THE JURIDICAL STATUS OF THE GULF OF TARANTO: A BRIEF REPLY

Gayl S. Westerman*

The special problem of identifying the juridical nature of coastal indentations is but one aspect of a more fundamental problem: the need to accommodate the legitimate exclusive interests of coastal states in maximizing wealth, power, and national security with the inclusive interests of the community of states in maximizing freedom of the seas. Throughout historical cycles of *mares liberum* and *clausum*,[1] this fundamental accommodation has remained the central focus of the international law of the sea.

Even today, after thoroughgoing codification efforts in 1958[2] and 1982,[3] the legal regime of the oceans remains in transition. Many

---

* Dr. Westerman is an Associate Professor of Law at Pace University School of Law, New York. Her J.S.D. dissertation at the Yale Law School, entitled THE JURIDICAL BAY: ITS DESIGNATION AND DELIMITATION IN INTERNATIONAL LAW, will be published by Oxford University Press this year.

1. *See* G. WESTERMAN: THE JURIDICAL BAY: ITS DESIGNATION AND DELIMITATION IN INTERNATIONAL LAW, *Part III: The Historical Treatment of Bays* 49-120 (unpublished Yale J.S.D. dissertation, 1984).

2. *See* Geneva 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]; Geneva Convention on the Continental Shelf, *done* Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (effective June 10, 1964); Geneva Convention on the High Seas, *done* Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (effective Sept. 30, 1962); Geneva Convention on Fishing and Conservation of Living Resources of the High Seas, *done* Apr. 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285 (effective Mar. 20, 1966).

3. On December 17, 1970, the General Assembly of the United Nations adopted resolution 2750c wherein it resolved "to convene, in 1973, a Conference on the Law of the Sea which would deal with the establishment of an equitable international regime—including an international machinery—for the area and the resources of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction . . . ." G.A. Res. 2750c; 25 U.N. GAOR Supp. (No. 28) at 26, U.N. Doc. A/8097 (1970). The Conference was mandated to produce a precise definition of that area, and because it was felt that the problems of ocean space were closely interrelated and needed to be considered as a whole, the Conference was also directed to consider a broad range of related issues which had been partially resolved in the 1958 Conventions, namely the regimes of the high seas, the continental shelf, the territorial sea and the contiguous zone, fishing and conservation of the living resources of the high seas, the preservation of the marine environment, and scientific research. Introduction to Draft Final Act of the Third United Nations Conference on the Law of the Sea, U.N. Doc. A/CONF.62/121 (1982), at 2. In all, eleven sessions of the Conference were held between December, 1973, and September, 1982. *Id.* at 405. After a decade of intense negotiation and

fear a return to a period of ocean enclosure[4] as states struggle to determine what constitutes a reasonable accommodation between the exclusive and inclusive interests of states in a period of technological and societal reordering which daily increases the capacity of certain states to exploit the resources of more extensive areas of the earth's waters, sea-bed, and subsoil. After several centuries of development in the international law of the sea, the central question remains: "What, in light of today's reality, are the most equitable and yet the most productive uses of ocean space?"

Within this equation, the international rules pertaining to coastal indentations have also entered a period of uncertain application. In 1958, faced with the prospect of increasingly expansive claims to internal waters by coastal states, the world community adopted Article 7 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, the text of which reads:

> 1. This article relates only to bays the coasts of which belong to a single State.
>
> 2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width

---

controversy, the Third United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc. A/CONF. 62/122), *reprinted in* 21 I.L.M. 1261 (1982) [hereinafter cited as 1982 Convention], was adopted by the Conference on October 2, 1982, and was concluded December 10, 1982, at Montego Bay, Jamaica. Although the 1982 Convention contains some revision of the 1958 Convention articles, as well as new law on many issues, numerous 1958 articles remain virtually unchanged. Article 7 (Bays) of the 1958 Convention on the Territorial Sea has become Article 10 of the Third United Nations Convention on the Law of the Sea, *see id.* at 5; but except for the addition of "nautical" to clarify any reference to "miles," the language of the two articles is identical. Because the 1982 Convention has only just been concluded and because there is substantial doubt as to who the eventual signatories will be (the United States being the most glaring absentee at present), the 1958 Conventions remain in force. Therefore, reference will be made throughout this article to Article 7 of the 1958 Convention on the Territorial Sea as the most authoritative statement of positive international law on the subject of bays. Where significant differences exist between other relevant 1958 Convention sections and the 1982 Convention, these differences will be noted. The caveat must be repeated, however, that although the 1982 Convention certainly reveals trends in the law, the treaty has not yet entered into force, and the 1958 Convention remains valid.

4. One need only glance at a map of sea zones claimed by states under the Geneva Conventions, and even more alarmingly under the 1982 Convention, to conclude that today's balance is increasingly being weighed in favor of exclusive state interests. *See, e.g., McBryde's Map*, WORLD OCEANS AND SEAS (1982) (available through Transemantics, Washington, D.C.) which, by accurately projecting ocean space rather than land mass, graphically illustrates the limited area now recognized as high seas after national claims to exclusive economic zones and territorial waters have been subtracted. When one reflects on the fact that the most valuable and realizable ocean resources lie in water areas closest to shore, the impact of expansive national claims is even more significant.

of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

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 on 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.

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.[5]

Viewed within the context of the Territorial Sea Convention as a whole,[6] Article 7 can best be understood as a *lex*

5. 1958 Convention on the Territorial Sea, *supra* note 2, art. 7.

6. Having firmly established, in Articles 1 and 2, the sovereignty of a state over its land territory, its internal waters, and the belt of sea adjacent to its coast known as the territorial sea, including the sea-bed, subsoil, and superjacent air space thereof, the 1958 Convention on the Territorial Sea establishes, in Articles 3 through 13, procedures for the delimitation of the baseline of the territorial sea. Article 3 sets out the normal method of baseline delimitation: "Except where otherwise provided in these articles, 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." 1958 Convention on the Territorial Sea, *supra* note 2, art. 3. The language of Article 3 is virtually identical to that embodied in the 1982 Convention, Article 5, where the only change has been the replacement of the words "these articles" with "this Convention."

Article 5 provides that waters on the *landward* side of the baseline of the territorial sea form part of the internal waters of the state, and Article 6 establishes the *seaward* limit of the territorial sea as that line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea claimed by that state. This delimitation system is unchanged by the 1982 Convention except that every state is given the right to establish a territorial sea not exceeding twelve nautical miles in breadth. *See* 1982 Convention, *supra* note 3.

specialis[7] which sets forth a mandatory and self-executing procedure to be used by states[8] both in determining the existence of and in delimiting the baseline of a juridical bay. A juridical bay is understood to be a coastal indentation, the size, location, configuration, and use of which warrant its inclusion within the internal waters, and hence the exclusive authority, of the coastal state.

In brief, Article 7 sets forth four discrete requirements for the designation of a juridical bay.[9] The first three of these requirements are set forth in paragraph two which can best be understood in two parts: sentence one, which sets out the geographical criteria[10] which must be met before an indentation may be enclosed as a bay, and sentence two, which establishes a mathematical formula intended to serve as a final check on these initial geographical requirements and to define with more certainty those indentations which are truly inland and not mere curvatures of the coast.

---

7. If all coasts were composed of regular geographical features, Articles 3, 5, and 6 read together would provide the only framework necessary for baseline delimitation, restricting each state to a belt of territorial waters following the sinuosities of its coastline. Coastal reality, however, displays a wide variance from the normal, and such natural and artificial irregularities as rivers, indentations, rocks, coastal islands, harbor works, ports, and buoys regularly appear. The world community has traditionally made allowances for special circumstances, and Articles 4 through 13 of the 1958 Convention on the Territorial Sea represent *lex speciali* which treat coastal irregularities as exceptions to the normal baseline rule of Article 3. *See* 1958 Convention on the Territorial Sea, *supra* note 2, arts. 4 (the straight baseline rule for deeply indented coastlines), 7 (bays), 8 (harbour works), 9 (roadsteads), 10 (islands), 11 (low tide elevations), 13 (rivers). The 1982 Convention, *supra* note 3, art. 6, has added special delimitation rules for reefs.

8. The basic rationale for claims arising under one of the "exceptions" articles is not to extend the territorial sea of the coastal state (which can be more easily accomplished by extending the *breadth* of this sea zone itself), but rather to include within the internal waters of that state areas of the sea which are closely dependent upon and which intensely affect the land regime. It has become increasingly clear to maritime nations that, inasmuch as the highest degree of state sovereignty can be exercised in these inland water areas, it is within their national security and economic interests to increase the area of such waters if possible. In virtually every instance, an artificial baseline must be provided to "close" these special waters. Resetting a baseline seaward in this fashion accomplishes a dual purpose: (1) additional sea areas come within the exclusive authority of the coastal state, and (2) the seaward limit of sea zones is extended proportionately, thus extending a state's jurisdiction over additional areas of high seas. As such attempts may intrude upon the fundamental community policy favoring freedom of the seas, resistance to many such claims by adversely affected states is predictable.

9. *See* G. WESTERMAN, *supra* note 1, *Part IV: Textual and Contextual Analysis of Article 7.*

10. Water areas may be classified in several different ways. Two of the most important classifications for these purposes are juridical and geographical. From the purely geographical point of view, there exist only two types of waters: those enclosed within the

In more detail, the first requirement set forth in sentence one is that a bay be a well-marked indentation. The second, is that the depth[11] of the indentation be in such proportion to its width as to contain landlocked waters.[12] Sentence one makes clear that juridical bay status cannot be conferred upon a mere curvature of the coast.

The geographical configuration requirements in sentence one are followed immediately in sentence two with the so-called "semi-

---

land and thus "inland" or "internal," and those lying without the land and thus, in the geographical sense, "open" seas. Juridically, however, these two natural classifications have been further subdivided into internal waters, the territorial sea, the contiguous zone, and so on, until we reach the high seas, each classification implying significant differences in coastal authority and control.

The territorial sea, the contiguous zone, the high seas, and the newly-conceived exclusive economic zone, are *purely* juridical concepts, derived not from natural geographic boundaries but rather from man-imposed regimes. Delimitation of these zones, therefore, may be done in a rather arbitrary fashion, based solely on those distances from the shore which the world community currently considers as necessary to regulate coastal passage, to enforce pollution, customs, and sanitary regulations, and to protect and exploit national resources.

"Internal waters," however, is a term which is at once both geographical *and* juridical, with the consequence that any attempt to design a juridical regime for bays under international law must of necessity be highly dependent upon the actual geographical relationship of the waters to the land. It is the bay's existence locked within the land mass which distinguishes it from a mere curvature of the coast and leads to the juridical determination that within a bay there exists no right of passage for foreign vessels, the most important distinction between internal waters and the territorial sea. *See* T. GIHL, *The Baseline of the Territorial Sea*, SCANDINAVIAN STUDIES IN LAW 137-44 (1967). It is this intimate interrelationship of the bay with the processes of life on shore that determines whether it may be legally assimilated to the land. It is important, therefore, while analyzing the technical formulas imposed by Article 7 to retain this overview: international rules concerning bays are necessarily linked to the bay's character as internal waters in the geographical sense. It is the landlocked character of the bay which justifies extending the exclusive authority of the land regime to its governance.

The obvious consequence of the foregoing for international law purposes is that an area of water must fulfill certain geographical criteria in order to be considered a bay, with all the juridical consequences that flow from that determination. For that reason, the Convention places the geographical considerations in the first sentence of paragraph two, without any limitation as to bay size. If a body of water fails to meet the geographical criteria which identify it as internal waters, there is absolutely no need to move further in Article 7. *See* G. WESTERMAN, *supra* note 1, *Part IV*, at 128-31.

11. Depth here refers to the extent of a bay's intrusion into the land, not the depth of the water. From the language of the Convention and the earlier Report of the Committee of Experts, U.N. Doc. A/CN.4/61/Add.1 May 18, 1953: International Law Commission Fifth Session, Addendum to Second Report of the Regime of the Territorial Sea by J.P.A. François, Special Rapporteur, it seems clear that bays are two-dimensional phenomena.

12. *See* G. WESTERMAN, *supra* note 1, *Part IV*, at 132-50, for a full discussion of the "well-marked" and "landlocked" requirements of Article 7(2).

circle test," to wit: "An indentation shall *not*, however, be regarded as a bay unless its area is as large as, or larger than, that of a semi-circle whose diameter is a line drawn across the mouth of that indentation."[13] The linguistic structure of the paragraph and the legislative history[14] both suggest that whereas many first order decisions on "bay-ness" may be made on the basis of the geographical norms alone (and if left unchallenged, may stand), those claims which must be justified against the opposition of third states will undoubtedly be settled by application of the more objective mathematical test of "bay-ness" imposed by sentence two.

To summarize the rules imposed by Article 7, paragraph two: if an indentation is well-marked from the sea and contains landlocked waters, the area of which meets the semi-circle test, a bay may be deemed to exist as opposed to a mere curvature of the coast. Once this determination has been made by use of the delimitation methods set out in paragraph three,[15] the only remaining question is how much of the waters of the bay may be enclosed as a juridical bay by the coastal state, thus gaining the exclusive sovereignty which that juridical status confers.

This final inquiry is addressed by the baseline delimitation rules set out in paragraphs four and five.[16] These paragraphs, read

---

13. *See* 1958 Convention on the Territorial Sea, *supra* note 2, art. 7(2) (emphasis added).

14. *See* G. WESTERMAN, *supra* note 1, *Part IV*, at 153-60.

15. Because paragraph two has set forth an areal standard, it follows that in some cases it will be necessary to measure the areas specified in order to make a proper comparison. Paragraph three provides rules for such measurement, but does not embody further definitional requirements for a juridical bay. It should also be noted that in most instances, the areal comparison mandated by paragraph two can be done in a relatively simple manner with proper maps. Most bays are not "borderline" in their relation to the area of the semi-circle, and a sufficient comparison may often be made by merely drawing a semi-circle on the map using the line adjoining the natural entrance points of the indentation as the diameter and making a visual comparison between semi-circle and indentation. If simple methods are not decisive, then more complicated geographic and hydrographic measures may be employed, using the measurement rules of paragraph three. But as Strohl has noted: "judging from the study made of the coasts of the world . . . it is this author's opinion that there would be very few borderline situations which would require geodetic and hydrographic surveys to establish the juridical quality of indentations or to establish exact[ly] the extent of internal waters in bays." M. STROHL, THE INTERNATIONAL LAW OF BAYS 92 (1963). For an interesting discussion of measurement methodologies, see *id.* at 88-92. *See also* G. WESTERMAN, *supra* note 1, *Part IV*, at 162-78, for a full discussion of the measurement rules set forth in Article 7, paragraph three.

16. *See* 1958 Convention on the Territorial Sea, *supra* note 2, art. 7(4) & (5). It is important to stress that paragraphs four and five are relevant only to this latter determination. If an indentation fails to meet the geographical and mathematical criteria above, no bay may be deemed to exist under Article 7, regardless of the width of its entrance.

together, establish the fourth requirement for the enclosure of a juridical bay, i.e., that the line[17] enclosing internal waters may not exceed twenty-four miles in width.[18]

Paragraphs four and five relate only to an indentation whose status as a bay has already been determined. The logic of this interpretation is evident in the structural arrangement of paragraphs within Article 7 as well as in the actual language chosen by the drafters. One will note that in paragraphs two and three, the referent noun is "indentation." Once the indentation has been granted bay status under the rules of paragraphs two and three, the proper boundary for internal waters is determined by applying the rules imposed by paragraphs four and five, wherein the referent noun becomes "bay."

17. It is interesting to note that only when the entire bay may be enclosed under paragraph four have the drafters directed that a "closing line" be drawn. *See id.* art. 7(4). In paragraph five, where the distance between natural entrance points exceeds twenty-four miles and thus only a portion of the bay may be enclosed as internal waters, a "straight baseline" is drawn to provide an artificial boundary between internal and territorial waters but not a "closing line." Some authors regard the distinction as perhaps inadvertent and in any event confusing, since the term "straight baseline" is also used under Article 4. It would seem to this author that the linguistic variation is not at all inadvertent but was specifically intended by the drafters to distinguish between two very different boundary lines.

The term "closing line" is reserved under the Convention for situations in which the entrance to the bay is of such size that the entire bay may be closed off from the sea by drawing a maritime boundary line between its natural entrance points. All of the waters of the bay are then considered as internal waters with the exclusive rights which that juridical status confers. In other situations, a bay may fulfill all the configuration requirements to gain juridical status, and yet be of a size which exceeds the community concept of water areas more intimately related to land than open sea. In that case, a balancing of equities is required. Such a bay clearly lies within the littoral of the coastal state and may have been intimately related to the exclusive economic and defense interests of that state. This is particularly true of those portions of the bay which lie furthest landward. Yet, to enclose the bay in its entirety would encroach on equally legitimate inclusive community interests which favor the maintenance of maximum open sea areas.

Within this context, paragraph five represents a policy decision by the drafters to allow a coastal state to enclose as internal as much of the waters of the bay as might have been enclosed had the natural entrance to the bay equalled twenty-four miles. The boundary line which results from this policy choice, however, cannot in any sense be termed a "closing line," which in essence permits the coastline of a state to be continued uninterrupted by the presence of the bay. It would seem that the term "straight baseline" has been employed by the drafters to distinguish a true closing line from this line drawn within a larger bay to delimit an acceptable boundary between internal and territorial waters.

One must argue, however, that although a separate terminology may be required to distinguish between the boundary line concepts in paragraph four and five, an alternative term to "straight baseline" might well be devised in order to avoid unnecessary confusion with yet another boundary concept, i.e., the straight baseline system set forth under Article 4. Perhaps the following wording would serve to clarify the concept under Article 7(5): "where the distance . . . exceeds twenty-four miles, an *internal water boundary line* 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." *See id.* art. 7(5) (emphasis added).

18. "Mile" here refers to a nautical mile. In 1929, the International Hydrographical Bureau recommended the adoption of a standard nautical mile valued at 1,852 international meters or 6,076.1033 U.S. feet. The United States adopted the measurement in 1954. Nearly

The adoption of Article 7 struck an historic procedural and evidentiary compromise between the exclusive and inclusive interests of states. In effect, once a given coastal indentation has been characterized as a bay within the parameters defined by Article 7, an irrebuttable presumption arises that the claimant state owns the enclosed waters as a matter of right against all states. In turn, should an indentation fail to meet one or more of the four Article 7 requirements detailed above, an extraordinarily high standard of proof is required in order to lay claim to the waters as an historic bay, the alternative basis for bay designation envisioned by the drafters.[19]

Well drafted and remarkably unambiguous, Article 7 would seem to have resolved, for some time at least, the issue of unreasonably expansive bay claims. The adoption of Article 4 within the same Convention, however, has led to an early derogation of the accommodation principle announced in Article 7. Designed as another special exception to the low-water baseline rule of Article 3, Article 4 allows a coastal state the option of drawing a straight baseline along portions of its coastline which are deeply indented

---

all major maritime countries have adopted it as well. A nautical mile is also equal to 1.60 of a degree of latitude. The 1982 Convention, *supra* note 3, art. 10, at 5, expressly includes the word "nautical" to clarify all reference to miles. The selection of the twenty-four mile limitation on the width of juridical bays represents another and much more controversial policy decision on the part of the drafters as well as a major departure from past state practice. *See* G. WESTERMAN, *supra* note 1, *Parts II, III, IV*, at 283-97.

19. It was never assumed that historic bays, those indentations to which a state is able to establish an exceptional claim by reason of continuous use and the acquiescence of other states, would be included within the scope of Article 7. The Report of the Committee of Experts, *supra* note 11, at 77, as well as every subsequent draft of Article 7 by the International Law Commission, *see* Report of the International Law Commission to the General Assembly, 10 U.N. GAOR Supp. (No. 9) at 15, U.N. Doc. A/2934 (1955), *reprinted in* [1955] 2 Y.B. INT'L L. COMM'N 36, U.N. Doc. A/CN.4/SER.A/1955/Add.1, recommended the exclusion of historic bays from the article. The complete absence of explanatory material on this issue in the official commentaries indicates widespread community acceptance of the exclusionary provision in Article 7(6), which reads, "The foregoing provisions shall not apply to so-called "historic" bays . . . ." 1958 Convention on the Territorial Sea, *supra* note 2, art. 7(6). Attempts to draft a separate article concretizing community norms on historic bays failed, *see* G. WESTERMAN, *supra* note 1, *Part IV*, at 311-12, both in 1958 and in 1982. Nonetheless, it is clear from the legislative history that the drafters considered that bays which failed to gain juridical status under the very generous requirements of Article 7 might nonetheless be enclosed by a state which could prove conclusively that it had effectively and continuously exercised sovereignty for a long standing period, with the acquiescence in such practice by foreign states. *See* Juridical Regime of Historic Waters, Including Historic Bays, [1962] 2 Y.B. INT'L L. COMM'N 23, U.N. Doc. A/CN.4/SER.A/1962/Add.1.

or fringed with islands (and where, therefore, the drawing of a normal, low-water baseline following the sinuosities of the coast would be extremely difficult and would lead to an extremely erratic baseline for the territorial sea) if such a claim is warranted by the economics of the region.[20] Clearly understood and intended by the drafters to take into account the idiosyncratic coastlines and economic needs of a small number of states, as well as to reflect the judgment of the International Court of Justice (I.C.J.) in the *Fisheries Case*,[21] Article 4 has been seized upon instead as the normal method of baseline measurement by many states, whether possessed of deeply indented, island-fringed coastlines or not.[22] An even more promiscuous use of Article 4 is made by certain states who wish to enclose, as internal waters, coastal indentations which meet neither juridical bay nor historic bay requirements.

Both of these current trends in the arguably overbroad use of Article 4 are represented by Professor Ronzitti's very fine article.[23] In his first paragraph, Professor Ronzitti asserts that "Italy's shores bordering the Ionian sea, particularly the segment joining Cape Spartivento to Cape Santa Maria di Leuca, form a coastline which is deeply indented and cut into,"[24] echoing both the language of the I.C.J. in the *Fisheries Case* and the normative language of Article 4 in the hope of justifying his government's drawing of a baseline along this portion of the Italian coast. The most cursory glance at the map provided by Professor Ronzitti (Figure 1) reveals that this portion of coast is neither deeply indented nor cut into, at least not in the sense represented by coasts, such as those of Sweden and Finland (Figure 2) to which the drafters intended Article 4 to apply. It is also clear from the brief analysis of Article 7 above that, except for the Gulf of Taranto, all of the indentations along this portion of the Ionian coastline would most certainly be characterized as mere curvatures of the coast.

---

20. *See* 1958 Convention on the Territorial Sea, *supra* note 2, art. 4.

21. *See* Fisheries Case (U.K. v. Nor.), 1951 I.C.J. 116 (Judgment of Dec. 18).

22. A review of straight baseline claims worldwide reveals that many states are making an arguably impermissible use of Article 4 to draw straight baselines in situations never envisioned by Convention drafters. *See* U.S. DEP'T OF STATE. BUREAU OF INTELLIGENCE AND RESEARCH, LIMITS IN THE SEAS (4th ed. 1981).

23. *See* Ronzitti, *Is the Gulf of Taranto an Historic Bay?*, 11 SYR. J. INT'L L. & COM. 275 (1984).

24. *Id.*

In defense of Professor Ronzitti's postulate, however, it must be said that the tendency to use Article 4 as a normal rather than as an exceptional basis for baseline delimitation has become endemic among states since 1958. In light of the growing tendency, as represented by the commonweal of UNCLOS, to favor the partitioning of the ocean into ever-widening spheres of national control, one may wonder whether one possible response to Lord Carrington's protest that such use is inconsistent "with our interpretation of the 1958 Geneva Convention on the Territorial Sea"[25] might be "everyone else is doing it; why shouldn't we?"; and one may further wonder if such a response and the misuse of Article 4 which it defends may yet become accepted practice if too few states see it in their national interests to protest.

A more conceptually dangerous proposition is put forward by Professor Ronzitti in his attempt to read Articles 7 and 4 together in such a way as to permit the use of Article 4 as an alternative method of bay enclosure. One must take exception, first, with Professor Ronzitti's assertion that "the Gulf of Taranto is a juridical bay since it meets the semi-circular test set up by Article 7(2) of the 1958 Geneva Convention . . . ."[26] There are four requirements for the designation of a juridical bay:[27] (1) an indentation which is well-marked; (2) which contains landlocked waters; (3) the area of which meets the semi-circle test; and (4) the entrance of which does not exceed twenty-four miles. Although it would appear from Figure 1 that the Gulf of Taranto meets the first three of these requirements,[28] it fails to satisfy the twenty-four mile limitation on the width of the entrance, and, therefore, can in no way be characterized as a juridical bay.

Failing that determination, a state is left with two options under Article 7. It may move inward within the bay and enclose

---

25. *Id.* at 282.

26. *Id.* at 272

27. *See supra* text accompanying notes 5-18.

28. As Professor Ronzitti notes, the waters of the Gulf lie behind well-marked entrance points and are landlocked in the sense that they lie clearly within the landmass of Italy and outside international trade routes. Vessels entering the Gulf are likely to be headed for Italian ports rather than plying international sea lanes. The area of these waters exceeds the area of a semi-circle drawn across the entrance. Nonetheless the distance between natural entrance points is 60 miles, a distance which far exceeds that set by the world community in recognition of exclusive state sovereignty over sea areas which are more related to the land than to the open sea.

the maximum area of water possible with a line of twenty-four miles, as permitted under paragraph five, or it may attempt to establish continuous effective sovereignty over a significant period of time with the acquiescence of third states, thus establishing its right to the waters as an historic bay.

Evidently, Professor Ronzitti has eschewed the first option which, it would appear from Figure 1, would justify only a small claim to an area of internal waters near Taranto (perhaps as illustrated by this author with a dotted line on Figure 1). Instead, Professor Ronzitti proceeds to an excellent analysis of Italy's historic claim to the waters in question, concluding quite correctly that the Gulf of Taranto cannot at present be lawfully enclosed as an historic bay. His analysis, however, holds open the possibility that, if the historic clock is set running on the date of the 1977 presidential decree and continues to run without the protest of third states "for a considerable period of time,"[29] historic status may yet be achieved.[30] As no state is likely to protest the enclosure until and unless its own vital interests are compromised, such an eventuality does not seem implausible.

Unfortunately, Professor Ronzitti does not stop with these conclusions, but attempts to justify the enclosure of the Gulf on alternative grounds.[31] From the question which he himself poses and answers in the affirmative, "whether in juridical bays (such as the Gulf of Taranto)[32] with an entrance exceeding twenty-four nautical miles in width, the coastal state is allowed to draw only a straight baseline according to article 7(5), or whether it has the faculty of choosing to draw a longer baseline, under article 4 of the Convention,"[33] it is clear that Professor Ronzitti believes that Article 4 represents an alternative basis for bay enclosure under the Convention. No interpretation could be further from the intent of the drafters.

Professor Ronzitti draws authority for his assertion that Articles 7 and 4 must be read together from the express language of Article 7(6), which reads: "[t]he foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight

29. *See* Ronzitti, *supra* note 23, at 275-76.
30. *Id.* at 293.
31. *Id.* at 285-92.
32. The Gulf is not a juridical bay. *See supra* text accompanying notes 26-28.
33. *See* Rozitti, *supra* note 23, at 275.

baseline system provided for in Article 4 is applied."[34] If one looks only to the sterile language of the section, one might conclude that the drafters intended both exclusions as alternative options for enclosing bays which failed to meet the juridical bay standards of Article 7. A careful reading of the legislative history, however, cannot fail to reveal that the last clause of this final scope provision was intended to address the possibility that certain coasts to which states might apply the straight baseline system of Article 4 would also contain bays. In that case, the straight baseline would per force be drawn in such a way as to subsume the entire bay within the larger area of internal waters created under Article 4. Because Article 4 is much broader in concept and more inclusive in scope than Article 7, which is limited to a single geographic feature, the drafters concluded that "should a straight baseline be drawn covering the coast of the bay, the special rule relating to bays would no longer be applicable."[35]

Although Professor Ronzitti inexplicably cites to the same commentary as authority for his analysis,[36] other portions of the legislative history[37] make clear that the obvious meaning of the drafters' remarks could not possibly have been that, failing to achieve bay status for a given indentation under either Article 7 or historic bay norms, a state may simply opt to use Article 4 and enclose the bay with a straight baseline. In addition to vitiating the whole purpose of both Articles 4 and 7, the reasoning which underlies such an interpretation is circular, to wit: (1) This indentation has failed to meet community standards for enclosure as internal waters; (2) Article 4 allows the enclosure of deeply indented coastlines or those fringed with islands; (3) The existence of this

---

34. *See* 1958 Convention on the Territorial Sea, *supra* note 2, art. 7(6).

35. III UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA OFFICIAL RECORDS. *See also* Fitzmaurice, *Some Results Of The Geneva Conference On The Law Of The Sea*, 8 INT'L & COMP. L.Q. 73, 80 (1959).

36. *See* Ronzitti, *supra* note 23, at 290.

37. In drafting the semi-circle test to be applied under Article 7(2), the International Law Commission commented that such a test was necessary "in order to prevent the system of straight baselines from being applied to coasts whose configuration does not justify it, on the pretext of applying the rules for bays." Report of the International Law Commission to the General Assembly, U.N. Doc. A/3159, *reprinted in* [1956] II Y.B. INT'L L. COMM'N 253, 269, para. 1. This comment reflects the overriding concern of the Commission during the drafting process that Article 4 not be applied impermissibly to coastlines which did not justify the use of a system of straight baselines, thus greatly infringing on inclusive community uses of the oceans. This concern was well-warranted as later events have shown.

single indentation qualifies the coast as one which is "deeply indented;" (4) It is, therefore, lawful and reasonable to apply Article 4 to enclose this single, failed indentation.

Such an analysis, no matter how artfully constructed from the text, simply is not in logical conformity with the basic policies which formed the work of the Convention and which underlie all of the international law of the sea. In addition, such an interpretation is at variance with the accepted doctrines of treaty interpretation, because to posit Article 4 as an alternative basis for bay enclosure would make the carefully drafted rules of Article 7 completely superfluous, an impermissible interpretative result.

The drafters of the 1958 Geneva Convention, as well as UNCLOS III, recognized the necessity of balancing the interest of coastal states in maintaining absolute sovereignty over water areas closely tied to their vital economic and defense interests with the interest of the community at large for maximum areas of open seas. In adopting Article 7, the world community compromised these interests and determined that a coastal state may, as a presumptive right, claim exclusive sovereignty over a bay lying within its coasts which is well-marked and landlocked, the area of which meets the semi-circle test, and the entrance of which is marked by a line no more than twenty-four miles wide. They also determined that only an extraordinary claim of historic usage might permit the enclosure of a bay whose entrance exceeds this limitation, because such an indentation no longer conforms to long-standing recognition of bays as water areas which are so closely interrelated to life processes on shore that they are perceived as being more like the land domain than the open sea. When an indentation exceeds this community norm, codified now in Article 7, the community of states has determined that the balance must be weighed on the side of the inclusive interests of the community as a whole. It cannot be held permissible to derogate this carefully drafted accommodation principle by the arbitrary use of Article 4. Since all indentations must of necessity "indent" the coast, this promiscuous reading would mean that every indentation, no matter how wide of the Article 7 mark or of an historic justification, might yet be enclosed to the detriment of the inclusive interests of states. This is the very expansionist activity of states which Article 7 was designed to prevent and which should now be respectfully, but forcefully, protested by all those who reverence the continuing validity of an international law of the sea.