

THE DELIMITATION OF TERRITORIAL WATERS IN THE MEDITERRANEAN SEA*

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I. INTRODUCTION

Only since 1950 has the issue of delimitation of the territorial sea been regarded separately by scholars. Before this time, attention centered (with a few worthy exceptions)¹ around the question of determining the extension of the territorial sea.² What brought this delicate issue to the notice of scholars was the rise of an international controversy over the delimitation of Norway's territorial waters. Norway broke away from the customary practice of the day, which was to use the low-water line as the base-line for measuring territorial waters.³ Instead, Norway established by Royal Decree of July 12, 1935 that the baseline for Norwegian territorial waters was to consist of baselines drawn between selected points along the coast. The Norwegian Decree was based on firmly established national entitlements, geographical conditions predominating on the Norwegian coast, and the protection of the vital interests of her inhabitants.⁴ The length of these lines differed according to the coast and, in several places, exceeded forty miles.

The adoption of the Royal Decree produced violent protests, particularly from the United Kingdom. After several incidents, the United Kingdom brought the controversy before the International

* This article has been written in conjunction with a research project sponsored by the Italian Ministry of Public Education.

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1. See S. DE BUSTAMANTE Y SIRVEN, *LA MER TERRITORIALE* 159 (1930); G. GIDEL, *3 LE DROIT INTERNATIONAL PUBLIC DE LA MER, LES TEMPS DE PAIX* (1930); G. GIDEL, *LA MER TERRITORIALE ET LA ZONE CONTIGUE* 493 (1934).

2. See P. BALDONI, *IL MARE TERRITORIALE NEL DIRITTO INTERNAZIONALE COMUNE* (1934); Tenekidès, *Le Conflict des Limites de la Mer Territoriale entre L'Etat Riverain et un Etat Tiers*, 64 *JOURNAL DU DROIT INTERNATIONAL [J. DR. INT.]* 673 (1937); F. FLORIO, *IL MARE TERRITORIALE E LA SUA DELIMITAZIONE* (1947).

3. See P.C. JESSUP, *THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION* 66 (1927).

4. For a translation of the Norwegian Royal Decree of 1935 see *Application Instituting Proceedings (U.K. v. Nor.)* 1951 I.C.J. Pleadings (1 Fisheries Case) 14 (Application dated Sept. 24, 1949).

Court of Justice, to ascertain whether the method used by Norway in 1935 to fix her baselines was in conformity with international law. The International Court of Justice determined that as long as certain conditions were respected, the method employed by the Royal Norwegian Decree of 1935 was not contrary to international law.⁵

The Court also established the following principles by which a state whose coasts are deeply indented and cut into may adopt straight baselines. First, the baseline must follow the general direction of the coast. Second, there must be a close dependence of the territorial sea on the land domain.⁶

The conclusions of the International Court of Justice were accepted into practice in 1958 at the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958 Geneva Convention). Article 3 of this Convention affirms that "[t]he normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast." Article 4 adds that "[i]n localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."

From then on the system of straight baselines was adopted by an increasingly vast number of states.⁷ Articles 5 and 7 of the 1982 United Nations Convention on the Law of the Sea (the 1982 Convention) confirms this trend in the international community. These Articles repeat the content of Articles 3 and 4 of the 1958 Geneva Convention, with slight differences in the wording.⁸

5. Fisheries Case (U.K. v. Nor.) 1951 I.C.J. 143 (Judgment of Dec. 18) [hereinafter cited as Fisheries Case]. See Waldock, *The Anglo-Norwegian Fisheries Case*, 28 BRIT. Y.B. INT'L L. 114 (1951); Evensen, *The Anglo-Norwegian Fisheries Case and Its Legal Consequences*, 46 AM. J. INT'L L. 609 (1952); Johnson, *The Anglo-Norwegian Fisheries Case*, 1 INT'L & COMP. L.Q. 145 (1952); Parfond, *L'Affaire Anglo-Norvégienne des Pêcheries*, 71 REVUE MARITIME 346 (1952); Auby, *Problems of Territorial Waters Before the International Court of Justice*, 80 J. DR. INT. 25 (1953); C.J. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* 144 (4th ed. 1967).

6. Fisheries Case, *supra* note 5, at 133.

7. In the Mediterranean, for example, as many as eleven states have adopted the straight baseline system. See *infra* text accompanying notes 51-112.

8. The outstanding difference is the addition in Article 7 of the 1982 Convention of a paragraph not found in the corresponding article, Article 4, of the 1958 Geneva Convention. Article 7(4) of the 1982 Convention reads:

2. Where because of the presence of a delta and other natural conditions the

State practice, jurisprudence and relevant international conventions provide three systems for measuring the breadth of the territorial sea. The first system involves the low-water line along the coast. The second system involves straight baselines but only in localities where the coast is deeply indented and cut into, or where there is a fringe of islands along the coast in the immediate vicinity. The third system involves a combination of the two above-mentioned methods.⁹

The use of straight baselines must obey certain rules, the most important of which is that the drawing of these lines "must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters."¹⁰ Furthermore, the system of straight baselines "may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or from an

coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal state in accordance with this convention.

United Nations Convention on the Law of the Sea, art. 7(4), *opened for signature* Dec. 10, 1982, U.N. Doc. A/CONF. 62/122 (1982), *reprinted in* 21 I.L.M. 1261, 1272 (1982) [hereinafter cited as 1982 Convention].

Although it is largely accepted that the rules of the 1958 Geneva Convention related to "historic bays" have become international customary rules, it is interesting to recall which Mediterranean states have ratified the 1958 Geneva Convention. Convention on the Territorial Sea and the Contiguous Zone, *done* Apr. 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 (effective Sept. 10, 1964) [hereinafter cited as 1958 Convention on the Territorial Sea]. These states, as of December 31, 1981, were: Israel, Italy, Malta, Spain and Yugoslavia. Tunisia signed the Convention but did not ratify it. See MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY GENERAL, STATUS AS AT 31 DECEMBER 1982 609 (1983). The 1982 Convention, which largely repeats the contents of the corresponding rules of the 1958 Convention, was passed in the U.N. General Assembly, with affirmative votes Algeria, Cyprus, Egypt, France, Greece, Lebanon, Libya, Malta, Monaco, Morocco, Syria, Tunisia and Yugoslavia. Italy and Spain abstained, while Israel and Turkey voted against passage of the Convention. Albania did not vote. See U.N. CHRON. No. 6 13 (1982).

9. This last method has been expressly provided for in Article 14 of the 1982 Convention, *supra* note 8, art. 14, while in the 1958 Geneva Convention there is no corresponding rule. 1958 Convention on the Territorial Sea, *supra* note 8. It seems, however, that a systematic reading of relevant rules of the 1958 Convention leads to the same conclusion. Where there are special geographical conditions, a state is entitled to utilize either the low-water line system (where the coastline is fairly regular) or the straight baseline system (for those parts of the coastline which are deeply indented and cut into). See 1958 Convention on the Territorial Sea, *supra* note 8.

10. See 1958 Convention on the Territorial Sea, *supra* note 8, art. 4(2); 1982 Convention, *supra* note 8, art. 7(3).

exclusive economic zone."¹¹ Particular rules also govern the use of the straight baselines in the presence of river mouths,¹² bays,¹³ ports,¹⁴ roadsteads,¹⁵ and low-tide elevations.¹⁶

Both the baseline systems of the 1958 Geneva Convention and the 1982 U.N. Convention are based on a concept previously articulated by the International Court of Justice in the 1951 *Fisheries Case*. The *Fisheries Case* holds that where the method of straight baselines is applicable, "account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage."¹⁷ Similarly, as it is often also held that third states have a particular interest in knowing whether a state has used the straight baseline system, due publicity must be given to charts indicating the location of a states' baselines.¹⁸

Some states bordering on the Mediterranean have adopted the system of straight baselines, but have left the actual drawing of baselines to a later date.¹⁹ In some cases these measures have still not been taken. What, then, are the consequences of the failure to adopt specific baselines? It is this author's opinion that in such circumstances, third states are entitled to consider the low-water line

11. 1982 Convention, *supra* note 8, art. 7(6). The content of Article 4(5) of the 1958 Geneva Convention is quite similar. 1958 Convention on the Territorial Sea, *supra* note 8, art. 4(5).

12. 1958 Convention on the Territorial Sea, *supra* note 8, art. 13; 1982 Convention, *supra* note 8, art. 9.

13. 1958 Convention on the Territorial Sea, *supra* note 8, art. 7; 1982 Convention, *supra* note 8, art. 10.

14. 1958 Convention on the Territorial Sea, *supra* note 8, art. 8; 1982 Convention, *supra* note 8, art. 11.

15. 1958 Convention on the Territorial Sea, *supra* note 8, art. 9; 1982 Convention, *supra* note 8, art. 12.

16. 1958 Convention on the Territorial Sea, *supra* note 8, art. 13; 1982 Convention, *supra* note 8, art. 13.

17. 1958 Convention on the Territorial Sea, *supra* note 8, art. 4(4); 1982 Convention, *supra* note 8, art. 7(5).

18. Article 16(2) of the 1982 Convention requests, furthermore, that the coastal state deposit a copy of such chart or a list of geographical coordinates with the Secretary-General of the United Nations. 1982 Convention, *supra* note 8, art. 16(2).

19. See, e.g., the legislation of Morocco, *infra* note 34. On other occasions, the exact location of the baselines is drawn directly on to large-scale maps which are duly publicized for the benefit of those concerned. This duty to give appropriate publicity to nautical maps is fundamental in that it enables anyone using the sea to recognize, precisely, the different maritime boundaries.

as the normal baseline. In fact, both the 1958 Geneva Convention and the 1982 Convention consider the low-water line as the normal baseline, while the straight baseline method may be invoked only in special circumstances. Relying on the low-water mark seems to be the only reasonable alternative, since in no other way can third states be sure of the exact external limit of the territorial sea of the state concerned.²⁰ It is precisely for this reason that this paper will examine both the legislation of states which have in theory adopted the straight baseline system, but which have not yet fixed them officially, and the legislation of states which have adopted the low-water line system.²¹

The question of the extension of the territorial sea, which has been controversial for some time, also requires some comment. Today, the original limit of three miles has been extended by some states to as much as 200 miles.²² As a result of these conflicting positions, it was impossible to establish any rule concerning the breadth of the territorial sea at the 1958 Geneva Convention. In recent years, however, international practice has become more uniform. For example, at the Third United Nations Conference on the Law of the Sea, it was unanimously agreed that "[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles."²³

The situation regarding territorial seas in the Mediterranean Sea is also rather complex. Syria has thirty-five miles of territorial waters,²⁴

20. "Un système de lignes droites qui n'est pas connu manque, en effet, de la notoriété requise pour pouvoir invoquer une tolérance et une reconnaissance de la part des autres Etats." Voelckel, *Les Lignes de Base dans la Convention de Genève sur la Mer Territoriale*, XIX ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL [AN. FR. DR. INT.] 830 (1973). A like theory is also based on some important statements made by the International Court of Justice in the 1951 Fisheries Case. See *Fisheries Case*, *supra* note 5, at 138-39.

21. See *infra* text accompanying notes 51-75.

22. According to the U.S. Department of State, by 1981 there were already 13 states claiming a territorial sea of 200 miles. U.S. DEPT. OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH, LIMITS IN THE SEAS, No. 36 (4th ed. 1981) [hereinafter cited as LIMITS IN THE SEAS]. See 3 OCEAN Y.B. 564 (1982).

23. According to the U.S. Department of State, by 1981, 87 states had fixed the extension of their territorial seas up to 12 miles. See LIMITS IN THE SEAS, *supra* note 22, No. 36 (1981).

24. See Syrian Law No. 37 (1981), which defines the Syrian Arab Republic's territorial waters, reprinted in V FOREIGN BROADCASTING INFORMATION SERVICE DAILY REPORTS (Middle East and Africa) No. 174, at H-1 (Sept. 9, 1981). Law No. 37 (1981) amended Legislative Decree No. 304 (1963) concerning the territorial sea of the Syrian Arab Republic.

Albania, fifteen,²⁵ Algeria,²⁶ Cyprus,²⁷ Egypt,²⁸ France,²⁹ Italy,³⁰ Libya,³¹ Malta,³² Monaco,³³ Morocco,³⁴ Spain,³⁵ Tunisia³⁶ and Yugoslavia³⁷ all have

25. See Decree No. 4650 of March 9, 1970 on the boundary of the People's Republic of Albania, as amended by Decree No. 5384 of February 23, 1976, *reprinted in VII NEW DIRECTIONS IN THE LAW OF THE SEA 1* (M. Nordquist, S. Houston & K.R. Simmonds eds. 1980). The text of the 1979 Decree is *reprinted in 12 WGO, MONATSHEFTE OSTEUROPAISCHES RECHT 309* (1970). The justification for the decision to extend the territorial sea up to 15 miles can be deduced from the following statement given by the Albanian delegate during the Third United Nations Conference on the Law of the Sea: "Since the two Super-Powers were traversing the Mediterranean and the Adriatic like sea monsters, Albania was going to reconsider the breadth of its territorial waters beyond the 12-mile limit." I THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA OFFICIAL RECORDS 100 (1975) [hereinafter cited as IUNCLOS III OFFICIAL RECORDS (1975)]. The 1976 unilateral decision by Albania has been criticized as "a violation of the existing law of the sea." See Ibler, *The Changing Law of the Sea as Affecting the Adriatic*, 20 GER. Y.B. INT'L L. 178 (1977).

26. See Decree No. 63-403 of October 12, 1963 which sets the limit of the territorial sea, *reprinted in 1 REVUE ALGERIENNE DES SCIENCE JURIDIQUES, POLITIQUES ET ECONOMIC [R.ALGER.S.JR.POL.EC.] 134* (1964).

27. Territorial Sea Law No. 45 of August 6, 1964, *reprinted in WESTERN EUROPE AND THE DEVELOPMENT OF THE LAW OF THE SEA 5* (F. Durante & W. Rodino eds. 1980). It is worth remembering that when Cyprus became independent in 1960, the United Kingdom retained, as sovereign British territory, certain base areas on the island. Agreement concerning Crown Properties in the Sovereign Base Areas, *done Aug. 16, 1960*, 382 U.N.T.S. 207 (1961) [hereinafter cited as Treaty Concerning Cyprus]. These non-ceded lands did not pass to the new state. The boundaries of the territorial sea of Cyprus and those of the U.K. base area were also decided by the Treaty Concerning the Establishment of the Republic of Cyprus. *Id.* at 208. The territorial sea of the base areas was set at a breadth of 3 miles, whereas the territorial sea of the Republic of Cyprus was set at 12 miles. *Id.* at 208. See *infra* text accompanying note 163. On the other hand, it is not known if the Turkish Republic of North Cyprus approved special rules concerning the territorial waters adjacent to its coast.

28. Royal Decree of January 15, 1951 concerning the territorial waters of the Kingdom of Egypt, *reprinted in VI REVUE EGYPTIENNE DE DROIT INTERNATIONAL [R.EGYPT.DR.INT.] 175* (1950). This Decree was modified by Presidential Decree No. 180 of February 17, 1958, *reprinted in XIV R.EGYPT.DR.INT. 406* (1958).

29. Law No. 71-1060 of December 24, 1971 relating to the delimitation of the French territorial sea, *reprinted in Queneudec, Chronique sur le Droit de la Mer, IV Mer Territoriale: La Loi Française du 24 Decembre 1971, XVII AN.FR.DR.INT. 759* (1971); Rousseau, *Chronique des Fait Internationaux*, 76 REVUE GENERALE DE DROIT INTERNATIONAL PUBLIC [R.G.DR.INT.P.] 1028 (1975); Rodriguez, *Le Droit Administratif de la Mer Territoriale*, 35 LE DROIT MARITIME FRANÇAIS [DR.M.FR.] 323, 387, 451 (1983).

30. Law No. 359 of February 18, 1974 modifying Article 2 of the Navigation Code, 258 GAZZ. UFF. ITAL. (Aug. 21, 1974) translation *reprinted in 1 ITALIAN Y.B. INT'L L. 332* (1975).

31. Act No. 2 of February 18, 1959 concerning the delimitation of Libyan territorial waters, *reprinted in UNITED NATIONS LEGISLATIVE SERIES, NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA, U.N. Doc. No. ST/LEG/SER.B/16*, at 14 (1974) [hereinafter cited as UNITED NATIONS LEGISLATIVE SERIES (1974)].

32. Territorial Waters and Contiguous Zone Act of 1971, as amended in 1978, *reprinted in WESTERN EUROPE AND THE DEVELOPMENT OF THE LAW OF THE SEA, supra* note 27, at 13. The 1978 amendment is *reprinted in UNITED NATIONS LEGISLATIVE SERIES, NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA, U.N. Doc. ST/LEG/SER.B/19*, at 63 (1980) [hereinafter cited as UNITED NATIONS LEGISLATIVE SERIES (1980)].

33. Ordonnance Souveraine No. 5.094 of February 14, 1973 concerning the delimita-

a twelve mile limit. Greece,³⁸ Israel³⁹ and Turkey⁴⁰ have a six mile limit.

tion of the territorial sea of Monaco, *reprinted in* WESTERN EUROPE AND THE DEVELOPMENT OF THE LAW OF THE SEA, *supra* note 27, at 5.

34. Law No. 1-73-211 of 26 Moharrem 1393 (1973) concerning the delimitation of the territorial sea and exclusive fishing zone of Morocco, *reprinted in* XII ANNUAIRE DE L'AFRIQUE DU NORD [AN.AFR.N.] 894 (1973).

35. Act No. 10 (1977) concerning the territorial sea, *reprinted in* NEW DIRECTIONS IN THE LAW OF THE SEA, *supra* note 25, at 62.

36. Law No. 73-49 of August 2, 1973 concerning the delimitation of the territorial sea, *reprinted in* XII AN.AFR.N. 1004 (1973).

37. Law No. 13 (1979) of March 27, 1979, amending the Law of May 22, 1965, concerning the coastal sea zone, the external sea belt, and the epicontinental belt of Yugoslavia, *reprinted in* II YUGOSLAV LAW 102 (1979). The law of May 22, 1965 is *reprinted in* I NEW DIRECTIONS IN THE LAW OF THE SEA (1973), *supra* note 25, at 35.

38. Law No. 230 of September 17, 1936, *reprinted in* NEW DIRECTIONS IN THE LAW OF THE SEA, *supra* note 25, at 15. The breadth of the Greek territorial sea extends to 10 miles for special purposes. See Law No. 4141 of March 26, 1913 concerning passage and sojourn of merchant vessels along the Greek shores and the policing of ports and harbors in time of war, *reprinted in id.* at 1. See also the Law of June 13, 1931 to regulate civil aviation, *reprinted in id.* at 7; Law of September 18, 1931 to define the extent of territorial waters for the purpose of navigation and the control thereof, *reprinted in id.* at 9. It is interesting that the Greek delegate affirmed, during UNCLOS III that, "where the territorial sea was concerned, [his] delegation supported a uniform breadth of 12 nautical miles." I UNCLOS III OFFICIAL RECORDS (1975), *supra* note 25, at 129.

39. Territorial Waters Law of 1956, *reprinted in* UNITED NATIONS LEGISLATIVE SERIES (1974), *supra* note 31, at 26. During the Third Conference on the Law of the Sea, the Israeli delegate stated that, "[i]t was obvious that, from the standpoint of territorial security, a zone of control subject to the absolute sovereignty of the coastal State, was a necessity, but a territorial sea of six nautical miles was sufficient for that purpose." I UNCLOS III OFFICIAL RECORDS (1975), *supra* note 25, at 151. He added, nevertheless, that his government would support the general trend in favor of a 12-mile limit "only if it was definitively and generally accepted." *Id.*

At this point it seems necessary to briefly examine the delicate problem of the territorial sea of the Gaza Strip. This territory, though occupied by Egypt, was never annexed by Egypt nor has it been officially annexed by Israel. According to Glassner & Unger, *Israel's Maritime Boundaries*, 1 OCEAN DEV. & INT'L L. 305 (1973-74), this means that the Gaza Strip is juridically "still part of the Palestine Mandate and its territorial sea remains three nautical miles wide." *Id. Cf.* Ordinance No. 6 of 1937 to Regulate Fisheries, *reprinted in* 1 GOVERNMENT OF PALESTINE. ORDINANCES, RULES AND NOTICES 157-63 (1937). This theory is based on analogous reasons given by the I.C.J. in the Advisory Opinion on Southwest Africa, *International Status of Southwest Africa* 1950 I.C.J. 131 (Advisory Opinion of July 11), in which the Court stated that the obligations of the mandate over that territory were still in force notwithstanding the dissolution of the League of Nations. *Id. See* Rostow, *Palestinian Self-Determination: Possible Futures for the Unallocated Territories of the Palestine Mandate*, 5 YALE STUD. WRLD PUB. ORD. 147-72 (1979). Other authors conclude that under international law, sovereignty is currently vested in Israel. If this were true, the territorial sea of the Gaza Strip would extend to a breadth of 6 miles. See, e.g., J. STONE, *ISRAEL AND PALESTINE: ASSAULT ON THE LAW OF NATIONS* 155 (1981). In the treaty of peace between the Arab Republic of Egypt and the State of Israel, the boundary between the two states if fixed, "without prejudice to the issues of the status of the Gaza Strip." Treaty of Peace Between the Arab Republic of Egypt and the State of Israel, *done* Mar. 26, 1977, *reprinted in* 18 I.L.M. 362 (1979).

Gibraltar has a three mile limit⁴¹ and Lebanon has not yet claimed any of the seas along its coasts.⁴² In spite of these variations, recent trends in the international community enable one to conclude that coastal states are allowed to establish the breadth of their territorial waters up to a limit of twelve nautical miles.⁴³

The present inquiry will deal specifically with the methods adopted by the coastal states of the Mediterranean basin to fix the baselines for measuring the breadth of their territorial seas.⁴⁴ To begin with, it must be remembered that during the 1951 *Fisheries Case* the International Court of Justice underlined the fact that "[a]lthough it is true that the act of delimitation is necessarily a

40. Law No. 2674 of May 20, 1982 concerning Turkish territorial waters has been unofficially translated by the Turkish Embassy, Washington, D.C. as follows: "The Council of Ministers is empowered to determine territorial waters at an extent greater than six miles for certain seas in accordance with relevant peculiarities and circumstances of those seas as well as with the principle of equity." In compliance with this provision, the Turkish Council of Ministers adopted on May 29, 1982 Decree No. 8/4742 which states:

Regarding the extent of territorial waters in the Black Sea and Mediterranean Sea, the Council of Ministers, on May 29, 1982, in conformity with the power specified in Law No. 2674 of May 29, 1982, and taking into account the peculiar characteristics of the seas which surround Turkey and of the principle of equity has decided that the situation which obtained before promulgation of this law will be continued.

It is worth remembering that Article 2 of Law No. 476 of May 15, 1964 provided that, "[i]n relation to States whose territorial sea is of greater breadth, the breadth of Turkey's territorial sea shall be determined in accordance with the principle of reciprocity." See UNITED NATIONS LEGISLATIVE SERIES (1974), *supra* note 31, at 128. Likewise, it should be stressed that at present, on the basis of a Greek and Turkish territorial sea of 6 nautical miles, "only three patches of the Turkish coast off the Anatolian plateau extend to the full 6 miles as being affected by median line reduction." C.R. SYMMONDS, *THE MARITIME ZONES OF ISLANDS IN INTERNATIONAL LAW* 155 (1979).

41. The problem of the territorial sea of Gibraltar is highly complex and will be examined in Part II of this study. As far as the breadth of the territorial waters of Gibraltar is concerned, however, it can be said that generally reference is made to the rules in force for the United Kingdom (3 miles). See P.C. JESSUP, *supra* note 3, at 10.

42. See LIMITS IN THE SEAS, *supra* note 22, No. 36 (1981) at 117. See also A.A. EL-HAKIN, *THE MIDDLE EASTERN STATES AND THE LAW OF THE SEA* 7 (1979); MacLean, *Arabs and the Sea*, *MED. ARAB REP.* 10-11 (1979).

43. See, e.g., Ferreira, *The Role of African States in the Development of the Law of the Sea at the Third United Nations Conference*, 7 *OCEAN DEV. & INT'L L.* 89 (1979); V. SEBEK, 1 *THE EASTERN EUROPEAN STATES AND THE DEVELOPMENT OF THE LAW OF THE SEA* 339 (1977); Catfish, *Les Zones Maritimes Sous Jurisdiction Nationale, Leurs Limites et Leurs Délimitation*, 84 *R.G.DR.INT.P.* 74 (1980); B. CONFORTI, *LEZIONI DI DIRITTO INTERNAZIONALE* 189 (2d ed. 1982).

44. In this study, however, the problem concerning the legal status of the territorial sea, the rights the coastal state is entitled to exercise therein, and the rights of third states in the territorial waters of the coastal state will not be examined. On these problems, see N. PAPADAKIS, *INTERNATIONAL LAW OF THE SEA: A BIBLIOGRAPHY* (1980).

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."⁴⁵ Thus, it is useful to recall that the method chosen to fix the baseline is fundamental in determining the legal status of the breadth of not only the territorial sea,⁴⁶ but also of the contiguous zone,⁴⁷ the exclusive economic zone⁴⁸ and even perhaps the continental shelf.⁴⁹

The Mediterranean area is one which is geographically singular. It has become a meeting point between not only North and South, but also East and West. Further, it has always been a zone of instability and frequent international crises. One only has to think of the situation in Lebanon where there is permanent conflict between the Arabs and the Israelis, and in Cyprus where there are poor relations between Greece and Turkey. The Mediterranean is bordered by states belonging to different international economic and military organizations such as the European Communities, N.A.T.O., the Arab League and the Organization for African Unity, as well as by countries like Yugoslavia, which are traditionally Non-Aligned Countries.

Maritime traffic, encouraged by numerous well-equipped ports, is flourishing and is an important voice in the economy of many states in the Mediterranean, as is fishing. All this has contributed to making even military control over this Sea decisive, which in turn helps to explain the presence of both the United States and the Soviet Navies.⁵⁰

In light of these considerations it is clear that each maritime claim made by a coastal state bordering on the Mediterranean assumes a particular importance. It is equally evident that given

45. Fisheries Case, *supra* note 5, at 132.

46. 1958 Convention on the Territorial Sea, *supra* note 8, art. 6; 1982 Convention, *supra* note 8, art. 4.

47. 1958 Convention on the Territorial Sea, *supra* note 8, art. 24(2); 1982 Convention, *supra* note 8, art. 33(2).

48. 1982 Convention, *supra* note 8, art. 57.

49. *Id.* art. 76(1) & (5). Cf. Alexander, *Baseline Delimitations and Maritime Boundaries*, 23 VA. J. INT'L L. 503 (1982-83).

50. See C. GASTEYGER, *Conflict and Tension in the Mediterranean*, in INSTITUTE OF STRATEGIC STUDIES, ADELPHI PAPER No. 51 (1968); B. BADURINA, *Military Force in the Mediterranean*, in THE TIDES OF CHANGE: PEACE, POLLUTION AND POTENTIAL OF THE OCEANS 197 (E.M. Borgese & D. Krieger eds. 1975); Gasteyger, *The Superpowers in the Mediterranean*, 6 ANNALES D'ETUDES INTERNATIONALES 41 (1975); J.W. LEWIS, *THE STRATEGIC BALANCE IN THE MEDITERRANEAN* (1976); B.M. BLECHMAN & S. KAPLAN, *THE POLITICAL USE OF MILITARY POWER IN THE MEDITERRANEAN BY THE UNITED STATES AND THE SOVIET UNION* (1977); Benchikh, *La Mer Méditerranée, Mer Semi-Fermée*, 84 R.G.DR.INT.P. 284 (1980).

these particular circumstances, the system for fixing the baseline takes on a role of prime importance.

II. THE METHODS FOR THE DELIMITATION OF
TERRITORIAL WATERS ADOPTED BY THE STATES
FACING THE MEDITERRANEAN AREA

A. THE LOW-WATER LINE

Both the 1958 Geneva Convention and the 1982 United Nations Convention state that "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."⁵¹ Although the wording of this rule seems quite clear, it creates some problems. One of these problems concerns an exact definition of the "low-water line." At the time of the 1958 Convention, the International Law Commission was on record as having stated that, "[t]he traditional expression 'low-water mark' may have different meanings; there is no uniform standard by which States, in practice, determine this line."⁵² Thus, during the 1958 Geneva Conference some suggestions were made to clarify the definition of "low-water line."⁵³ These suggestions, however, were overlooked to avoid an over-rigid definition. It was, however, stated that in view of differing state practice in the determination of the low-water line, "il existe donc *des* lignes de basse mer et non *une* laisse de basse mer,"⁵⁴ since "la définition de la laisse de basse mer ne se trouve pas en droit international, mais seulement dans les législations nationales."⁵⁵

Uncertainty over the exact definition of the "low-water line" does not usually lead to appreciable differences in the extension of territorial waters. Such uncertainty, however, might cause confusion over the fixing of the baseline where two states have coasts

51. 1958 Convention on the Territorial Sea, *supra* note 8, art. 3; 1982 Convention, *supra* note 8, art. 5.

52. Report of the International Law Commission to the General Assembly, 11 U.N. GAOR Supp. (No. 9) at 13, U.N. Doc. A/3159 (1956).

53. The French delegation, for example, proposed to supplement that expression with the words, "or isobath zero with reference to the datum sounding line." I UNCLLOS III OFFICIAL RECORDS (1975), *supra* note 25, at 212.

54. Voelckel, *supra* note 20, at 823.

55. Rodriguez, *supra* note 29, at 38. The necessity for a more precise definition of the low-water line criterion has been emphasized by others, as well, see A.L. SHALOWITZ, 1 SHORE AND SEA BOUNDARIES 212-13 (1962); M.I. GLASSNER & M. UNGER, *supra* note 39, at 305.

opposite each other. In these circumstances, it might be difficult to determine the boundary of the median line, where every point is equidistant from the nearest point of the baseline from which the territorial waters of the opposite state are measured.⁵⁶ Were such a situation to exist, delimitation of the territorial sea between the states concerned would have to be arranged by agreement.

Of all the states facing the Mediterranean, four have officially fixed their baselines according to the low-water line rule. Some of these states had little choice. The coasts of Monaco⁵⁷ and Israel⁵⁸ are not deeply indented and cut into, nor is there a fringe of islands along the coast in its immediate vicinity. In this respect the case of Israel is also a good example. "The Mediterranean coast of Israel is quite regular, having only one indentation, Haifa Bay, formed largely by the promontory of Mount Carmel jutting into the sea."⁵⁹

The prerequisites for using the straight baseline method do, however, probably exist for other states, such as Greece⁶⁰ and Cyprus.⁶¹ The coastlines of these states are deeply indented and cut into. Also, there is a fringe of islands in the immediate vicinity of Greece. The decision taken by these states, however, to fix the baseline along the low-water line is still in perfect conformity with Article 3 of the 1958 Geneva Convention and with Article 5 of the 1982 Convention. Use of the straight baseline method is, in fact, simply a possibility and cannot be considered as compulsory.⁶²

56. 1958 Convention on the Territorial Sea, *supra* note 8, art. 12; 1982 Convention, *supra* note 8, art. 15. See *infra* text accompanying notes 157-78.

57. Ordonnance Souveraine No. 5.094, *supra* note 33.

58. Territorial Waters Law, *supra* note 39, art. 2.

59. M.I. GLASSNER & M. UNGER, *supra* note 39, at 304. Article 2 of the Israeli Territorial Law states that:

Wherever it is said in any law that a part of the open sea adjoining the coast of the State is included in the territory of the State or that any law or a power under any law applies to such part, and the extent of that part is not fixed at less than six nautical miles from low water mark or from some other point on the coast, such extent shall be six nautical miles as aforesaid.

UNITED NATIONS LEGISLATIVE SERIES (1974), *supra* note 31.

60. Law No. 230 of September 17, 1936, *supra* note 38, art. 1. Failing specific rules, it can be affirmed that the principle of the low-water line should also be applied to the numerous islands under Greek sovereignty. On Greek legislation concerning the law of the sea, see Tenekidès, *supra* note 2, at 696; Ivraakis, *Observations on the Legal Protection of the Mineral and Biological Resources of the Sea Beyond the Territorial Waters of Greece*, 12 REVUE HELLÉNIQUE DE DROIT INTERNATIONAL [R.HELL.DR.INT.] 227 (1959); Papacostas, *La Mer Territoriale et la Zone Contiguë*, 14 R.HELL.DR.INT. 166 (1961).

61. Territorial Sea Law, *supra* note 27, art. 3.

62. In fact, Article 4(1) of the 1958 Geneva Convention as well as Article 7 of the 1982 Convention provide that, "[t]he method of straight baselines . . . may be employed (emphasis

Although Lebanon has no specific legislation regarding the limits of her territorial sea,⁶³ some related laws have been created for special purposes, such as fishing or customs.⁶⁴ The baseline for these limits is always the coast or the line of low tide. The Lebanese coast is in general quite regular, which partly explains the choice of the low tide line.

Apart from the states mentioned above, there are others which have adopted the low-water line system officially. These states are Malta, Morocco, Algeria, Libya and Gibraltar. The Moroccan law of 1973, however, which extended the breadth of the territorial waters to twelve nautical miles,⁶⁵ also reserved the actual fixing of the baseline to a later date. To date, no Decree establishing a baseline has been enacted.⁶⁶ Since, then, it is impossible to determine the straight baselines, it is the low-water line which should be considered the baseline of the territorial sea of Morocco.

The reason for Morocco's failure to enact baseline legislation is perhaps due to the particular geographical position of Morocco and to the problem of the "Spanish presidios" (Ceuta and Melilla) and the Spanish islets near the Moroccan coast.⁶⁷ Faced with these

added)." 1958 Convention on the Territorial Sea, *supra* note 8, art. 4(1); 1982 Convention, *supra* note 8, art. 7. For similar views see S. LACLETA MUÑOZ, *Aguas Interiores y Bahías*, in 1 LA ACTUAL REVISION DEL DERECHO DEL MER: UNA PERSPECTIVA ESPAÑOLA 214 (1974); Adam, *Un Nuovo Provvedimento in Materia di Linee di Base del Mare Territoriale Italiano*, 61 RIV.DIR.INT. 471-72 (1978).

63. See *supra* note 42.

64. The Fisheries Order of November 14, 1921, No. 1104, issued by France (Lebanon was still under French mandate) limited the territorial sea of Lebanon to a breadth of 6 miles for fishing purposes. UNITED NATIONS LEGISLATIVE SERIES (1974), *supra* note 31, at 524. The Penal Code, enacted by Legislative Decree No. 340/NI of March 1943, extended the territorial sea, for jurisdictional purposes, to a distance of 20 kilometers. *Id.* at 344. The Customs Code, enacted by Law No. 422 of June 30, 1954, permits customs officers to visit all ships which sail within 20 kilometers of the coast of Lebanon. *Id.* at 177.

65. Law No. 1-73-211, *supra* note 34, art. 1. This law also established a 70 mile exclusive fishing zone. In this zone, "[l]'exercice des droits de pêche est maritimes réservé . . . aux bateaux battant pavillon marocain ou exploités par des personnes physiques ou morales marocaines." *Id.* art. 5. For a discussion of the importance for Morocco of the 1973 fishing law, see Statement of Mr. Azzou, in LE DROIT MARITIME MAROCAIN, TRAVEAU DES JOURNÉES INTERNATIONALES DU DROIT MARITIME MAROCAIN 171 (1981).

66. See Bardonnnet & Carroz, *Les Etats de l'Afrique de l'Ouest et le Droit International des Pêches Maritimes*, XIX AN.FR.DR.INT. 844 (1973). The Moroccan coastline is, however, regular and there are no inlets of considerable dimensions.

67. The question of the Spanish "Presidios" within the Law of the Sea was also raised by Morocco during UNCLOS III giving rise to protests by Spain. Cf. IV THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA OFFICIAL RECORDS 75 (1975) [hereinafter cited as IV UNCLOS III OFFICIAL RECORDS (1975)].

difficulties it is highly possible Morocco avoided adopting a unilateral law and that she preferred to negotiate a solution. In such a situation the only possible baseline third states can use to measure the Moroccan territorial waters is that of the low-water line.

Malta presents a similar problem. Article 3(1) of the Maltese Territorial Waters and Contiguous Zone Act states that except "as hereinafter provided, the territorial waters of Malta shall be all parts of the open sea within 12 nautical miles of the coast of Malta; measured from the low-water mark and the method of straight baselines joining appropriate points."⁶⁸ This Maltese document is couched in rather obscure terms. It is possible, however, to state that in the absence of more precise indications to concretely establish straight baselines, the baseline of the territorial waters of Malta is given by the low-water mark.

Algeria's legislation is a unique case which deserves to be examined separately. Decree No. 63/403 of October 12, 1963 fixes the breadth of Algeria's territorial waters but does not mention the nature of the baseline from which this distance is to be measured.⁶⁹ For reasons already mentioned,⁷⁰ however, it seems reasonable to say that the low-water line along the coast of Algeria is to be considered the baseline from which Algeria's territorial sea is to be measured.

The problem posed by the territorial waters of Libya is identical to that posited above related to Algeria. Act No. 2 of February 18, 1959 concerning the delimitation of the Libyan territorial sea⁷¹ gives no indication as to the baseline. As in the case of Algeria, then, it must be supposed that the low-water line is the baseline of the Libyan territorial waters.⁷²

68. Territorial Waters and Contiguous Zone Act, as amended, UNITED NATIONS LEGISLATIVE SERIES (1980), *supra* note 32.

69. Decree No. 63-403 of October 12, 1963, *supra* note 26. For a comment on the particular rules concerning Algerian territorial waters, see Bendeddouche, *Note sur la Réglementation Algérienne du Passage et du Séjour des Navires de Guerre Étrangers dans les Eaux Territoriales et Intérieures de l'Algérie*, XI R.ALGÈRES.JR.POL.EC. 461 (1974).

70. See *supra* text accompanying notes 1-50.

71. Act No. 2 of February 18, 1959, UNITED NATIONS LEGISLATIVE SERIES (1974), *supra* note 31, at 14.

72. It might be helpful to remember, on this point, that before the Act of February 18, 1959, the territorial sea of Libya stretched for six miles from the coast. See Note of November 29, 1955 from the Ministry for Foreign Affairs of the Kingdom of Libya, reprinted in UNITED NATIONS LEGISLATIVE SERIES (1974), *supra* note 31, at 32. As far as the problem of the closing line of the Gulf of Sirte is concerned, see *infra* text accompanying notes 113-56.

Finally, Gibraltar's territorial waters present a similar, but more complex, problem. In the Treaty of Utrecht of July 1713,⁷³ Article 10 sets no limits to British jurisdiction over the adjacent waters in the bay or in the strait. The question of British territorial waters around Gibraltar has been the origin of persistent tension between the two states since 1713. Their positions are still highly discordant, but in general a territorial sea belonging to Gibraltar itself is recognized⁷⁴ by Britain as well as others.⁷⁵ As there is no special legislation on the question, the baseline for the territorial waters of Gibraltar is given as the low-water line.⁷⁶

III. COMBINATIONS OF THE LOW-WATER LINE AND STRAIGHT BASELINES SYSTEMS

The requisites for the use of straight lines baselines have been discussed at length above.⁷⁷ It must, however, be noted that it is unusual for a coastline to be deeply indented and cut into for the entirety of its length, or for there to be a fringe of islands along

73. The Treaty of Utrecht, art. 10, *reprinted in* THE SPANISH RED BOOK ON GIBRALTER 155 (1965).

74. On this subject, the Spanish Royal Order of September 27, 1876 was considered very important. It gave precise instructions to the commanders of the coastguard cutters not to pursue smugglers within three miles east and south of the Rock. Although these instructions were in no way intended as Spain's recognition of British jurisdiction over the waters in question, "[t]he 1876 Royal Order was interpreted by the Gibraltarians as a *de facto* recognition of some type of British jurisdiction or control over the adjacent marine areas in the Strait of Gibraltar and Algericas Bay." S.C. TRUVER, THE STRAIT OF GIBRALTER AND THE MEDITERRANEAN 173 (1980). See S. CONN, GIBRALTER IN BRITISH DIPLOMACY IN THE EIGHTEENTH CENTURY (1942); E. BRADFORD, MEDITERRANEAN: PORTRAIT OF A SEA (1971).

75. In this regard it is useful to remember the answer given, on November 14, 1967, by the British Foreign Secretary who was asked, "[w]hat steps are being taken to prevent the violation of British territorial waters off Gibraltar by Spanish Warships." E. LAUTERPACHT, BRITISH PRACTICE IN INTERNATIONAL LAW 95 (1967). The Foreign Secretary replied, "[u]nder international law Spanish and other warships enjoy the right of innocent passage through Gibraltar's territorial sea." *Id.* Previous to that comment, in May 1962, the Governor of Gibraltar remarked that, "[i]f the Spaniards seek to extend their [anti-smuggling] vigilance to the whole of Algericas Bay, by entering British jurisdictional waters . . . the British would defend themselves by every means in their power." THE SPANISH RED BOOK ON GIBRALTER, *supra* note 73, at 80. It is, however, worth remembering that the Spanish Law of January 4, 1977, *supra* note 35, contains a final provision according to which Spanish law, "is not to be intended as a recognition of any rights or situations in connection with the waters of Gibraltar other than those referred to in art. 10 of the Treaty of Utrecht of 13 July 1713 between the Crowns of Spain and Great Britain." *Id.*

76. The Territorial Waters Order of 1964, which determines the straight baselines of the territorial sea of the United Kingdom, makes no reference to the territorial waters of Gibraltar. E. LAUTERPACHT, *supra* note 75, at 49.

77. See *supra* text accompanying notes 10-21.

the whole coast. Thus, it is unlikely for straight line baselines to be appropriate in most cases. Under these circumstances, many coastal states have determined baselines in turn by using the low-water line in conjunction with the straight baseline system, according to the particular coastal situation.⁷⁸

The straight baselines system is rather difficult to apply due to the vague wording of the rules derived from the conclusions of the International Court of Justice in the 1951 *Fisheries Case*.⁷⁹ State practice demonstrates that many of the Court's expressions in that case have been used in the 1958 Geneva Convention interpreted in many different ways. Some of those phrases most frequently misinterpreted are that "the drawing of such baselines must not depart to any appreciable extent from the general direction of the coast," "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," as well as "account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage."⁸⁰

Albania and Spain are the two Mediterranean states which have used the straight lines baselines system most widely. Albanian Decree No. 4650 of March 9, 1979, as amended in 1976,⁸¹ established a system of straight baselines departing from Cape Rodoni and extending as far as the Greek boundary (through the Straits of Corfu). A short section, from the estuary of the River Bua (Yugoslav border) to Cape Rodoni seems to have the low-water line as the baseline for determining the territorial sea. The 1976 Decree, however, does not stipulate any particular baseline along

78. 1982 Convention, *supra* note 8, art. 14.

79. *Fisheries Case*, *supra* note 5.

80. 1958 Convention on the Territorial Sea, *supra* note 8, art. 4(2) & (4); 1982 Convention, *supra* note 8, art. 7(3) & (5). See Gihl, *The Baseline of the Territorial Sea*, 11 SCANDINAVIAN STUDIES IN LAW 119 (1967); Voelckel, *supra* note 20, at 820; L.M. ALEXANDER, *Towards an Objective Analysis of Special Circumstances, Bays, Rivers, Coastal and Oceanic Archipelagos and Atolls*, in THE LAW OF THE SEA INSTITUTE, OCCASIONAL PAPER NO. 13; P. BEAZLEY, MARINE LIMITS AND BASELINES: A GUIDE TO THEIR DELIMITATION (1977). To avoid similar problems, during the 1958 Geneva Conference, various proposals were made in order to regulate straight baselines more closely. For example, according to a proposal presented by the United Kingdom, the length of straight baselines should not exceed ten miles. I UNCLOS III OFFICIAL RECORDS (1975), *supra* note 25, at 228. According to another proposal made by Italy, "no point of the straight baselines should be more than five miles from the coast." *Id.* at 252.

81. Albanian Decree No. 4650 of March 9, 1970, *supra* note 25.

this stretch of coast. Rather, in order to determine the exact baseline, recourse must be had to the 1970 Decree.⁸² The seven straight baselines pass from headland to headland, with the exception of a point on Sazani Island. The lines close two bays in conformity with the 1958 Geneva Convention, but close five others in ways which do not conform to the 1958 Geneva Convention.⁸³ Nevertheless, these straight baselines meet the prerequisites discussed above. It therefore seems possible to state that "this drawing of straight baselines is in conformity with the existing law of the Sea."⁸⁴

Spain has drawn straight baselines along almost all of her Mediterranean coastline. Article 2 of Act No. 10/1977 of January 4, 1977⁸⁵ states that "[t]he inner limit of the territorial sea shall be determined by the low-water line and by such straight baselines as may be established by the Government." A transitional provision in the above-mentioned Act states that "[t]he straight baselines established by the Decree in implementation of Act No. 20/1967 of April 8 shall constitute the inner limit of the territorial sea in accordance with Article 2 of this Act, until such time as the Government exercises the powers conferred on it by that Article."

The Spanish Government has not yet enacted any such Decree. Therefore, the straight line baselines for the delimitation of the Spanish territorial sea remain those fixed for the implementation of Act No. 20/1967 of April 8, 1967. These baselines were determined by Royal Decree No. 2510/1977 of August 5, 1977.⁸⁶ Thirty-nine straight baselines have been drawn along the Mediterranean coast, beginning at the frontier with Gibraltar and reaching to the border of France. The baseline coincides with the low-water line in only two stretches, one from Cabo de Salou to Barcelona (the light) and the other from Arenys de Mar (breakwater end) to Cabo Bagur.

82. In reality, a straight baseline from the estuary of the Buna River and the Cape of Rodoni was foreseen, but only in order to determine the internal waters.

83. Cf. R.B. PRESCOTT, *THE POLITICAL GEOGRAPHY OF THE OCEANS* 92 (1975).

84. Ibler, *supra* note 25, at 178.

85. Act No. 10/1977 *supra* note 35. On the development of Spanish legislation concerning the territorial waters, see Ortega, *Dercho de Pesca y Mar Territorial Español*, XVI REVISTA ESPAÑOLA DE DERECHO INTERNACIONAL [R.ESP.DER.INT.] 61 (1963); de Azcarraga, *España Extiende a Doce Millas su Mar Territorial*, XXII R.ESP.DER.INT. 332 (1969); Caro, *Delimitación de las Agua Jurisdiccionales Españolas*, XXII R.ESP.DER.INT. 742 (1969); IDEM, *Mar Territorial: Naturaleza, Anchura e Delimitación*, in *LA ACTUAL REVISION DEL DERECHO DEL MAR*, *supra* note 62, at 235; J.D. GONZALES CAMPOS, L.I. SANCHEZ RODRIGUEZ & A.S. DE SANTA MARIA, 1 CURSO DE DERECHO INTERNACIONAL PUBLICO 458 (1983).

86. See 1 NEW DIRECTIONS IN THE LAW OF THE SEA, *supra* note 25, at 64.

The straight lines connect points on headlands as well as points on islands (such as the *Islas Hormigas*, *Isla de Tabarca* and *Isla de Portichol*) which lie along the coast and in its immediate vicinity. Although some bays were closed in contrast with the requirements established in Article 7 of the 1958 Geneva Convention (Article 10 of the 1982 Convention), it is to be presumed that their closing was not based on the above-mentioned Articles. Rather, their closing was a result of the adoption of the straight baselines system.⁸⁷

Straight baselines were adopted to determine the baselines of the Balearic Islands, some of which are completely surrounded by straight baselines (*Minorca*, *Ibiza* and *Formentera*). For the island of *Mallorca*, however, the low-water line is still the baseline between *Cabo Formenton* and *Cabo Llebeitx*, where the coastline of the islands is quite regular. There are no special provisions either in Act No. 10/1977, or in Royal Decree No. 2510/1977 concerning the territorial seas of the Spanish "enclaves" in Morocco (*Ceuta* and *Melilla*), or the Spanish islands off the coast of Morocco. However, since Article 2 of Act 10/1977 states that the inner limit of the Spanish territorial sea shall be determined by the low-water line and, where necessary, by straight baselines, it seems feasible to suggest that the above-mentioned islands and "enclaves" have the low-water line as the baseline for measuring their territorial waters.

For other states, the combined system of low-water line and straight baselines has been much more clearly expressed in their legislation. Egypt is a case in point. The Mediterranean coast of Egypt is relatively featureless and without islands. Nevertheless Article 5 of Royal Decree No. 180 of January 15, 1951 specifically states the criteria by which the baselines of Egyptian territorial waters are to be determined.⁸⁸ This rule raises some problems of compatibility with the relevant international provisions because it is not stipulated that the straight baselines must not depart to any appreciable extent from the general direction of the coast. A glance at the map, however, shows that in the Mediterranean at least this problem does not arise. Major problems do arise from Article 1(c), which states that "[t]he term 'island' includes any islet, reef, rock,

87. See *infra* text accompanying notes 113-56.

88. Royal Decree of January 15, 1951 *supra* note 28. Article 6 of the Royal Decree states that "the following are established as the baselines from which the coastal sea of the Kingdom of Egypt is measured: (a) where the shore of the mainland or an island Royal Decree of January 15, 1951, *supra* note 28, art. 6.

bar or permanent artificial structure not submerged at lowest low tide."

This definition of "island" given by the Decree departs from the generally accepted rule that an island is a *naturally-formed* area of land, surrounded by water which is permanently above the high-water mark.⁸⁹ The differences are unequivocal and fundamental to the drawing of straight baselines,⁹⁰ but it seems pointless to examine the question any further since these rules have no bearing on the Mediterranean coast of Egypt.⁹¹

As previously mentioned, Law No. 37/1981 extended the Syrian territorial waters to 35 nautical miles. One of the provisions of this Law states that in case of conflict with other rules, Law No. 37/1981 shall prevail. In the absence of other indications, it is to be considered that those baselines described in the previous legislative Decree, No. 505 of December 28, 1963, are retained. This Decree concerning the territorial sea of the Syrian Republic⁹² is nearly identical in concept to that of Egypt. An important difference is to be seen, however, in the definition of "island." In the Syrian Decree it is very close to that of Article 10 of the 1958 Geneva Convention.⁹³

The Syrian coasts are rather different from those of Egypt, inasmuch as there are some islands and shoals near to it⁹⁴ which enable straight baselines to be drawn.⁹⁵ Although, according to

89. 1958 Convention on the Territorial Sea, *supra* note 8, art. 10.

90. According to the Royal Decree of Egypt, it would be possible, for example, for an artificial island to have its own territorial sea. On this question, see generally Charles, *Les Iles Artificielles*, 71 R.G.DR.INT.P. 343 (1967); A.H.A. SOONS, *Artificial Islands and Installations in International Law*, in LAW OF THE SEA INSTITUTE, OCCASIONAL PAPER NO. 22 (1974).

91. Cf. LIMITS IN THE SEAS, *supra* note 22, No. 22.

92. See Syrian Law No. 37 (1981), *supra* note 24. As previously noted, the Government of Syria decided, on September 9, 1981, to extend the breadth of its territorial sea up to 35 miles. Syrian Law No. 37, *supra* note 24. However, it does not appear that new baselines have been fixed.

93. There remains, however, a substantial difference: the Syrian definition appears to also include artificial islands which are excluded by the 1958 Geneva Convention. 1958 Convention on the Territorial Sea, *supra* note 8.

94. Syrian law permits the enclosure of "shoals" within the internal waters of the state. Syrian Law No. 37, *supra* note 24. Syrian Law No. 37 defines "shoals" as "every region within the territorial sea, covered by shallow water, part of which remains covered with water at the lowest level reached by the low tide." *Id.* According to Article 4(3) of the 1958 Geneva Convention, "[b]aselines 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." 1958 Convention on the Territorial Sea, *supra* note 8, art 4(3).

95. Article 6 of the Syrian Decree allows, in special circumstances, for the extension of the territorial sea. According to this article:

Article 4 of the Syrian Decree, the straight baselines are to be shown "on a large-scale map approved by the Syrian Arab Republic," it has not been possible to obtain a copy of such a chart. This makes it much more difficult to judge exactly how Syria has applied the straight baselines system. The conclusions of Geographer, U.S. State Department, are useful on this point. After a close examination of the Syrian coast it was observed that "the coastal features of Syria are limited in extent and in geographical distribution. The total effect of the system, as a result, would be relatively limited to the extension of the territorial sea."⁹⁶

The Turkish Act of May 20, 1982, concerning territorial waters,⁹⁷ is considerably different from the Syrian Legislative Decree. Article 3 declares that "[t]he breadth of territorial waters will be measured from baselines to be determined by the Council of Ministers." While Article 5 states that "[b]aselines which show outer limits of internal waters and the breadth of the territorial waters will be shown on large scale Naval maps prepared for this purpose." No copies of these Naval maps are currently available. However, by taking Decree No. 8/4742 adopted by the Turkish Council of Ministers on May 29, 1982⁹⁸ into consideration, it is useful to recall the situation present before the promulgation of the 1982 Law.

The Turkish coasts are, of course, deeply indented with only a few islands in the North. Most of the Aegean islands are under Greek sovereignty. The straight baselines, introduced by Law No. 476 of May 15, 1964, contain roughly 119 individual segments, which do not depart appreciably from the general direction of the coast. From the Greek boundary to Enez in the North and between Av Burun and the Syrian frontier, the baseline is defined as the low-water line.⁹⁹

In case the measurement of the territorial sea according to the provisions of this legislative decree leaves behind a region of high seas surrounded by the territorial sea from all sides and cannot be extended in any direction for a distance of 12 nautical miles: this region is considered as part of the territorial sea as well as any pocket that becomes prominent from the high seas and should be surrounded by a drawing of one straight line not exceeding 12 nautical miles in length.

Syrian Law No. 37, *supra* note 24, art. 6.

96. LIMITS IN THE SEAS, *supra* note 22, No. 36 (1981).

97. Law No. 2674 of May 20, 1982, *supra* note 40.

98. See Decree No. 8/4742 of May 29, 1982, *supra* note 40.

99. A scale copy of the Turkish chart is *reprinted in* LIMITS IN THE SEAS, *supra* note 22, No. 36 (1981).

The next Decree to be examined is the French Decree of October 19, 1967. That Decree concerns straight baselines and the closing of bays.¹⁰⁰ The wording of this Decree makes it extremely difficult to distinguish straight baselines from lines closing bays so that it is necessary to examine the Decree in its entirety. The baseline of the continental Mediterranean coast will be considered first. This baseline joins points on dry land, but also extends to islands (e.g. Riou, Planier, Grand-Rouveau and Embiex). The straight baselines do not depart appreciably from the direction of the coast except for the section between the Toulon roadstead and Cavalaire Bay, where there are some islands present. The low-water line is the baseline for the most regular stretches of the coastline, for example, between the Spanish border and the bay of Aigues-Mortes. The straight baselines system is widely used for the waters around Corsica on the west coast, but all along the east coast of this island the baseline is given by the low-water line.

Tunisia too, has used a combination of the low-water line and the straight baselines systems. Article 1(2) & (3) of Law No. 73-49, of August 2, 1973¹⁰¹ provide that:

2. Les lignes de base sont constituées par la laisse de basse mer ainsi que par les lignes de base droites tirées vers les hauts fonds de Chebba et des îles Kerkennah où sont installées des pêcheries fixes, et par les lignes de fermeture des Golfes de Tunis et de Gabès.

3. Ces lignes de base seront précisées par décret.

This above Decree was enacted on November 3, 1973.¹⁰² The low-water line is the baseline of the Tunisian territorial waters from the Algerian border as far as Cap Sidi Ali El Mekki, from Cap-Bon to Ras Kapudia, from Ras Turgueness to Sidi Garus and from Ras Marmor to the Libyan border. The low-water line is also the baseline for most of the islands (Fratelli, Cani, Pilau and Kuriates). Straight baselines delimiting the permanent fisheries of Chebba and the

100. The Decree of October 19, 1967 is reprinted in 71 R.G.DR.INT.P. 1165 (1967). Reference to these baselines can be found in Article 1 of Law No. 71-1060 of December 24, 1971, according to which, "the low-water line, the straight baselines and the closing lines of bays, which are determined by Decree," constitute the baseline of French territorial waters. Law No. 71-1060, *supra* note 29, art. 1.

101. See Law No. 73-49 of August 1973 *supra* note 36.

102. Decree No. 73-257 of November 3, 1973, JOURNAL OFFICIEL DE LA REPUBLIQUE TUNISIENNE 1697-98 (1973).

Kerkennah islands go from Ras Kapudia to Samoun. Another segment unites Sidi Garous with Ras Marmor.

The Decree of November 3, 1973 provides for baselines closing the Bays of Tunis and Gabes, a point which will be dealt with below.¹⁰³ Here too, straight baselines unite points on dry land with points on the islands. The straight baselines which enclose the fisheries of Chebba and the Kerkennah islands do not follow the general direction of the coast. It is interesting to note that Tunisia regards these waters as historic waters.¹⁰⁴

Italian legislation also presents several problems, both domestic¹⁰⁵ (which will not be addressed here) and international. Until 1977 the low-water line was the official baseline for Italian territorial waters.¹⁰⁶ In 1977, however, a Presidential Decree fixed new baselines.¹⁰⁷ Straight baselines were drawn along the Tyrrhenian coast of the peninsula in such a manner as to enclose the Tuscan Archipelago as well as that of Ponza. The low-water line prevails along the Adriatic coast although straight baselines are drawn in the vicinity of the Gargano Promontory and in the north around Venice and Trieste. The two largest islands, Sardinia and Sicily, have straight baselines drawn around them to include the smaller islands which are situated along their coasts.

Doubts have been expressed as to the legality of Italy's enclosing the Tuscan Archipelago.¹⁰⁸ Moreover, even stronger doubts have been expressed regarding "the closure effected by the line, drawn pursuant to the order, across certain gulfs and bays where the distance in many cases exceeds the limit of 24 miles."¹⁰⁹ As far as

103. See *infra* text accompanying notes 113-56.

104. See Case Concerning the Continental Shelf (Tunisia v. Libyan Arab Jamahiriya) 1982 I.C.J. 72 (Judgment of Feb. 24). Libya has always considered that those lines are not contestable by Libya. *Id.* at 75. See also Y.Z. BLUM, HISTORIC TITLES IN INTERNATIONAL LAW 241 (1965); A. SHUKAIRY, TERRITORIAL SEAS AND HISTORICAL WATERS IN INTERNATIONAL LAW (1967); Goldie, *Historic Bays in International Law: An Impressionistic Overview*, 11 SYR. J. INT'L L. & COM. 211 (1984).

105. Doubts have been expressed over whether the scope of such a statute is compatible with the Italian legal system. See Fusillo, *Legislation*, 3 ITALIAN Y.B. INT'L L. 572 (1977); Adam, *supra* note 62, at 486; B. CONFORTI, *supra* note 43, at 193.

106. See Article 2 of the preliminary rules of the Italian Maritime Code of 1942, *reprinted* in 57 RIV.DIR.INT. 859 (1974).

107. Decree No. 816 of April 26, 1977, *reprinted* in 3 ITALIAN Y.B. INT'L L. 570 (1977).
108. Adam, *supra* note 62, at 486. Cf. Fusillo, *supra* note 105, at 572; B. CONFORTI, *supra* note 43, at 193.

109. Fusillo, *supra* note 105, at 574.

the conformity of the straight baselines around the Tuscan Archipelago is concerned, it must be observed that were the baseline to be fixed according to the low-water line, even according to Article 5(2) of the 1958 Geneva Convention the regime of the waters around this archipelago would be very similar to that pursuant to the adoption of the 1977 Decree. However, the manner of fixing the baseline around these islands (which has not provoked official protests from other states) could be of particular significance in the near future. As has previously been mentioned, the baseline is not only the line from which the breadth of a state's territorial waters is measured. It also delimits those areas of sea such as the exclusive economic zone and the continental shelf which are of great economic importance.

Finally, there are the laws of Yugoslavia. Straight baselines were proclaimed by Yugoslavia on April 23, 1965,¹¹⁰ between Cape Kastanjia in the north and Cape Zarubaca in the south. The total length of these baselines, which consist of twenty-six segments, is 244.7 miles. Since there is a large number of islands nearby along the coast, the straight baselines connect many of these islands as well as several of tidal elevation. Each has a lighthouse as prescribed by Article 4(3) of the 1958 Geneva Convention.¹¹¹ The low-water line is still the baseline between the Italian border and Kastanija and from Cape Zarubaca to the Albanian boundaries, as well as for the two main Yugoslav islands, O Dugi Otok and Mljet.

This system of straight baselines was amended by a law adopted on March 27, 1979.¹¹² The innovation of interests for this paper was the introduction of a new straight line, added to the others, which joins Platamon to Mendra in the south of Yugoslavia.

IV. THE BASELINE OF THE TERRITORIAL SEA WITHIN A BAY

The drawing of baselines in bays has always been a moot point.¹¹³ The main problems are the location and the maximum extent of the closing line, and the rights of the littoral state on the landward side of this imaginary line. The particular character of

110. See Law of May 22, 1962, *supra* note 37, art. 11.

111. See R.V. PRESCOTT, *supra* note 83, at 87.

112. See Law of March 27, 1979, *supra* note 37.

113. See, generally L.J. BOUCHEZ, *THE REGIME OF BAYS IN INTERNATIONAL LAW* (1963); M.P. STROHL, *THE INTERNATIONAL LAW OF BAYS* (1963).

the questions involved regarding bays leads us to consider them separately further on.

For obvious reasons, state practice before 1958 will not be discussed.¹¹⁴ Rather, Article 7 of the 1958 Geneva Convention is the important point of departure. It is not by chance that Article 10 of the 1982 Convention reproduces, word for word, the text of Article 7 of the 1958 Geneva Convention. This Article gives a definition of "bay."¹¹⁵ It also establishes the criteria for the closing-lines of bays¹¹⁶ and points out that of the provisions therein, neither apply to so-called 'historic bays,' [n]or in any case where the system of straight baseline[s] . . . is applied." This rule gives rise to delicate problems. Apart from what is meant by "historic" bays,¹¹⁷ the most complex concern seems to be that of finding a relationship between the straight baselines system (for which no limit in length is laid down) and the closing line of bays (which must not exceed twenty-four nautical miles in length).¹¹⁸ It has been rightly observed that Article 7 of the Geneva Convention is a special rule, with a special relationship to Article 4.¹¹⁹ For this reason, where all the requisites

114. See Yates, *International Law and the Delimitation of Bays*, 49 N.C.L. REV. 943 (special ed. 1971).

115. Article 7(2) of the 1958 Convention on the Territorial Sea defines a bay as "a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast." 1958 Convention on the Territorial Sea, *supra* note 8, art. 7(2).

116. Articles 7(3), (4) & (5) set forth the criteria for the closing lines of bays as follows:

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of Islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four 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.

Id. art. 7(3), (4) & (5).

117. This paper will not examine the problem of "historic bays" deeply. On this argument see the other articles in this Symposium, 11 SYR. J. INT'L L. & COM. (1984).

118. Cf. Voelckel, *supra* note 20, at 827-28; Adam, *supra* note 62, at 474.

119. Cf. Ronzitti, *Sommeregibili non Identificati, Pretese Baie Storiche e Contromisure Dello Stato Costiero*, LXVI RIV. DIR. INT. 36 (1983). This interpretation, as the author points out, is based on the preparatory works of the 1958 Geneva Convention.

laid down in Articles 4 and 7 exist, the coastal state may draw a closing line as well as a straight baseline.

Naturally, the consequences of each choice differs when the baseline has been drawn following Article 4 as opposed to when it has been drawn following Article 7.¹²⁰ In the first instance, according to Article 5(2) of the 1958 Geneva Convention, a right of innocent passage will continue to exist in those waters, while in juridical and historic bays no such right exists for foreign ships.

An examination of state practice shows that coastal states do not always make this distinction clearly. It is rarely specified which of the two criteria have been used for the delimitation of national territorial waters. This makes interpretation particularly difficult and leads to uncertainty over the navigational regime in some sea areas, which might give rise to situations of international tension.

Considering the rules contained in the national legislation of states bordering on the Mediterranean, it is clear some rules present no problem. This is because the low-water line is often the baseline (e.g. Cyprus, Israel and Monaco), even in the presence of bays.¹²¹ Article 7 of the 1958 Geneva Convention leads to the conclusion that closing-lines for bays are merely a choice open to the states involved. Nevertheless, wherever these states have not proceeded to draw a closing-line, the baseline shall be given by the low-water line along the coast.

Other states whose baselines are the low-water line as well, have adopted special rules for the baselines in bays. Morocco is a case in point, as well as Algeria, Greece and Libya. The rules governing the baselines in Morocco and Algeria have already been examined.¹²² It must be noted for Morocco, however, that a Dahir of June 30, 1962¹²³ provides for bays to be closed by "une ligne droite, tirée en travers de la baie dans la partie la plus rapprochée de l'entrée, au premier point où l'ouverture n'excède pas 12 milles," although there is no precise definition of what constitutes a bay.

120. Cf. *id.* at 37.

121. Along the coast of Cyprus there are many bays, such as Khrysokou Bay, Morphou Bay, Famagusta Bay, Larnaca Bay, Akrotiri Bay, and Episkopi Bay which do not correspond to the definition given in Article 7 of the 1958 Geneva Convention. 1958 Convention on the Territorial Sea, *supra* note 8, art. 7. Many bays in Malta, however, do appear to correspond to Article 7 of the 1958 Geneva Convention: Mellieha Bay, St. Paul's Bay, Salina Bay, St. George's Bay, St. Julian's Bay. *Id.*

122. See *supra* text accompanying notes 65-72.

123. Decree No. 1-59-064 of 27 Moharrem 1382 (1962), reprinted in Rousseau, *Chronique des Fait Internationaux*, 67 R.G.DR.INT.P. 181-82 (1963). The Moroccan coastline is quite regular. Excluding the promontory of Melilla, only Athucemas Bay is not a juridical bay.

On July 9, 1888, while Algeria was still a French Colony, France enacted a Presidential Decree which caused the closing of many of the gulfs of Algeria.¹²⁴ The largest closing line is ten miles long,¹²⁵ while the others are shorter. Apart from considering whether or not this Decree is still in force, it should be noted that in general the bays mentioned in the Presidential Decree cannot be considered historic bays under Article 7 of the 1958 Geneva Convention. It must also be observed that the application of closing lines has been carried out with moderation. In some places, the closing line does not even join the natural entrance points of the bay, but rather points situated inside the bay.¹²⁶

Turning now to Greece, it should be noted that the Greek baseline must be considered separately. As previously mentioned, Law No. 230, of September 17, 1936 provides that the breadth of the Greek territorial sea is to be measured from the coast.¹²⁷ Law No. 4141 of March 26, 1913, which concerns passage and sojourn of merchant vessels along the Greek shores,¹²⁸ contains provisions which are different. This law provides for gulfs or bays, the entrance of which does not exceed twenty miles in width, to have a baseline which is "a straight line drawn across the seaward limit of the gulf or bay."¹²⁹ The upper limit of the closing line provided for by this law (which is only applicable in times of war),¹³⁰ is therefore less than that established by Article 7 of the 1958 Geneva Convention.¹³¹

It has also been mentioned that in Libya, Act No. 2 of February 18, 1959, concerning the delimitation of Libyan territorial waters, gives no indications as to the baseline.¹³² In fact, the Libyan coast is neither indented nor cut into, unless one considers the Gulf of

124. See UNITED NATIONS LEGISLATIVE SERIES, LAWS AND REGULATIONS ON THE REGIME OF THE TERRITORIAL SEA, U.N. Doc. No. ST/LEG/SER.B/6, at 16 (1957) [hereinafter cited as UNITED NATIONS LEGISLATIVE SERIES (1957)].

125. See, for example, the Bay of Sidi-Merouan, the Gulf of Bône, the Bay of Bougie, the Bay of Algérie.

126. See, for example, the closing line of the bay of Oran.

127. See Law No. 230 of September 17, 1936, *supra* note 38.

128. See Law No. 4141 of March 26, 1913, *supra* note 38.

129. Law No. 4141, *supra* note 38, art. 1(1).

130. Cf. L.J. BOUCHEZ, *supra* note 113, at 63.

131. However, given that a definition of bay was not given, and that Greece has not ratified the Convention, it is quite possible that the closing of some Greek bays is not in conformity with Article 7 of the 1958 Geneva Convention. 1958 Convention on the Territorial Sea, *supra* note 8, art. 7. In this case, moreover, the closing of similar bays could eventually be justified in light of Article 4 of the 1958 Geneva Convention. *Id.* art. 4.

132. See Act No. 2 of February 18, 1954, *supra* note 31.

Bunbah (near Tobruk), which is definitely not an historic bay. Nevertheless, in 1973 Libya declared the Gulf of Sirte to be "under its complete national sovereignty and jurisdiction in regard to legislative, judicial, administrative and other aspects related to ships and persons that may be present within its limits."¹³³

The next issue to be examined is how those states, which have adopted the system of straight baselines, have disciplined the closing of bays. Legislation on the part of Albania, France, Italy, Spain and Yugoslavia is emblematic. Albania has provided for a series of straight baselines which cover most of her coasts.¹³⁴ There are several bays and gulfs along it, like the Gulf of Vlones. These seem to be covered by the definition of a bay given in Article 7 of the 1958 Geneva Convention. The natural entrance of these gulfs is inside the baseline. Thus, the rules governing the waters of this gulf are eventually those provided for in Article 5(2) of the 1958 Geneva Convention concerning the right of innocent passage for third state vessels.¹³⁵

In France, the Decree of October 19, 1967 fixed the straight baselines as well as the closing-lines of bays.¹³⁶ There are several gulfs and bays along the French Mediterranean coast, but only a few of them seem to respond to the requisites laid down in Article 7 of the 1958 Geneva Convention. According to the above Decree, lines are drawn to close the Gulfs of Aigues Mortes, Saintes Maries, Fos, Saint Tropez, Fréjus and Juan, and the Bays of Sanary, Cavalaire, Pampelonne, Angès, Beaulieu and Roquebrune. This Decree, however, fails to define the rules according to which these bays and gulfs were closed.¹³⁷ Moreover, as the navigational regime in some of these gulfs is not well-defined, it seems that the right of innocent passage should be granted to all foreign ships where Article 5(2) of the 1958 Geneva Convention is applicable.

Most of the conclusions posited above also apply to Italy.

133. See UNITED NATIONS LEGISLATIVE SERIES, NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA, U.N. Doc. ST/LEG/SER.B/18, at 26 (1976) [hereinafter cited as UNITED NATIONS LEGISLATIVE SERIES (1976)].

134. See *supra* note 25 and text accompanying notes 82-85.

135. 1958 Convention on the Territorial Sea, *supra* note 8, art 5(2).

136. See Decree of October 19, 1967, *supra* note 100.

137. Article 1 of the Decree of October 13, 1967 states that "[l]es lignes de base droites et les lignes de fermeture des baies servant à la détermination des lignes de base à partir desquelles est mesurée la largeur des eaux territoriales sont tracées comme il est indiqué ci-après" Decree of October 13, 1967, *supra* note 100, art. 1.

Numerous bays and gulfs which cannot be defined as juridical were closed following the Presidential Decree of 1977.¹³⁸ As the French Decree before it, the Italian Decree does not specify according to which Article of the 1958 Geneva Convention the various segments of the baseline were drawn.¹³⁹ The Italian Decree defines the Gulf of Taranto as being "historic." The problems raised by this definition, however, will not be examined here.¹⁴⁰

Spanish Royal Decree No. 2510/1977, of August 5, 1977¹⁴¹ also does not make a distinction between lines closing bays and straight baselines. There are indeed many gulfs along the Spanish Mediterranean coasts, such as Almeria, Cartagena, Alicante and San Jorge which, though they do not conform to Article 7 of the 1958 Geneva Convention, have been closed by straight baselines.¹⁴²

As noted earlier, the straight baselines system determines most of the baselines for Yugoslav territorial waters. No special provisions are made for the waters falling within these straight baselines. Article 11 of the Law on the Coastal Sea Zone and the Epicon-tinental Belt of the Socialist Federal Republic of Yugoslavia, as amended in 1979,¹⁴³ states that the baseline of the territorial waters is given by the low-water line, by straight baselines and by "straight lines closing the entrance[s] to bays."¹⁴⁴ Although no limit is set to the length of these closing lines, it could be supposed that they come into play in that part of Yugoslavia, beyond Zarubaca Point in the south, where no straight baselines have been drawn. There is at

138. Presidential Decree No. 816 of April 26, 1977, *supra* note 107. For example, in the Tyrrhenian Sea, the Gulf of Gioia and the Gulf of Eufemia, have been closed by the segments Scilla Lighthouse—Cape Vaticano shoal reef and Cape Cozzo—River Savuto, respectively. In Sicily, the Gulf of Castellamare has been closed by the segment Punta di Solanto—Punta Raisi. Finally, the Gulf of Cagliari has been closed by the segment southern Isolotti—Isolotto S. Macario.

139. Article 1 of the Italian Decree provides only that, "[t]he straight baselines and lines closing natural or historic bays for determining the baselines for calculating the extent of the Italian territorial sea shall be drawn as follows . . ." *Id.* art. 1.

140. On this question, see Ronzitti, *supra* note 119, at 5.

141. See Spanish Royal Decree No. 2510/1977 of August 5, 1977, *supra* note 86.

142. These bays have been closed by the segments, Punta del Sabinal—Punta Baja, Cabo Tinoso—Cabo de Agua, Isla de Tabarca—Cabo de las Huertas, and Cabo Tortosa—Caba de Salou, respectively.

143. See Law of March 27, 1979, *supra* note 37, art. 11.

144. According to Article 3(2) of the Yugoslav law, a "bay" is defined as, "a distinctly limited inlet recessed into the land and of a sea area equal to or larger than the area of the semi-circle with a diameter equal to the length of the straight line closing the entrance into the inlet." Law of March 27, 1979, *supra* note 37, art. 3(2).

least one bay in this zone (near Boka Kotorska) to which Article 11 of the above-mentioned law could be applied.¹⁴⁵

In contrast to most other national legislations, Turkish Law No. 2674, of May 20, 1982, concerning its Territorial waters,¹⁴⁶ makes no special provisions regarding closing-lines for bays.¹⁴⁷

The Tunisian coasts are fairly regular, with the exception of the Gulfs of Tunis and Gabès. Closing lines have been drawn across both of these Gulfs.¹⁴⁸ This decision by Tunisia raises special problems concerning most specifically the Gulf of Tunis (with its 23-mile wide entrance). Tunisia has laid precise historical claims to these waters, the examination of which falls outside the scope of the present paper.¹⁴⁹

Finally, the decisions of Egypt and Syria remain to be examined. Article 1(b) of the Royal Decree of January 15, 1951 concerning the territorial waters of the Kingdom of Egypt¹⁵⁰ states that "[t]he term 'bay' includes any inlet, lagoon or other arm of the sea," while Article 6 of the same Decree asserts that "[t]he following are established as the baselines from which the coastal area of the Kingdom of Egypt is measured: . . . b) where a bay confronts the open sea, lines drawn from headland to headland across the mouth of the bay."

This provision raises several problems. In the first place, the definition of bay is vague; there is no requirement that the bay have a reasonable penetration inland in proportion to its width. Moreover, there is no definition of the size of the gulf. On the basis of this Decree, which has been officially criticized by the United Kingdom and the United States,¹⁵¹ many Egyptian bays in the Mediterranean could be closed.¹⁵² Placing aside the problem of the El-Arab Gulf, which is considered by Egypt to be an "historic" bay,¹⁵³ none of these

145. See Law of March 27, 1979, *supra* note 37, art. 11.

146. See Turkish Law No. 2674 of May 20, 1982, *supra* note 40.

147. In Turkey, there are various bays which are not in conformity with the semi-circle rule. See, e.g., Kerme Bay, Fethiyex Bay, and Izmir Bay.

148. See Decree No. 73-257 of November 3, 1973, *supra* note 102.

149. On this point see L.J. BOUCHEZ, *supra* note 113, at 222-23; Barrie, *Historic Bays*, VI COMP. & INT'L L. J. S. AFRICA 53 (1973); Continental Shelf, *supra* note 104, at 53.

150. See Royal Decree of January 15, 1951, *supra* note 28, art. 1(b).

151. The text of the British protest is reprinted in 7 R.EGYPT.DR.INT. 91 (1951). The American protest appears at *id.* at 94.

152. For example, The Gulf of Salum (45.4 miles), Abu Hashaifa Bay (31.6 miles), El-Arab Gulf (94.7 miles), the Bay of Pelusium (49.3 miles) and the Bay of El-Arish (65.0 miles). See 11 R.EGYPT.DR.INT. 205 (1955). Cf. A.A. EL-HAKIN, *supra* note 42, at 9.

153. The Egyptian government made the following statement in 1926: "According to

bays meet the semi-circularity requirement of Article 7 of the 1958 Geneva Convention.¹⁵⁴

The definition of "bay" given in Legislative Decree No. 304 of December 28, 1963, concerning the territorial sea of the Syrian Arab Republic¹⁵⁵ is considerably different from that contained in the Egyptian Decree mentioned above. According to the Syrian Decree, the term "bay" means a "pronounced curve which has a depth in relation to the width of its mouth so as to encompass water surrounded by land."^{155a} The curve is not considered a curve unless its area should be equal or more than half a circle circumscribed within the mouth of that curve.^{155b} "Nevertheless, the maximum length of the closing line of the bay is not defined. Article 5(b) of the Syrian Decree states that the baseline for the measurement of the territorial sea in the bays is fixed as "lines to be drawn at one point of the land from the entry of the bay to the other point."^{155c}

No great problems arise from the absence of a maximum limit to the extension of closing-lines of bays. By looking at the map, it can be seen that along the Syrian coast there should be no bay corresponding to the definition given in Article 1(b) of the Syrian Decree.¹⁵⁶

V. THE PROBLEM OF DRAWING BOUNDARY LINES THROUGH THE TERRITORIAL SEAS OF ADJACENT OR OPPOSITE STATES

Although only a recent activity of states, "the issues of maritime boundary delimitation have been among the most contentious at the Third United Nations Law of the Sea Conference. This is because boundary delimitation questions are not solvable by any

Egyptian public law, the breadth of the territorial waters is three miles, except as regards the Bay of El-Arab, the whole of which is, owing to its geographical configuration, regarded as territorial waters." Conference for the Codification of International Law: Territorial Waters, League of Nations Doc. C.74 M.39 1929, at 125 (1927). In the British protest of 1951, it was affirmed that along the Egyptian coast there are no historic bays. See British protest, *supra* note 151. On this point see also, L.J. BOUCHEZ, *supra* note 113, at 220-21; M.P. STROHL, *supra* note 113, at 258-61.

154. In consideration of the particular features of its own coastline, Egypt argued, during the 1958 Conference, to exclude both the semi-circularity requirement and the 24-mile closing limit from Article 7. See 11 R.EGYPT.DR.INT. 203 (1955); 13 R.EGYPT.DR.INT. 70-71 (1957).

155. See Decree No. 304 of December 28, 1963, *supra* note 24.

155a. *Id.*

155b. *Id.*

155c. *Id.*

156. See LIMITS IN THE SEAS, *supra* note 22, No. 53 (1973).

one universally accepted formula."¹⁵⁷ The question was examined in depth during the 1958 Geneva Conference on the Law of the Sea,¹⁵⁸ at the conclusion of which the following Article was approved:

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest point on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.¹⁵⁹

The wording of this article makes quite clear the importance of the exact determination of the baseline. It is also evident that states which have adopted the straight baselines system will have the advantage in determining the median line¹⁶⁰ over others which have adopted the low-water line system. If one considers that no two boundary situations are identical, and that the agreements

157. Smith, *A Geographical Primer to Maritime Boundary-Making*, 12 OCEAN DEV. & INT'L L. 1 (1982). See H.D. HEDBERG, *National International Jurisdictional Boundary on the Ocean Floor*, in LAW OF THE SEA INSTITUTE, OCCASIONAL PAPER No. 16 (1972); Voelckel, *Aperçu de Quelques Problèmes Techniques Concernant la Délimitation des Frontières Maritimes*, XXV AN.FR.DR.INT. 693 (1979); N. WISNOEMOERTO, *Delimitation of Maritime Boundaries: Its Problems and Issues*, in THE FRONTIERS OF THE SEAS: THE PROBLEMS OF DELIMITATION 46 (1981).

158. It is worth remembering that the International Law Commission, in its drafting of proposed Law of the Sea texts, called upon a "group of experts" to settle how maritime space should be divided between adjacent or opposite states. Those "experts" conclusions are presented at [1953] 2 Y.B. INT'L L. COMM'N 77.

159. See A.L. SHALOWITZ, *supra* note 55, at 231; C. DE VISSCHER, *PROBLÈMES DE CONFINS EN DROIT INTERNATIONAL PUBLIC* 119 (1969); Hodgson & Cooper, *The Technical Delimitation of a Modern Equidistant Boundary*, 3 OCEAN DEV. & INT'L L. 361 (1974); Aede, *Toward the Formulation of the Rule of Delimitation of Sea Boundaries Between States with Adjacent or Opposite Coasts*, 19 VA. J. INT'L L. 207 (1979); Jagota, *Maritime Boundary*, 171 HAGUE RECUEIL 96 (1981-II). Article 15 of the 1982 Convention, *supra* note 8, art. 15, repeats the content of Article 12 of the 1958 Geneva Convention. 1958 Convention on the Territorial Sea, *supra* note 8, art. 12.

160. On this point it is worth remembering that during the 1958 Geneva Convention Conference, Portugal made a proposal to replace the words "on the baseline from which the breadth of the territorial sea of each of the two States is measured" by the words "on the low-water line along the coasts of those States." III THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA OFFICIAL RECORDS (1975) [hereinafter cited as III UNCLLOS III OFFICIAL RECORDS (1975)]. The purpose of this proposal was, according to Boavida, the Delegate of Portugal, "to simplify the procedure required and to enable mariners to draw the median line on the charts without reference to the domestic law of the States concerned." *Id.* at 187.

between the states concerned assume considerable importance, it is to be presumed that in order to prevent future conflict, most of the coastal states will have to enter into bilateral negotiations to establish offshore boundaries.¹⁶¹

With regard to the question of boundaries of territorial waters of opposite or adjacent states, as yet only three specific agreements have been concluded in the Mediterranean area. The first of these agreements defines the territorial sea boundaries between the Republic of Cyprus and the two United Kingdom Sovereign Base Areas on the Island of Cyprus.¹⁶² Although a precise determination of the principles used by negotiators seems to be impossible, it can be stated that the boundaries were *not* based on the equidistance principle. Moreover, in each instance, the terminal limits to the sea boundaries were not designated.¹⁶³

The second agreement for the delimitation of offshore boundaries concerns the boundary between Italy and Yugoslavia, in the Gulf of Triest. Article 2 of the Treaty between the two countries signed at Osimo on November 10, 1975 declares that "[l]a frontière entre les deux Etats dans le Golfe de Trieste est décrite par le texte à l'Annexe III et tracée sur la Carte à l'Annexe IV du présent Traité."¹⁶⁴ In the exchange of notes reproduced in Annex IV it is stated that "[e]n procédant à la délimitation des eaux territoriales dans le Golfe de Trieste, chaque partie a tenu compte des principes

161. Cf. Smith, *supra* note 157, at 2.

162. When Cyprus became independent in 1960, the United Kingdom maintained certain base areas on the island as sovereign "British Territory." Treaty Concerning Cyprus, *supra* note 27, at 208, provided for territorial sea boundaries between the new republic and the U.K. Sovereign Base Areas.

163. This was done, perhaps, in order to enable both parties to extend the breadth of their territorial waters. See R.V. PRESCOTT, *supra* note 83, at 109. At present, the breadth of the territorial waters of Cyprus is 12 nautical miles while that of the United Kingdom seems to be 3 nautical miles. In fact the Treaty between the United Kingdom and Cyprus describes British Sovereign Base Areas as British territory. Treaty Concerning Cyprus, *supra* note 27, at 208. This has been confirmed recently by the British Minister of State, who wrote: "The Sovereign Bases remained British territory when the rest of the island of Cyprus was transferred to the sovereignty of the Republic of Cyprus under the Treaty of establishment. The British Government continues to consider the 1960 Treaties as valid." Statement of Minister of State, Foreign and Commonwealth Office, July 8, 1980, LI BRIT. Y.B. INTL L 442 (1980).

164. Treaty of Economic Cooperation between Italy and Yugoslavia, *done* Nov. 10, 1975, 119 GAZZ. UFF. ITAL. (Apr. 3, 1977). Italy ratified the treaty in 1977. See Law No. 73 of March 14, 1977, 77 GAZZ. UFF. ITAL. (1977).

déoulant de la Convention de Genève sur la mer territoriale et la zone contiguë du 29 avril 1958.”

Relations between Italy and Yugoslavia have for a long time been strained due to unresolved questions over the frontiers, dating from World War II. It has been pointed out that in determining the boundaries of territorial waters in the Gulf of Triest, political, rather than juridical considerations carried more weight.¹⁶⁵

Apart from these two agreements over offshore boundaries there is another between Italy and Turkey, concerning the delimitation of territorial waters between the coast of Anatolia on one side and Castellorizzo and the nearby islands on the other.¹⁶⁶ These states frequently utilized the concept of “median line” to determine their respective territorial waters.¹⁶⁷ Italy ceded the full sovereignty of Castellorizzo as well as the adjacent islands¹⁶⁸ to Greece, according to the Treaty of Peace with Italy, signed at Paris on February 10, 1947.¹⁶⁹

It does not seem, though, that any such relinquishment of sovereignty should affect the boundary established by the Treaty. One rule regarding this point is Article 11 of the 1978 Vienna Convention on Succession of States on Respect of Treaties. The opinion of a number of authors, however, also implies the existence of a precise rule of general international law.¹⁷⁰ It can, therefore, be deduced that Greece succeeded Italy in the Treaty stipulated between this state and Turkey in 1932.¹⁷¹ For this reason the Agreement is still in force and continues to govern the limits of the territorial waters between Castellorizzo and the adjacent islets on one

165. See Florio, *Problemi della Frontiera Marittima nel Golfo di Trieste*, 60 RIV. DIR.INT. 483 (1977). In reality, there is another agreement which could be of some interest at this point: the Convention between Italy and France for the Delimitation of the Fisheries Zone between Corsica and Sardinia, *done* Jan. 18, 1908, 206 Parry's T.S. 171 (1980). The boundary line is determined by two segments: one drawn between Guardia del Turco and Isola Budelli; the other between Control do li Scala and Punta Marmorata. The agreement fixes the boundary line for the delimitation of the fishing zone only. *Id.*

166. Convention for the Delimitation of the Territorial Waters between the Coast of Anatolia and the Island of Castellorizzo, *done* Jan. 4, 1932, 88 L.N.T.S. 244 (1933).

167. *Id.* art. 5.

168. Treaty of Peace with Italy, *done* Feb. 10, 1947, 49 U.N.T.S. 3 (1950).

169. *Id.* at 126.

170. See, e.g., I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 667 (3rd ed. 1979).

171. On this point, see Statement of M. Halkiopoulos, reprinted in CONSEIL DE L'EUROPE, ASSEMBLÉE PARLEMENTAIRE, CONFÉRENCE PARLEMENTAIRE RELATIVE À LA CONVENTION DES NATIONS UNIES SUR LE DROIT DE LA MER 7 (1984).

side and the coasts under Turkish sovereignty on the other.

Apart from these three, there are no other specific agreements over the delimitation of the boundaries of territorial waters of opposite or adjacent states in the Mediterranean area. Most of the national legislations concerning the territorial sea make no specific ruling as to this problem.¹⁷²

Other legislation does, however, contain rulings governing the boundaries of territorial waters of opposite or adjacent states. In general terms, these laws declare that if the coastal sea of the state concerned is overlapped by the coastal sea of another state, unless otherwise stated in some particular Convention, the boundaries shall be determined in accordance with the principles of international law.¹⁷³ In a few cases it is stated that failing an agreement the breadth of the territorial waters of the state concerned does not extend beyond a median line every point of which is equidistant from the nearest point on the baselines of the coast of the state concerned and the baseline of the foreign coasts, opposite or adjacent to the coasts of the state concerned.¹⁷⁴ It is, therefore, possible to establish the boundary line of the territorial seas between opposite or adjacent states on the basis of these rulings. This is true even failing specific agreements in cases at least where there is no doubt as to the determination of the baselines concerned, boundary lines may be established.

But how are the limits of the territorial seas to be established between opposite or adjacent states when neither state has *ad hoc* rulings in their national legislation? In the absence of specific agreements between the states concerned, it has been affirmed that

172. See the national legislation of Albania, Algeria, Cyprus, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Tunisia and Yugoslavia.

173. See Article 8 of the Royal Decree concerning the Territorial Waters of the Kingdom of Egypt, *supra* note 28, and Article 7 of the Legislative Decree concerning the Territorial Sea of the Syrian Arab Republic, *supra* note 24.

174. See Article 2 of the French Law extending French territorial waters to 12 miles, *supra* note 29; Article 2 of the Moroccan Declaration of March 2, 1973, *supra* note 34; Article 4 of the Spanish Law concerning the Territorial Sea, *supra* note 35. Article 4 of the Spanish Law states that the Spanish territorial sea shall extend beyond the median line only if the baselines of states concerned were drawn "in accordance with international law." *Id.* The Turkish Law No. 2674 of May 20, 1982, on the other hand, affirms that "Turkish territorial waters with States which share adjacent or opposite shores will be delineated by agreement. This agreement will be made by taking into account relevant characteristics of the region and circumstances and according to the principle of equity." Turkish Law No. 2674, *supra* note 40.

the limits will still be represented by the median line. If this were not so it would be impossible to determine the territorial seas of these states.

Considering the assertions of the International Court of Justice in the 1969 North Sea Continental Shelf Case,¹⁷⁵ and considering that only 5 states facing the Mediterranean, as well as the United Kingdom, are parties to the 1958 Geneva Convention, it is possible to affirm that the states concerned are entitled to fix the boundary of their territorial waters by agreement with the opposite or adjacent states. This gives the states the possibility of taking "historic titles or other special circumstances" into account as foreseen by Article 12 of the 1958 Geneva Convention.

However, where no such special agreement exists, the boundary of the territorial seas of opposite or adjacent states shall be the median line. This is in order to guarantee rights of passage to those who sail the seas and who otherwise would not be able to know the exact boundary line. It is interesting to note that Article 15 of the 1982 U.N. Convention confirms the fact that, in the absence of agreement, the median line is to be considered as the boundary line of the territorial seas between states with opposite or adjacent coasts.

The baselines which serve to determine the position of the median line shall be those fixed in the national legislations of the states concerned, unless these baselines are objects of controversy. When fixing the baseline of its territorial sea, each state may take the geographical configuration of its coastline into account as well as any historical titles which it may possess, or consider that it possesses, to zones of sea near its coast. When the system used to fix the baseline is not the object of official protests on the part of other states (in particular of opposite or adjacent states), the median line is traced through points equidistant from the baselines of the states concerned.

Where claims are laid through specific historical titles by one of the states, or where a state declares that a baseline has been fixed in contrast with the rules of international law, it will be an

175. North Sea Continental Shelf Cases (W. Ger. v. Den.; W. Ger. v. Neth.) 1969 I.C.J. 4 (Judgment of Feb. 20). The Court stated that as far as the delimitation of the continental shelf of states with opposite or adjacent coasts was concerned, the use of the equidistance method of delimitation is obligatory only between parties to the 1958 Geneva Convention. *Id.* at 53.

extremely arduous task to determine the median line with exactness unless a specific agreement is reached. In this last case, only an agreement between the parties concerned will enable the precise determination of the boundary line through the territorial seas of those adjacent or opposite states.

With the exception of incidents connected with the delimitation of "historic" waters or bays,¹⁷⁶ only some particular areas of the Mediterranean have seen controversies or incidents stemming from the delimitation of territorial waters of adjacent or opposite states. Such incidents include disputes in the territorial waters of Gibraltar,¹⁷⁷ fishing incidents involving Spain and Morocco, Italy and Tunisia and Italy and Libya, and controversies between Turkey and Greece concerning the delimitation of their territorial seas.¹⁷⁸ In all the other cases where either express or *de facto* criteria of the median line have been used to fix the boundary of territorial waters of opposite or adjacent states, no incidents of any importance have occurred through disagreement over the interpretation of this boundary line.

VI. CONCLUSION

In concluding this enquiry into the various laws of Mediterranean states concerning the delimitation of their own territorial waters, some particularly interesting aspects will be emphasized. First, it should be noted that in the Mediterranean area in recent years there has been a general trend to fix the breadth of territorial seas at a limit not exceeding twelve nautical miles. To date only Syria and Albania have fixed their limits at a greater distance (thirty-five and fifteen nautical miles respectively). Extending the breadth of the territorial waters to twelve miles raises problems for navigation in the Mediterranean straits.¹⁷⁹

176. On the recent incidents in the Gulf of Sirte and the Gulf of Taranto see, Francioni, *The Status of the Gulf of Sirte in International Law*, 11 SYR.J.INT'L L. & COM. 311 (1984); Ronzitti, *supra* note 119, at 5, respectively.

177. See *supra* text accompanying notes 74-76.

178. This controversy has become more complex since Greece has started to examine the possibility of extending her territorial waters to 12 miles. A like decision would ensure Greece the control of 64% (instead of 35%) of the Aegean Sea. See C. ROUSSEAU, *supra* note 123, at 808. On the difficult relations between Greece and Turkey concerning the Law of the Sea, see C.R. SYMMONDS, *supra* note 40, at 90, 137 & 172; D.W. BOWETT, *THE LEGAL REGIME OF ISLANDS IN INTERNATIONAL LAW* 249 (1979).

179. For a geographical description of these straits, see R.H. KENNEDY, *A Brief*

Leaving rulings contained in special treaties aside,¹⁸⁰ it is generally recognized that all ships and aircraft enjoy the right of transit passage, which shall not be impeded through international straits.¹⁸¹ The rules for navigation through straits are, therefore, different from the general rule on innocent passage through territorial seas. These rules are so different that while a coastal state may temporarily suspend the right of innocent passage through specified areas of its territorial seas, under particular circumstances,¹⁸² the suspension of transit passage for foreign ships through straits is never permitted.

Geographical and Hydrographical Study of Straits Which Constitute Routes for International Traffic, in I UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA OFFICIAL RECORDS 114 (1958) [hereinafter cited as I UNCLOS OFFICIAL RECORDS (1958)]. See also Smith, *An Analysis of the Strategic Attributes of International Straits: A Geographical Perspective*, 2 MARITIME STUDIES AND MANAGEMENT 88 (1974).

180. In the 1958 Convention, the only reference to straits is found in Article 16(4): "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State." 1958 Convention on the Territorial Sea, *supra* note 8, art. 16(4). See R. LAPIDOTH, *LES DETROITS EN DROITS INTERNATIONAUX* (1972); Shyan, *International Straits and Ocean Law*, 15 INDIAN J. INT'L L. 17 (1975); Giuliano, *The Regime of Straits in General International Law*, 1 ITALIAN Y.B. INT'L L. 16 (1975). In the 1982 Convention, the whole of Part 3 (Articles 31-45) deals with straits. 1982 Convention, *supra* note 8, arts. 31-45.

Specific rules deal with the navigation regime in the Strait of the Dardanelles. See *Montreaux Convention*, done July 20, 1936, reprinted in 173 L.N.T.S. 218 (1936-37). Article 1 of the *Montreaux Treaty* provides for "freedom of transit and navigation in the Straits" and declares that the exercise of that freedom shall henceforth be regulated by the provisions of the Convention. *Id.* art. 1.

The problem of the Suez Canal, which is not a strait, is slightly more complex today than when regulated by the Convention of Constantinople in 1888. See *Convention of Constantinople*, done Oct. 20, 1888, reprinted in J. A. OBIETA, *THE INTERNATIONAL STATUS OF THE SUEZ CANAL* 119 (2d ed 1970). According to Article 1 of the Convention of Constantinople, the Canal "shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war without distinction of flag." *Id.* art. 1. In 1956, the Egyptian government nationalized the Canal Company but made no claim to change the international status of the Canal itself. On April 24, 1957, Egypt made another statement according to which she would, from then on, respect the obligation arising from the Convention of Constantinople. See de Visscher, *Les Aspects Juridiques Fondamentaux de la Question de Suez*, 62 R.G.DR.INT.P. 400 (1958); Dehaussy, *La Déclaration Egyptienne de 1957 sur le Canal de Suez*, VI AN.FR.DR.INT. 169 (1960); J.A. OBIETA, *THE INTERNATIONAL STATUS OF THE SUEZ CANAL* (2d ed. 1970).

181. *Corfu Channel (United Kingdom v. Greece)* 1949 I.C.J. at 28 (Judgment of Apr. 9).

182. 1958 Convention on the Territorial Sea, *supra* note 8, art. 16(3); 1982 Convention, *supra* note 8, art. 25. Cf. Oelofsen, *Third United Nations Conference on the Law of the Sea: Passage through Straits Used for International Navigation*, 8 COMP. & INT'L L. J. S. AFRICA 367 (1975); A.D. PHARAND, VII INTERNATIONAL STRAITS, *THE SAURUS ACROASUM* 59 (1977).

Another feature which distinguishes the rules governing innocent passage through territorial seas from transit passage through straits should be mentioned here. Submarines are required to navigate on the surface and to show their flag only when they are traveling through the territorial waters of a foreign country.¹⁸³ On this point it must be recalled that there are provisions which have been made not allowing the existence of a sufficient zone of high seas for navigation through such straits. In these circumstances it has been foreseen for example that "regulations may be issued in order to insure a free maritime and aerial navigation, subject to the provisions of international conventions, and, if need be, after an agreement has been reached with the concerned State."¹⁸⁴ Greater problems arise, however, from the Albanian legislation, according to which the waters of the Corfu Strait¹⁸⁵—defined by the International Court of Justice as an "international strait"¹⁸⁶—are, considered "internal waters" and are, therefore, not subject to the right of transit passage on the part of foreign vessels.¹⁸⁷ Other straits exclusively within the limits of the territorial sea of one state, whose legislation does not contain rulings expressly concerning navigation through straits, are to be considered as coming under the relevant rules of customary international law giving the right of transit.¹⁸⁸

As far as the baseline for measuring the breadth of the territorial sea is concerned, four states have officially adopted the low-water line system (Cyprus, Greece, Israel and Monaco). The low-water line also constitutes *de facto* the baseline for Algeria, Libya,

183. 1958 Convention on the Territorial Sea, *supra* note 8, art. 16(3); 1982 Convention, *supra* note 8, art. 20.

184. French Law No. 71-1060 of November 24, 1971, *supra* note 29. With this rule, France intended to set an example for other states. Cf. Queneudec, *supra* note 29, at 768. Article 3 of the French Law concerns the Strait of Bonifacio, which separates Corsica from Sardinia. French Law No. 71-1060 of November 24, 1971, *supra* note 29, art. 3. Article 3 of the Moroccan Law of March 2, 1973, *supra* note 34, art. 3, is modeled after French Law No. 71-1060. The Moroccan law is particularly important as it was written specifically for navigation in the Strait of Gibraltar. *Id.*

185. Corfu Channel, *supra* note 181, at 29.

186. Albanian Decree No. 4650 of March 9, 1970, *supra* note 25, art. 4(2).

187. For a criticism of Albanian legislation in the field under discussion, see Ibler, *supra* note 25, at 191.

188. In the only navigable waterway to and from the Adriatic—the Straits of Otranto—there still exists quite a wide lane which has the *status* of high seas. See Ibler, *supra* note 25, at 179.

Malta, Morocco and Gibraltar. In nine states of the Mediterranean area, however, the baseline is partly drawn as the low-water line and partly by a system of straight lines; these states are Albania, Egypt, France, Italy, Spain, Syria, Tunisia, Turkey and Yugoslavia.¹⁸⁹ The criteria for drawing these baselines are not always uniform and the conditions laid down in Article 4(2) of the 1958 Geneva Convention have been interpreted in several ways. In spite of this the provisions concerning straight baselines have rarely been the object of official protest from third states.¹⁹⁰

The practice of Mediterranean states shows considerable divergence not only with respect to what is considered a bay, but also with respect to the maximum length for the closing-lines of bays. The term "historic bay" has also been subject to several interpretations, depending on the requirements of the state concerned. This has given rise to some dangerous incidents which could have been the cause of international crises. Similar crises could have come about through the uncertainty of the regime of navigation in the waters of some bays, since it is impossible from the examination of the single national legislations to determine on the basis of what principle the closing of the bays has been carried out.¹⁹¹ The fact that the national legislation of some states—Albania, Egypt, Syria, Turkey, and Yugoslavia—provides a specific ruling which establishes the internal waters, does not solve this problem. This is because according to these rules, not only are the waters of ports and bays considered internal, but also all those on the landward side of the baseline of the territorial sea.¹⁹²

189. In reality even Malta and Morocco officially adopted the straight baseline method. But, for the reasons given previously, *see supra* notes 121-23, the low-water line has to be considered the effective baseline in these states.

190. On this point it is worth recalling those authors who claim it would be permissible to adopt measures which, while in contrast with the 1958 Geneva Convention, would remain within the reasonable limits of tolerability. *See generally* Adam, *supra* note 62, at 489.

191. The national legislation which clarifies the navigational regimes on the landward side on the closing lines of bays are: Tunisian Law No. 73-49, *supra* note 36, art. 2; Turkish Law No. 2674, *supra* note 40, art. 4. According to both laws, the Gulf waters are considered *internal waters*.

192. On this point it is uncertain whether third states' vessels continue to enjoy a right of innocent passage in the waters considered internal by these legislations. Just because the bays closed were not important for international navigation does not always answer the question. Several of these bays, such as the Gulf of Taranto, are very important for military or strategic reasons.

The territorial seas of adjacent or opposite states have been delimited by only three bilateral agreements. In most other cases the boundary has either been fixed unilaterally by national legislation, or else it is fixed *de facto*. Although this means of fixing the boundaries of the territorial sea has given rise to incidents because of divergent interpretations of the boundary line, no particular difficulties have arisen in its actual application. It must also be stressed that in some cases¹⁹³ it has been preferred, and it is still preferred, to resolve the question of the limits of territorial seas by action rather than to embark on bilateral negotiations which could have or could still aggravate situations of international tension.¹⁹⁴

It must be added that in the near future the issue of the limits of territorial seas, particularly between adjacent states, will become more important. The consequences that derive concerning the delimitation of the zones of sea, such as the continental shelf and the exclusive economic zone, are of particular economic interest. The trend of states to enlarge their sovereignty over increasingly extensive areas of sea for economic but also for military reasons,¹⁹⁵ coupled with the small size of the Mediterranean Sea, makes the delimitation of boundaries between territorial seas one of the most delicate issues that the international community will have to face in the near future.¹⁹⁶

193. See, e.g., the boundaries between Greece and Turkey, Morocco and Spain, and Spain and Gibraltar.

194. Bardonnnet & Carroz, *supra* note 66, at 844.

195. See Lawrence, *Military-Legal Considerations in the Extension of Territorial Seas*, 29 MIL. L. REV. 47 (1965); J.A. KNUAS, *The Military Role in the Ocean and its Relation to the Law of the Sea*, in SIXTH ANNUAL CONFERENCE OF THE LAW OF THE SEA INSTITUTE 77 (1971); J. GOLDBLAT, *Law of the Sea and the Security of Coastal States*, in NINTH ANNUAL CONFERENCE OF THE LAW OF THE SEA INSTITUTE 301 (1975); D.P. O'CONNELL, *THE INFLUENCE OF LAW ON SEA POWER* (1975); G.G. ROSENTHAL, *THE MEDITERRANEAN BASIN. ITS POLITICAL ECONOMY AND CHANGING INTERNATIONAL RELATIONS* (1982); Abbadi, *Security and Cooperation in the Mediterranean Basin*, 14 OCEAN DEV. & INT'L L. 55 (1984).

196. See R. JEANNEL, *Les Procédés de Délimitation de la Frontière Maritime*, in SOCIÉTÉ FRANÇAISE POUR LE DROIT INTERNATIONAL, COLLOQUE DE POITIERS 34 (1980).