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DEPENDENT ARCHIPELAGOS IN THE LAW OF THE SEA

Sophia Kopela

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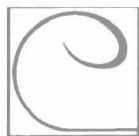
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Dependent Archipelagos in the Law of the Sea



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To my parents and my sister

Preface and Acknowledgements

International law of the sea is – strangely enough – land-based and land-oriented. As noted by the ICJ in the *Fisheries case*, ‘it is the land which confers upon the coastal state a right to the waters off its coasts’ (*ICJ Reports* 1951, p. 133). The archipelagic concept advocates a rather sea-oriented approach to maritime management and delimitation of maritime space recognising the interdependence between the land and the sea on an equal basis. This reflects the original definition of an archipelago as an ‘island-studded sea’ in contrast to its more mundane definition as a ‘group, chain, cluster of islands’. In this sense, the sea does not separate the islands but unites them. For this objective to be attained, the archipelagic concept advocates the unification of the waters of the archipelago into a uniform legal regime where the state would exercise sovereignty. Due to this close association and interdependence, the sea in this respect becomes part of the territory.

Archipelagos have been a challenge for international law of the sea. The great variety of archipelagic formations, even problems related to what an archipelago is, have tested the imagination of lawyers and states with respect to how to regulate the delimitation of their maritime zones. The Law of the Sea Convention (LOSC) has responded to this challenge by adopting two systems which to an extent reflect the archipelagic concept: Article 7 (article 4 TSC) on the application of straight baselines to ‘fringes of islands along the coast in its immediate vicinity’ has been suggested to provide a feasible solution for coastal archipelagos. Part IV of the LOSC, an important innovation of the Convention, provides for a special archipelagic regime for archipelagic states, which are defined as states ‘constituted wholly by one or more archipelagos’. Dependent outlying archipelagos cannot benefit from the application of this special protective regime, as they do not fall within the ambit of the Convention’s definition of archipelagic states.

While one may think that the LOSC has thus effectively addressed the archipelagic problem, this is not without problems and state practice has stepped in – as it often happens – to clarify, interpret, supplement, and contribute to the development of international law. This is the basis of the present book: the existence of a problem, its solution on the basis of the LOSC, the inadequacies of the adopted approaches, how states have responded to these inadequacies, and finally the assessment of the value of state practice and its impact upon the already established rules.

This book is based on my doctoral thesis submitted and defended at the University of Bristol for the degree of Doctor in Philosophy. In the thesis, I examined the status of dependent outlying archipelagos. For the book, I have broadened the scope of the analysis in order to include coastal archipelagos. The initial idea for my doctoral thesis came from the 'archetype' of archipelagos, the Aegean archipelago, which spreads along the mainland of my home country, Greece, in the Aegean Sea. The idea was to explore whether the archipelagic concept could be applicable to dependent archipelagos, and to what extent geographic particularities may play a role in how archipelagos have been treated in international law. This brought me to the distinction between coastal and outlying archipelagos, and dependent archipelagos and archipelagic states. While the focus of my doctoral thesis was the status of dependent outlying archipelagos, the examination of state practice made me realise how the systems applied to both outlying and coastal archipelagos in state practice are rather similar both in terms of the rationale for the application and the criteria/requirements. And this became a central theme in the present book: the legal treatment of archipelagos in international law of the sea on the basis of their geographical features regardless of whether they are coastal or outlying, and regardless of their political status.

This book is not trying to answer the question of whether archipelagos merit a special regime in international law of the sea. This has been answered affirmatively by the LOSC when it adopted both article 7 and Part IV of the LOSC. These two regimes affirm that archipelagos should be recognised as circumstances where a special regime is warranted. What this study tries to do is to demonstrate to what extent the LOSC has effectively addressed the archipelagic problem. Nevertheless, it is not the intention of this book to challenge the existing regime. This is the role of state practice as an element contributing to developments in the law. And this is what the present study has tried to do: explore and analyse state practice in such a way so as to evaluate its law-making value on the basis of potential solutions and developments in international law. Certainly, *de lege ferenda* aspects in the development of the law cannot be avoided when considering solutions and developments in international law. However, the focus of the book is on state practice. Of course, it has not been intended for the analysis and examination of state practice to be exhaustive, however, the scope of the cases presented and analysed is quite broad in order to identify common patterns and potential developments in the law based on these patterns. Straight baselines have been analysed and assessed, and it has been attempted to demonstrate the position of states. Analysis of state practice and its impact on the law is a difficult endeavour. There are practical difficulties related to collection of information. Surely nowadays the databases of DOALOS provide a valuable tool in the hands of researchers; still difficulties exist not least with regard to practical information concerning the actual practice of states, especially enforcement, and what states intended to do or say. With regard to state behaviour, assumptions are inevitable, but, whenever possible, I have tried to contact state authorities

to clarify issues, and though this has not always been easy or straightforward, elements of this research have been incorporated in the book, and I would like to thank those officials who responded to my plea for information.

And this brings me to more thanks. First of all, I would like to express my sincere gratitude to my PhD supervisor, Professor Malcolm Evans, for his patient guidance and invaluable advice throughout my doctoral study at the University of Bristol and after that. I would also like to thank my examiners in my PhD *viva voce*, Professor Robin R. Churchill, University of Dundee, and Professor Achilles Skordas, University of Bristol, for their insightful comments on the arguments I raised in my thesis. I have tried to incorporate and accommodate these comments in various aspects of this book. I am also grateful to Professor Antonios Bredimas, Law School, University of Athens, for his very useful comments and advice on various aspects of my thesis. I am also grateful to my scholarship sponsor, the Greek State Scholarship's Foundation (IKY), which awarded me a full scholarship for my doctoral research at the University of Bristol.

My sincere thanks also go to Dr Robin Cleverly, Head of the Law Division, UK Hydrographic Office, for providing me with information concerning not only the position of the UK but also other instances of state practice, and for sharing his knowledge on various aspects of the law of the sea.

The book was written while working as a lecturer in two academic institutions in the United Kingdom: Kingston University London (2009–2011) and Lancaster University (2011–date). I am grateful to colleagues in both institutions for their support and advice. I would also like to thank Daniel Francis, Kingston University graduate, for his research assistance related to aspects of Chapter 6, and Matthew Linnell, Lancaster University graduate, for his assistance with technical measurements concerning the application of straight baselines, and for producing some of the maps which appear in the Appendix. I would also like to thank the UN Map Division for giving me permission to reproduce maps originally produced by the UN Division of Oceans Affairs and Law of the Sea, and the Hydrographic Society for their permission to reproduce an illustration (Figure 22 in the Appendix) from P.B. Beazley, *Maritime limits and Baselines: A guide to their delineation* (The Hydrographic Society, London, 1987).

I am also very grateful to Ms Lisa Hanson, Assistant Editor at BRILL / Martinus Nijhoff Publishers, for her kind patience and support during the production of my book manuscript.

Finally, I would also like to thank my friends in Athens, Bristol, London, and Lancaster for their support. Last but not least, I would like to express my sincere gratitude to my family, especially my parents and my sister, for their continuous encouragement and support.

Dr Sophia Kopela
Lancaster, 2012

List of Abbreviations

AJIL	American Journal of International Law
AFDI	Annuaire Français de Droit International
BYIL	British Yearbook of International Law
Can.YIL	Canadian Yearbook of International Law
EEZ	Exclusive Economic Zone
EFZ	Exclusive Fishing Zone
GA	General Assembly
GYIL	German Yearbook of International Law
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ILA	International Law Association
ILC	International Law Commission
YBILC	Yearbook of the International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
IJECL	International Journal of Estuarine and Coastal Law
IJMCL	International Journal of Marine and Coastal Law
IMO	International Maritime Organisation
LN	League of Nations
LOSC	Law of the Sea Convention
LSB	Law of the Sea Bulletin
LTE	Low Tide Elevation
MP	Marine Policy
MSC	Maritime Safety Committee
NILR	Netherlands International Law Review
NYIL	Netherlands Yearbook of International Law
ODIL	Ocean Development of International Law
Off.Rec.	Official Records
PCIJ	Permanent Court of International Justice
PSSA	Particularly Sensitive Sea Area
RGDIP	Revue General de Droit International Public
Span.YIL	Spanish Yearbook of International Law
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNESCO	United Nations Education Social and Culture Organisation
VJIL	Virginia Journal of International Law

List of Figures

Figure 1. Application of article 7 LOSC to a hypothetical group of islands	105
Figure 2. Hypothetical group of islands forming a juridical bay	109
Figure 3. Finland – Aaland Archipelago	265
Figure 4. United Kingdom: Outer Hebrides	266
Figure 5. Guinea-Bissau – Bijagos (Bissagos) Archipelago	267
Figure 6. Myanmar – Mergui Archipelago	268
Figure 7. Thailand – Ko Samui Archipelago	269
Figure 8. Honduras – Islas de La Bahia (Bay Islands)	270
Figure 9a. Russian Federation: Novaya Zemlya	271
Figure 9b. Russian Federation: New Siberian Islands	272
Figure 9c. Russian Federation: Severnaya Zemlya	273
Figure 10. Norway: Svalbard Archipelago	274
Figure 11. Denmark: Sjaelland and Faroe Islands	275
Figure 12a. Falkland Islands (Straight baseline system proclaimed by the UK)	276
Figure 12b. Malvinas Islands (Straight baseline system proclaimed by Argentina)	277
Figure 13. France: Guadeloupe	278
Figure 14. Ecuador: Galapagos Islands	279
Figure 15. Australia: Houtman Abrolhos Islands	280
Figure 16. Turks and Caicos Islands – United Kingdom	281
Figure 17. Spain: Balearic Islands	282
Figure 18. Canary Islands – Spain (based on Law 44/2010 on Canary Islands Waters)	283
Figure 19. Portugal: Azores and Madeira Islands	284
Figure 20. France: New Caledonia	285
Figure 21. Myanmar – Co Co Islands and Preparis Islands	286
Figure 22. India: Andaman and Nicobar Islands and Lakshadweep Islands	287
Figure 23. Paracel Islands (Straight baseline system proclaimed by China)	288
Figure 24. Island Forming a Juridical Bay	289

Contents

Preface and Acknowledgements	xv
List of Abbreviations	xix
List of Figures	xxi
 Introduction	 1
I. Archipelagos, the Archipelagic Concept and the Law of the Sea Convention	1
II. Dependent Coastal and Outlying Archipelagos: Definitional Aspects	4
III. The Scope and Structure of the Book	7
 Chapter One The Development of the Archipelagic Concept in International Law of the Sea: From Straight Baselines to the Archipelagic Regime of the Law of the Sea Convention	 11
1.1 Introduction	11
1.2 Proposals and Evolution of the Archipelagic Concept Prior to the Third UN Conference on the Law of the Sea	12
A. Early Proposals Regarding the Treatment of Archipelagos in International Law	12
B. The Impact of the <i>Fisheries Case</i> upon the Evolution of the Archipelagic Concept	14
C. Proposals and Discussions on Archipelagos in the Aftermath of the <i>Fisheries Case</i>	16
I. Straight Baselines and Outlying and Coastal Archipelagos in the Discussions of the ILC	16
II. Straight Baselines and Archipelagos during UNCLOS I	18
III. The Regime of Enclosed Waters in the Discussions of the ILC ad UNCLOS I	20
IV. Special Treatment of Archipelagos on the Basis of Historic Reasons in UNCLOS II	22
D. Factors Impeding the Acceptance of a Special Regime for Outlying Archipelagos: An Interplay of Geographic and Political Considerations	23

1.3	Archipelagos and the Third UN Conference on the Law of the Sea	25	
	A. Political Developments Influencing UNCLOS III	25	
	B. Outlying Archipelagos and the Archipelagic Regime Adopted in UNCLOS III	28	
	I. Distinction on the Basis of the Political Status of Archipelagos	30	
	II. Conditions for the Application of the Archipelagic Regime: Archipelagic Definition vs. Quantitative Requirements	38	
	III. The Archipelagic Regime: A Regime to Satisfy Conflicting Interests	42	
1.4	Concluding Remarks: The Application of the Archipelagic Concept in the LOSC: Gains and Losses	49	
Chapter Two The Application of Straight Baselines on the Basis of Article 7 LOSC and State Practice: Implications for Coastal Archipelagos			53
2.1	Introduction	53	
2.2	Article 7 LOSC and Application of Straight Baselines in Localities where there is a 'Fringe of Islands along the Coast in Its Immediate Vicinity'	54	
	A. Rationale and Objectives for the Application of Straight Baselines to 'Fringes of Islands'	54	
	B. Conditions for the Application of Article 7 to 'Fringes of Islands along the Coast in Its Immediate Vicinity'	56	
	I. 'Fringe of Islands'	56	
	a. Background	56	
	b. Islands vs Article 121 (3) LOSC Rocks	57	
	c. Number of Islands	60	
	d. Compactness of the Group: Distances between the Islands	61	
	II. The Relationship between the Coast and the Fringe of Islands: 'Along the Coast in Its Immediate Vicinity'	61	
	III. Conditions Regarding the Application of the Straight Baselines System per se	63	
	a. Article 7 (2–5) LOSC	63	
	b. Maximum Length of Straight Baselines	66	
	IV. Some Guidance from International Courts and Tribunals	66	

C.	Coastal Archipelagos and Article 7 LOSC	70
I.	'Fringe of Islands' vs Coastal Archipelagos	70
II.	Coast and Coastal Archipelagos	72
2.3	The Provision, the Most (mis)used? Reflections on State Practice with an Emphasis on Coastal Archipelagos	73
A.	Using Straight Baselines in the Case of a Few Off-Lying Islands: From Rationalisation Technique to Expansion of Coastal Jurisdiction	74
B.	Using Straight Baselines in the Case of Coastal Archipelagos: Protection of Vulnerable Maritime Areas	76
I.	Chile – Chilean Archipelago	77
II.	Finland – Aaland Archipelago	77
III.	United Kingdom – Outer Hebrides	78
IV.	Guinea-Bissau – Bijagos (Bissagos) Archipelago	79
V.	Canada – Canadian Arctic Archipelago	79
VI.	Myanmar – Mergui Archipelago	81
VII.	Thailand – Ko Samui Archipelago	82
VIII.	Italy – Tuscany Archipelago	83
IX.	Honduras – Islas de La Bahia (Bay Islands)	83
X.	Russian Federation	84
2.4	The Contemporary Relevance of Straight Baselines in Coasts Fringed with Islands	86
A.	Application of Straight Baselines and Impact on Maritime Space	86
I.	(External) Extension of Coastal State Jurisdiction	86
II.	(Internal) Extension of Coastal State Jurisdiction: The Status of Enclosed Waters	89
B.	Interpretation of Article 7 LOSC on the Basis of Subsequent State Practice and the Significance of Precedents	93
2.5	Concluding Remarks: Reconsideration of the Rationale of Article 7 and Coastal Archipelagos	97
Chapter Three Dependent Outlying Archipelagos: Straight Baselines, the LOSC and State Practice		99
3.1	Introduction	99
3.2	Potential Application of Straight Baselines on the Basis of the Law of the Sea Convention to Dependent Outlying Archipelagos	100
A.	Article 7 of the LOSC: 'Fringes of Islands' and Outlying Archipelagos	100

I.	Conditions for the Identification of Groups of Islands Qualifying for the Application of Straight Baselines (Article 7 Paragraph 1 of the LOSC)	103
a.	The Relevance of the Size of the Islands of the Group	103
b.	The Relationship between the Coast of the Main Island and the Rest of the Islands of the Group: Fringe and Masking Criterion	104
II.	Conditions Regarding the Application of the Straight Baselines Systems per se	105
B.	Article 10 of the LOSC: Islands Forming Juridical Bays	106
3.3	Practice of States in Outlying Archipelagos	112
A.	The Practice of Continental States Applying a Special System for the Measurement of the Maritime Zones of Their Outlying Archipelagos	112
I.	Archipelagos Dominated by One or Two Large Islands	113
a.	Kerguelen Islands – France	117
b.	Svalbard Archipelago – Norway	118
c.	Sjaelland and Laesø Islands – Denmark	120
d.	Furneaux Group – Australia	121
e.	Falkland Islands – United Kingdom	122
f.	Guadeloupe – France	124
II.	Archipelagos with Similarly Sized Islands or Islands Located in a Random Way	124
a.	Galapagos Islands – Ecuador	125
b.	Faroe Islands – Denmark	126
c.	Houtman Abrolhos Islands – Australia	127
d.	Canary Islands – Spain	127
e.	Balearic Islands – Spain	130
f.	Azores and Madeira Islands – Portugal	131
g.	Turks and Caicos Islands – United Kingdom	132
h.	Loyalty Islands (New Caledonia) – France	134
i.	Kong Karls Land (Svalbard) – Norway	134
j.	Dahlak Archipelago – Eritrea	135
k.	Sudan	136
l.	Co Co Islands and Preparis Islands – Myanmar	136
m.	Andaman and Nicobar Islands – Lakshadweep Islands – India	137
n.	Paracel Islands – China	138
o.	Iran, Syria and United Arab Emirates	139

B. Practice of Continental States Applying the Low-Water Rule in Their Outlying Archipelagos	140
I. Hawaii – USA	141
II. Aegean Archipelago – Greece	143
3.4 Concluding Remarks	147
Chapter Four Law-Creating Value of the Practice of States in Outlying Archipelagos with an Emphasis on Customary International Law	
4.1 Introduction	149
4.2 The Development of Customary International Law Related to Outlying Archipelagos and the LOSC	150
A. The LOSC and Customary International Law: Interrelations and Interactions	150
B. The LOSC and Outlying Archipelagos	156
4.3 The Status of Dependent Outlying Archipelagos in General Customary International Law	159
A. State Practice – The Material Element	160
I. Assessment of State Practice	160
II. Elements of State Practice Essential for the Formation of Customary Law	163
a. Duration	163
b. Consistency, Uniformity and Generality	164
B. The Subjective Element	166
I. <i>Opinio juris sive necessitatis</i>	166
II. <i>Opinio juris</i> and the LOSC	170
C. The Reaction of the International Community	173
I. Opposition and Protests	173
II. Acceptance Inferred from Active Conduct	178
III. Significance of Divergent Practice: Does Divergent Practice Manifest Opposition?	178
IV. Significance of Silence: Does Lack of Protest Manifest Acquiescence?	179
D. Concluding Remarks	182
I. Dependent Outlying Archipelagos and Customary International Law	182
II. The Content of the Emerging Customary Rule of International Law	183
4.4 Conclusion	189

Chapter Five The Archipelagic Concept and Special Customary and Historic Rights: Three Case Studies	191
5.1 Introduction	191
5.2 Some Introductory Remarks on Special Customary/Historic Rights	192
5.3 The Faroe Islands	195
5.4 The Galapagos Islands	200
5.5 The Canadian Arctic Archipelago	207
A. Historic Waters Based on Title Acquired and Transferred to Canada by the Inuit	209
B. Historic Waters and the Exercise of Sovereign Authority	211
I. Activities Manifesting Sovereign Intention	211
II. Canadian Legislation Related to the Arctic Archipelago	214
III. Assertion of the Claim via Statements of Canadian Governmental Officials	217
IV. The Reaction of Other States: Critical Time for the Establishment of the Historic Title and Acquiescence	220
C. Weighing Strengths and Weaknesses in an Historical Context	225
5.6 Conclusion	226
Chapter Six Legitimacy of the Archipelagic Regime and Future Developments	229
6.1 Introduction	229
6.2 Contemporary Relevance of the Archipelagic Regime: Part IV of the LOSC and Dependent Outlying Archipelagos	230
A. The Archipelagic Concept and the Element of Statehood	230
I. Legal Definition of Archipelagos according to the LOSC ..	230
II. Statehood as a Means of Distinguishing Archipelagos	230
III. Self-Governing and Non-Self-Governing Archipelagic Territories as 'Quasi' Archipelagic States	234
B. Reasons for the Application of the Archipelagic Regime in Terms of Needs and Interests and the Exclusive Economic Zone	236
I. Economic Considerations	237
II. Protection of the Marine Environment	237
III. Issues Related to Internal and External Security	240
IV. Psychological and Symbolic Reasons	242