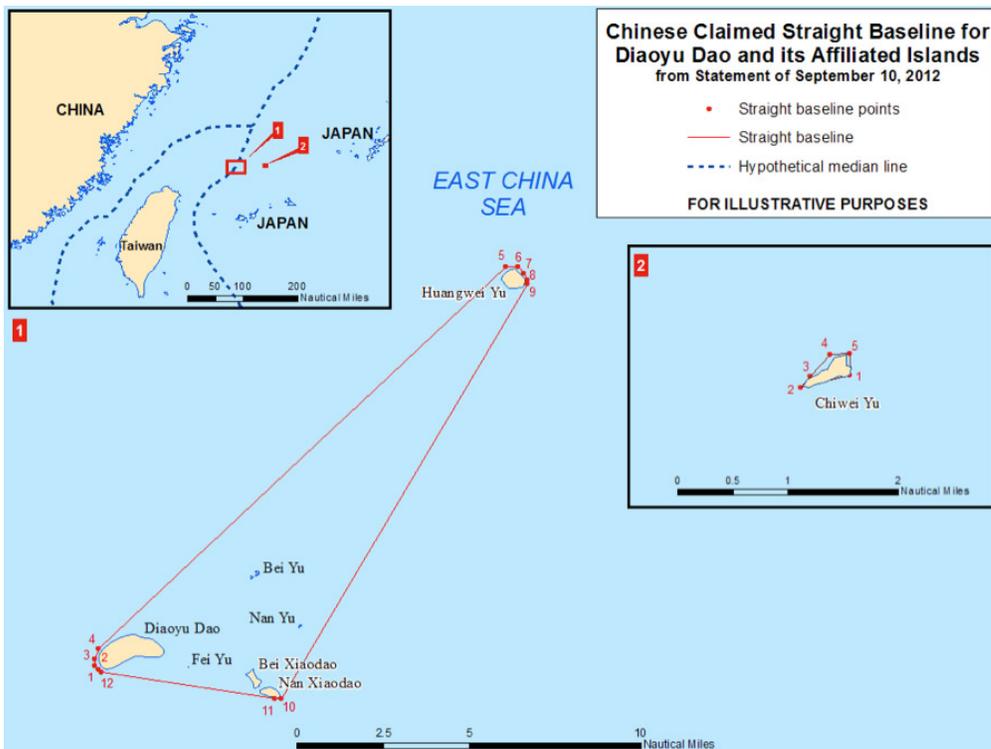
**Table 3**

No. of Basepoint	Chinese name	Japanese name	Coordinates	Area (km <sup>2</sup> )	Highest elevation (m)
1.	Chiwei Yu	Taisho To	25°55.3'N 124°33.7'E	0.0609	75
2.	Wangchi Dao	--	25°55.2'N 124°33.2'E		
3.	Xiaochiwei Dao	--	25°55.3'N 124°33.3'E		
4.	Chibeibei Dao	Kita Kojima	25°55.5'N 124°33.5'E		
5.	Chibeidong Dao	--	25°55.5'N 124°33.7'E		

**Table 4**

Baseline segment	Segment length miles
1-2	0.48
2-3	0.14
3-4	0.27
4-5	0.18
5-1	0.20

**Map 1**



**Annex 1**

**Statement of the Government of The People’s Republic of China on the Territorial Sea Baselines for Diaoyu Dao and Its Affiliated Islands 10 September 2012 [33]**

In accordance with the Law of the People’s Republic of China on Territorial Sea and Its Contiguous Zone of 25 February 1992, the Government of the People’s Republic of China hereby announces the baselines of the territorial sea adjacent to Diaoyu Dao and its affiliated islands of the People’s Republic of China.

I. The baselines of the territorial sea for Diaoyu Dao, Huangwei Yu, Nanxiao Dao, Beixiao Dao, Nan Yu, Bei Yu, and Fei Yu are composed of all the straight lines joining the adjacent base points listed below:

1. Diaoyu Dao 1 25°44.1’N, 123°27.5’E
2. Diaoyu Dao 2 25°44.2’N, 123°27.4’E
3. Diaoyu Dao 3 25°44.4’N, 123°27.4’E
4. Diaoyu Dao 4 25°44.7’N, 123°27.5’E
5. Haitun Dao 25°55.8’N, 123°40.7’E
6. Xiahuya Dao 25°55.8’N, 123°41.1’E
7. Haixing Dao 25°55.6’N, 123°41.3’E
8. Huangwei Yu 25°55.4’N, 123°41.4’E
9. Haigui Dao 25°55.3’N, 123°41.4’E
10. Hanglong Dao 25°43.2’N, 123°33.4’E
11. Nanxiao Dao 25°43.2’N, 123°33.2’E
12. Changyu Dao 25°44.0’N, 123°27.6’E
1. Diaoyu Dao 1 25°44.1’N, 123°27.5’E

II. The baselines of the territorial sea adjacent to Chiwei Yu are composed of all the straight lines joining the adjacent base points listed below:

1. Chiwei Yu 25°55.3’N, 124°33.7’E
2. Wangchi Dao 25°55.2’N, 124°33.2’E
3. Xiaochiwei Dao 25°55.3’N, 124°33.3’E

4. Chibeibei Dao 25°55.5'N, 124°33.5'E
5. Chibeidong Dao - 25°55.5'N, 124°33.7'E
1. Chiwei Yu 25°55.3'N, 124°33.7'E

## Endnotes:

[1] The Chinese baseline statement is *available at*

[http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/chn\\_mzn89\\_2012\\_e.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/chn_mzn89_2012_e.pdf). China's straight baseline claim of May 15, 1996, did not address these features. See Straight Baseline Claim: China, Limits in the Seas No. 117, July 9, 1996, *available at* <http://www.state.gov/documents/organization/57692.pdf>.

Also on September 10, 2012, Beijing took the highly unusual step of issuing its official public responses to the purchase of the Senkakus through China's two highest-level diplomatic documents, the Government Statement on baselines and a Foreign Ministry Statement denouncing the purchase. Beijing uses these documents to signal high government concern about foreign policy issues. The Foreign Ministry Statement is *available at*

[http://www.chinadaily.com.cn/china/2012-09/11/content\\_15748611.htm](http://www.chinadaily.com.cn/china/2012-09/11/content_15748611.htm) and

<http://www.nyconsulate.prchina.org/eng/xw/t968570.htm>. This is the first time since at least 1979 that China has responded to a disagreement with another country using both types of documents rather than just one of them. Beijing has issued Government Statements on only two previous occasions since 1979: to respond to the U.S. accidental bombing of the Chinese Embassy in Belgrade in 1999 and in advance of China's invasion of Vietnam in 1979. It has issued Foreign Ministry Statements on only eleven occasions since 1992. In a measure of China's growing assertiveness on sovereignty issues, four of the last five Foreign Ministry Statements, all issued since 2009, have dealt with issues related to China's claims either in the South China Sea or the Senkakus.

[2] The geonames for all of the features in this study conform to those adopted by the U.S. Board of Geographic Names, *available at* <http://geonames.nga.mil>.

[3] See Maritime Zone Notifications, Circular Communications from the Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs (Sept. 21, 2012), *available at*

[http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn\\_s/mzn89ef.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn89ef.pdf). The chart and list of geographical coordinates are referenced to the Chinese Geodetic Coordinate System 2000. The chart submitted to the UN was Chinese Navy Chart 03085, Scale 1:250,000 (1st ed. Sept. 2012), *available at*

[http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAAPS/chn\\_mzn89\\_2012.jpg](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAAPS/chn_mzn89_2012.jpg) (illustrating the straight baseline segments and territorial sea). The chart is annotated as "not to be used for navigation." The Chinese statement did not identify the type of the "straight line" (geodetic or rhumb). A geodetic line appears as a straight line on a conic projection of the Earth. A rhumb line appears as a straight line on a Mercator projection.

[4] Permanent Mission of Japan to the United Nations New York, Diplomatic Note PM/12/303 (Sept. 24, 2012), *available at*

[http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn89\\_2012\\_jpn.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn89_2012_jpn.pdf).

[5] The United States takes no position on the conflicting claims to sovereignty over these disputed features.

[6] See Straight Baseline and Territorial Sea Claims: Japan, Limits in the Seas No. 120 (April 30, 1998), *available at* <http://www.state.gov/documents/organization/57684.pdf>. Nor has Taiwan; see Annex 2 to Taiwan's Maritime Claims, Limits in the Seas No. 127 (Nov. 15, 2005), *available at* <http://www.state.gov/documents/organization/57674.pdf>.

[7] The text of this law is appended to LIS 117, *available at*

[http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN\\_1992\\_Law.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf).

[8] Remarks of Assistant Foreign Minister Le Yucheng at the Symposium on the Issue of Diaoyu Dao, Diaoyutai State Guesthouse (Sept. 14, 2012), *available at* <http://www.chinese-embassy.org.za/eng/zt/topic1/t971220.htm>.

[9] The international legal rules for deciding sovereignty disputes are well established. They derive from a number of international cases and are detailed elsewhere. See Ian Brownlie, *The Creation and Transfer of Territorial Sovereignty*, in Principles of Public International Law (7th ed. 2008). The rules are collected and summarized in J. Ashley Roach, *Base Points and Baselines in Maritime Boundary Delimitation*, in Maritime Border Diplomacy 269, at 285-300 (Myron H. Nordquist & John

Norton Moore eds., 2012). China (but not Japan) has exercised its right under Article 298(1)(a)(i) to exclude from compulsory dispute procedures “any unsettled dispute concerning sovereignty or other rights over continental or insular land territory.” See United Nations, Oceans and Law of the Sea, Settlement of Disputes Mechanism, [http://www.un.org/Depts/los/settlement\\_of\\_disputes/choice\\_procedure.htm](http://www.un.org/Depts/los/settlement_of_disputes/choice_procedure.htm).

[10] The competing sovereignty claims to the Senkaku (Diaoyu) Islands have been the subject of considerable analysis. See, e.g., Park Hee Kwon, *The Law of the Sea and Northeast Asia: A Challenge for Cooperation* 79-84 (2000); Victor Prescott and Clive Schofield, *The Maritime Political Boundaries of the World 277* (2d ed., 2005) (and sources cited therein) [hereinafter Prescott & Schofield]. The Japanese Foreign Ministry basic view on the Senkakus is *available at* [http://www.mofa.go.jp/region/asia-paci/senkaku/qa\\_1010.html](http://www.mofa.go.jp/region/asia-paci/senkaku/qa_1010.html). The Chinese Ministry of Foreign Affairs views on the Diaoyu Dao are *available at* <http://www.chinese-embassy.org.za/eng/zt/topic1/t971218.htm> & <http://www.chinese-embassy.org.za/eng/zt/topic1/t971220.htm>. The Chinese State Council Information Office has published a People’s Republic of China White Paper, *Diaoyu Dao, An Inherent Territory of China* (Sept. 2012), *available at* <http://www.globaltimes.cn/content/735258.shtml>.

[11] Portions of this analysis are adapted from J. Ashley Roach & Robert W. Smith, *Excessive Maritime Claims* (3d ed. 2012).

[12] The territorial sea is a belt of sea adjacent to a coastal State’s land territory and internal waters, and in the case of an archipelagic State, its archipelagic waters, not exceeding twelve nautical miles measured from the baselines determined in accordance with the LOS Convention. The coastal State’s sovereignty extends beyond its land territory and internal waters, and archipelagic waters, to the territorial sea and the air space over the territorial sea as well as to its bed and subsoil. LOS Convention, Articles 2 and 3. Unless otherwise noted, miles in this study are nautical miles. One nautical mile equals 1,852 meters.

[13] “An ‘archipelagic State’ means a State constituted wholly by one or more archipelagos and may include other islands; (b) ‘archipelago’ means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.” See United Nations Convention on the Law of the Sea art. 46, 1833 U.N.T.S. 3, 21 I.L.M. 1261 (1982) [hereinafter LOS Convention].

[14] UN Office for Oceans Affairs and the Law of the Sea, *The Law of the Sea: Baselines*, ¶¶ 35 & 38, U.N. Sales No. E.88.V.5\* [hereinafter UN, Baselines].

[15] *Id.* ¶¶ 35, 38 & 39, at 18 & 20. With the advent of the exclusive economic zone (“EEZ”), the original reason for straight baselines—i.e., for the protection of coastal fishing interests—has all but disappeared. Their use in a manner that prejudices international navigation, overflight, and communications interests runs counter to the thrust of the Convention’s strong protection of these interests. In light of the modernization of the law of the sea in the Convention, it is reasonable to conclude that, as the Convention states, straight baselines are not normal baselines; straight baselines should be used sparingly, and where they are used, they should be drawn conservatively to reflect the one rationale for their use that is consistent with the Convention, namely the simplification and rationalization of the measurement of the territorial sea and other maritime zones off highly irregular coasts. U.S. Senate Comm. on For. Relations, *Commentary: The 1982 United Nations Convention on the Law of the Sea and the Agreement on Implementation of Part XI*, Senate Treaty Doc. 103-39, at 9, *available at* <http://www.foreign.senate.gov/treaties/details/103-39> [hereinafter U.S. Commentary]; Victor Prescott, *Maritime and Political Boundaries of the World* 50 (1985); W. Michael Reisman & Gayl S. Westerman, *Straight Baselines in International Maritime Boundary Delimitation* xv (1992); Prescott & Schofield 163.

[16] *Maritime Delimitation and Territorial Question between Qatar and Bahrain*, Merits, 2001 I.C.J. 40, at 67, ¶ 212, *available at* <http://www.icj-cij.org/docket/files/87/7027.pdf>.

[17] Reisman & Westerman, *supra* note 15, at 77.

[18] U.S. Commentary, *supra* note 15, at 9.

[19] The rationale for these characteristics is recounted in Roach & Smith, *supra* note 11, 16-17, n.16-18.

[20] Neither term is defined in the LOS Convention or in the IHO Glossary appended to UN, *Baselines*, *supra* note 14. For a discussion of the meaning of these terms, see Roach & Smith, *supra* note 11, at 62, n.19.

[21] Article 7 of the LOS Convention does not define a “fringe”, or how close the islands must be to the mainland in the vicinity, or how close together the islands must be. For a discussion of these

issues, see Roach & Smith, *supra* note 11, at 62, n.20.

[22] U.S. Commentary, *supra* note 15, at 9.

[23] The rationale for these three criteria is recounted in Roach & Smith, *supra* note 11, at 63, n.22-24.

[24] Nevertheless, several continental States with offshore groups of islands which may be geographically described as archipelagos but which do not meet the juridical definition set out in Article 46 of the LOS Convention, have sought to enclose those islands with straight baselines in a manner simulating an archipelago. Following adoption of the LOS Convention, the United States protested the claims of Canada, Denmark, Ecuador, Portugal, Sudan and the United Kingdom. For details, see Roach & Smith, *supra* note 11, at 108-115. In ratifying the LOS Convention, the Netherlands stated the application of Part IV of the Convention is limited to a state constituted wholly by one or more archipelagos, and may include other islands. Claims to archipelagic status in contravention of article 46 are not valid. The status of archipelagic state, and the rights and obligations deriving from such status, can only be invoked under the conditions of Part IV of the Convention.

In depositing its instrument of ratification of the Convention, the United Kingdom stated that any declarations “which are incompatible with the provisions of the Convention relating to archipelagic states or waters, including archipelagic baselines” are not in conformity with Articles 309 and 310 of the Convention. United Nations, Multilateral Treaties Deposited with the Secretary-General: Status, available at <http://treaties.un.org/pages/Participation/Status.aspx>.

[25] LOS Convention, *supra* note 13, art. 47(1). For the purpose of computing this ratio of water to land, “land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.” *Id.* art. 47(7).

[26] The ratio around Uotsuri Shima (Diaoyu Dao), Minami Kojima (Nan Xiao Dao), and Kuba Shima (Huangwei Yu) is 27.1:1.

[27] Taiwan has also claimed an EEZ and continental shelf generally by its law of January 21, 1998, reproduced as Annex 3 to Taiwan’s Maritime Claims, Limits in the Seas No. 127, *supra* note 6.

[28] Wikipedia, Senkaku Islands, available at [http://en.wikipedia.org/wiki/Senkaku\\_Islands](http://en.wikipedia.org/wiki/Senkaku_Islands). Xiao means rock (iwa in Japanese) and Dao (shima, jima and to in Japanese) mean island.

[29] See the discussion in Prescott & Schofield, *supra* note 15, at 61-89. ITLOS Judge Vukas has expressed his disagreement with EEZ claims from the Kerguelen Islands. See Monte Confurco Case (Seychelles v. France), Case No. 6 (ITLOS Dec. 18, 2000) (declaration), available at [http://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no\\_6/Declaration.Vukas.E.pdf](http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_6/Declaration.Vukas.E.pdf); see also Volga Case (Russian Federation v. Australia), Case No. 11 (ITLOS Dec. 23, 2002), 42 I.L.M. 159 (2003) (declaration), available at [http://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no\\_11/decl.Vukas.E.pdf](http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_11/decl.Vukas.E.pdf).

[30] See Fackler, “In Shark-Infested Waters, Resolve of Two Giants Is Tested,” N.Y. Times, Sept. 23, 2012, sec. 1, at 5 & 8, available at [http://www.nytimes.com/2012/09/23/world/asia/islands-dispute-tests-resolve-of-china-and-japan.html?partner=rssnyt&emc=rss&utm\\_source=angelina+likes+this&\\_r=1](http://www.nytimes.com/2012/09/23/world/asia/islands-dispute-tests-resolve-of-china-and-japan.html?partner=rssnyt&emc=rss&utm_source=angelina+likes+this&_r=1) (describing economic activities on Uotsuri Shima in the years prior to 1940).

[31] Kwon, *supra* note 10, at 84 (without citing sources, stating that Japan does, and China does not, claim an EEZ/continental shelf from these features). The preliminary information submitted by China for its extended continental shelf contains track lines well north of the Senkakus from four of China’s mainland straight baseline points into the Okinawa trench. See Preliminary Information Indicative of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles of the People’s Republic of China (trans.) (2009), available at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/preliminary/chn2009preliminaryinformation\\_english.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chn2009preliminaryinformation_english.pdf). The executive summary of China’s partial submission for the extended continental shelf in the East China Sea shows the Senkakus as being on the continental shelf as the natural prolongation of China’s mainland. See [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/chn63\\_12/executive%20summary\\_EN.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/executive%20summary_EN.pdf) (figure 2). For diplomatic notes by Japan and China on this partial submission, see [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/chn63\\_12/jpn\\_re\\_chn\\_28\\_12\\_2012.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/jpn_re_chn_28_12_2012.pdf) and [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/chn63\\_12/chn\\_re\\_jpn07\\_01\\_2013e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/chn_re_jpn07_01_2013e.pdf).

[32] For an analysis of the potential oil and gas resources, see U.S. Energy Info. Administration, East China Sea (Sept. 25, 2012), available at [http://www.eia.gov/countries/analysisbriefs/east\\_china\\_sea/east\\_china\\_sea.pdf](http://www.eia.gov/countries/analysisbriefs/east_china_sea/east_china_sea.pdf). For judicial

precedents limiting such features to a twelve-mile territorial sea in maritime delimitation contexts, see *Territorial and Maritime Dispute (Nicar. v. Colom.)*, Judgment, ¶¶ 176-180, 181-183, 214, 238 (Nov. 19, 2012) (Quitasueño and Serrana), *available at* <http://www.icj-cij.org/docket/files/124/17164.pdf>; *Maritime Delimitation in the Black Sea (Rom. v. Ukr.)*, Judgment, 2009 I.C.J. 122-123, ¶ 187 (Feb. 3) (Serpents Island), *available at* <http://www.icj-cij.org/docket/files/132/14987.pdf>; and *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.)*, 2007 I.C.J. 751-752, ¶¶ 300-305 (Oct. 8) (Parties claimed only a territorial sea around the islands of Bobel Cay, Savanna Cay, Port Royal Cay and South Cay (paras. 262-264)), *available at* <http://www.icj-cij.org/docket/files/120/14075.pdf>.

[33] The original text appears in CPP20120910004001 Beijing Xinhua Domestic Service in Chinese (Sept. 12, 2012, 09:25 GMT), *available at* <http://soa.gov.cn/soa/news/importantnews/webinfo/2012/09/1346633829444929.htm>. The English translation in Annex 1 is *available at* <http://www.chinese-embassy.org.za/eng/zt/topic1/t971217.htm> & <http://be.china-embassy.org/eng/zxxx/t968769.htm>, as well at the DOALOS website, *supra* note 1.