THE ROLE OF ARCHIPELAGIC BASELINES
IN MARITIME BOUNDARY DELIMITATION

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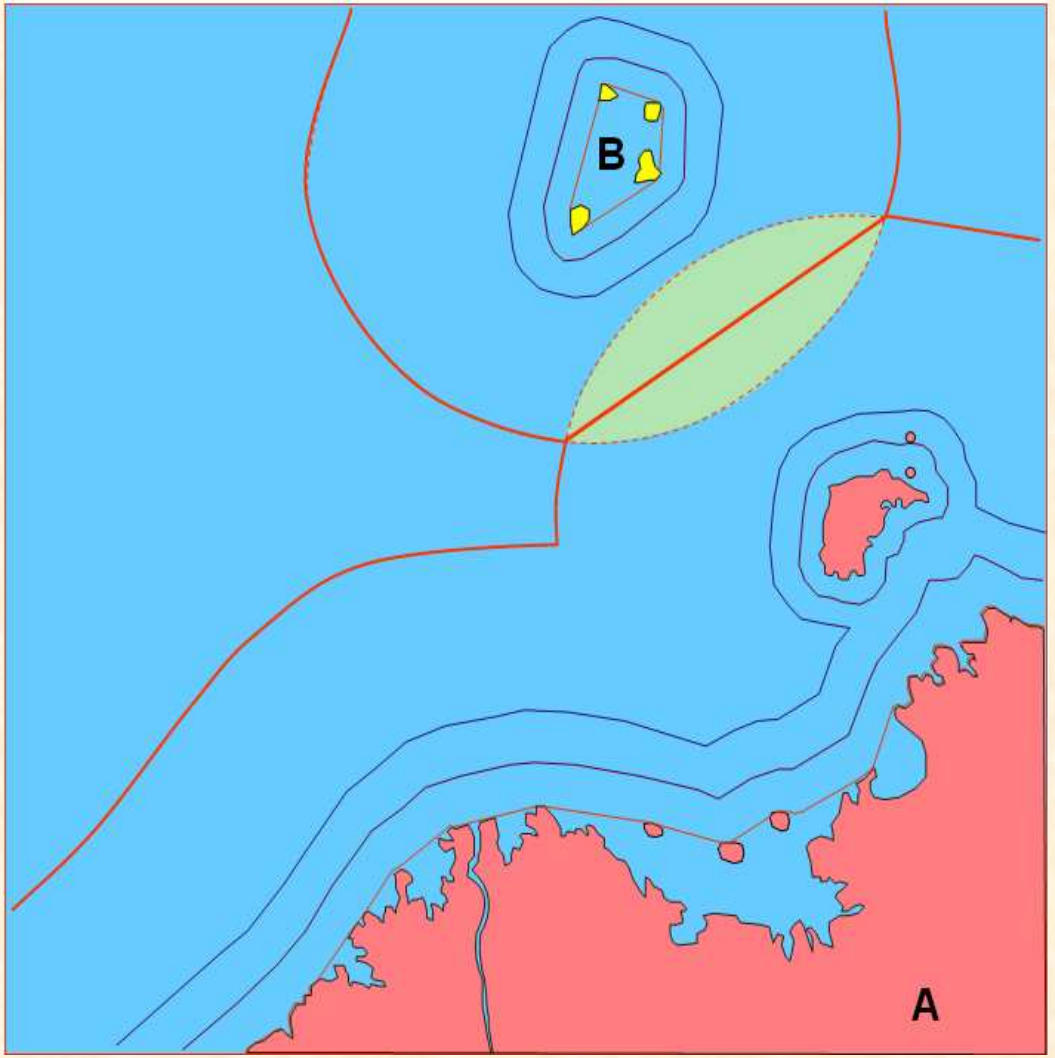
United Nations - Nippon Foundation of Japan Fellowship Program (2009 – 2010)



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O U T L I N E

- ARCHIPELAGIC STATES
- ARCHIPELAGIC BASELINES
- MARITIME DELIMITATION METHODS INVOLVING ARCHIPELAGIC BASELINES
- ANALYSIS OF STATE PRACTICE
- CONCLUSION

Archipelagic Status

1st UN Conference on the Law of the Sea

2nd UN Conference on the Law of the Sea

3rd UN Conference on the Law of the Sea

Part IV LOSC 1982

The codification which represented a significant development of the international legal status of waters within and around certain States which can be geographically and legally considered as archipelagos

ARCHIPELAGIC STATES

Article 46 LOSC

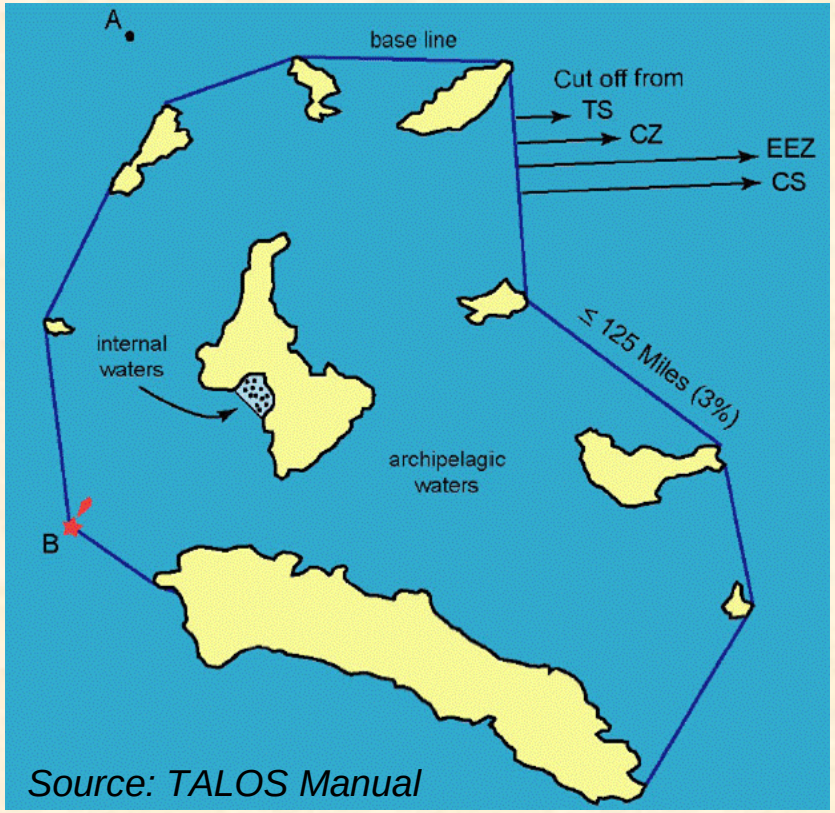
For the purposes of this Convention:

(a) "archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;

(b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

ARCHIPELAGIC BASELINES

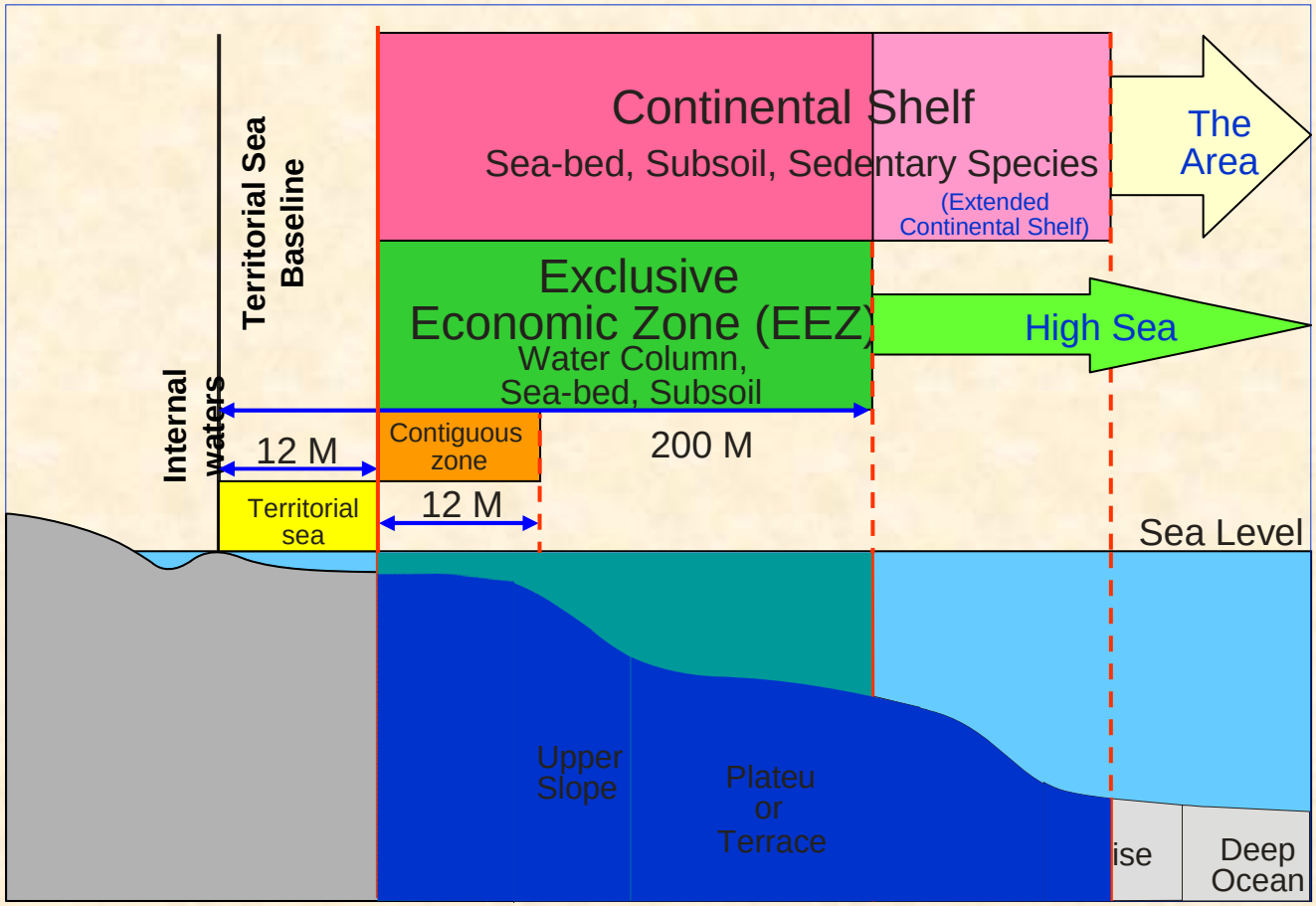
Archipelagic baselines drawn in accordance with LOSC Art. 47



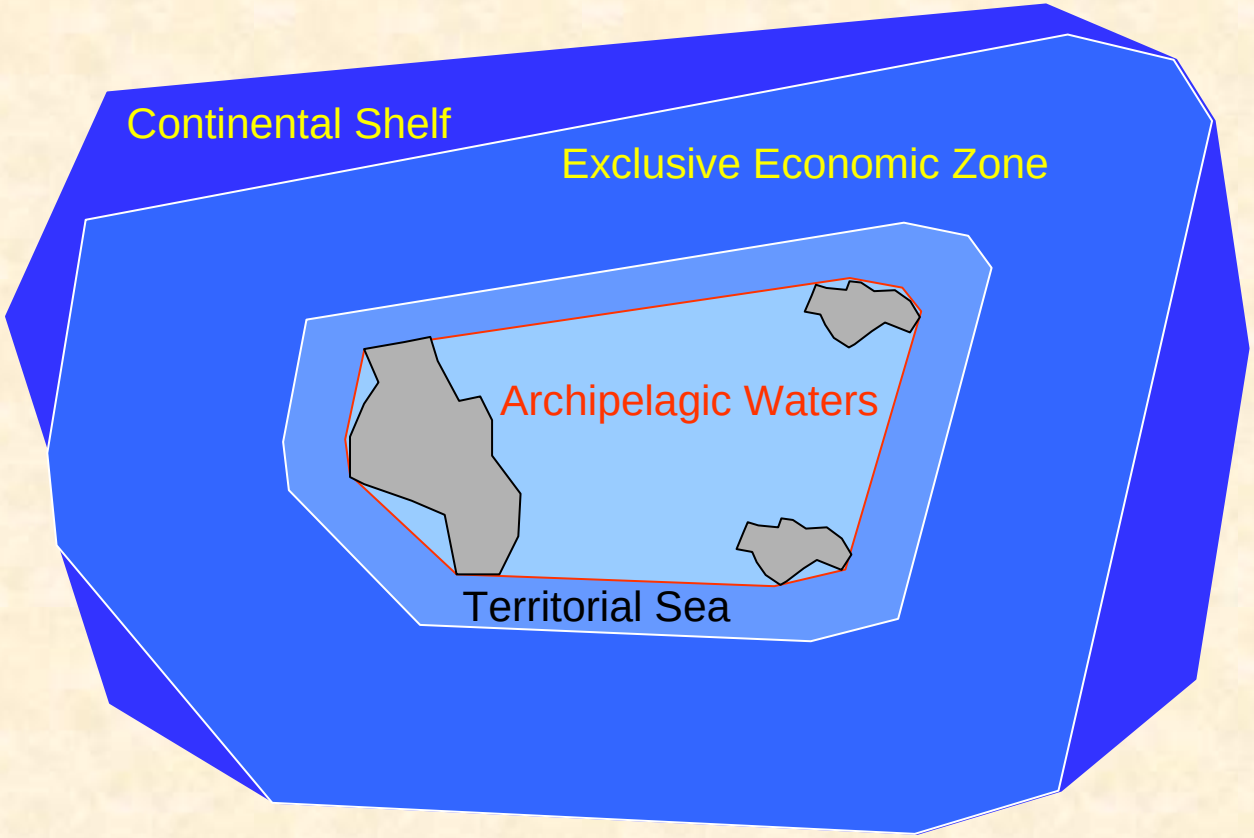
Source: TALOS Manual

- 5 Requirements under Art. 47
  - The claimant state's "main islands" must be included within the archipelagic baselines system
  - The ratio of water to land within the baselines must be between 1:1 and 9:1
  - The length of any single baselines segment must not exceed 100nm
  - Three percent of the total number of baseline segments enclosing an archipelago may exceed 100nm (max 125nm)
  - Such baselines "shall not depart to any appreciable extent from the general configuration of the archipelago"

Maritime Jurisdictions - LOSC 1982



Arsana&Schofield (2009)



Source: Arsana (2009)

Principles of Maritime Boundary Delimitation

State A Main land

Archipelagic State B

Fringing islands

Island

Low Tide Elevations

Baselines

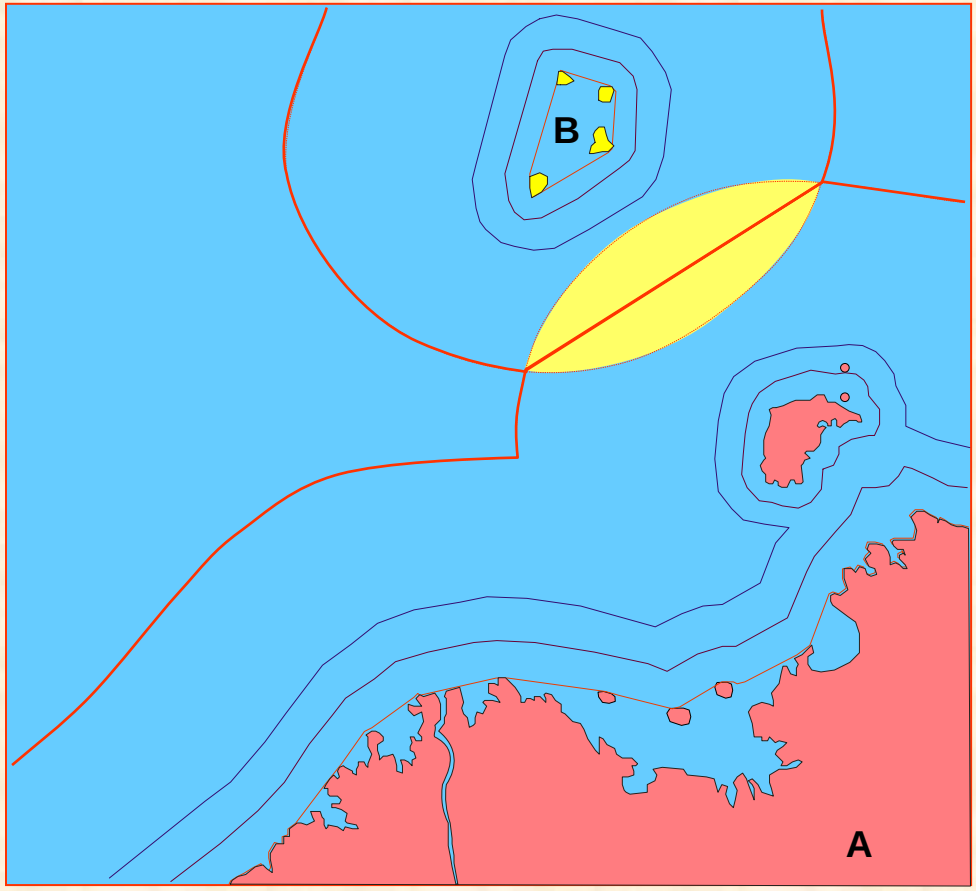
Territorial sea Limit 12 M

Contiguous zone Limit 24 M

EEZ Limit 200 M

Overlapping claim

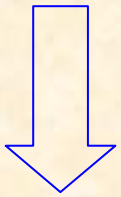
Maritime boundary



Arsana, 2007: 9

Article 48

The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47



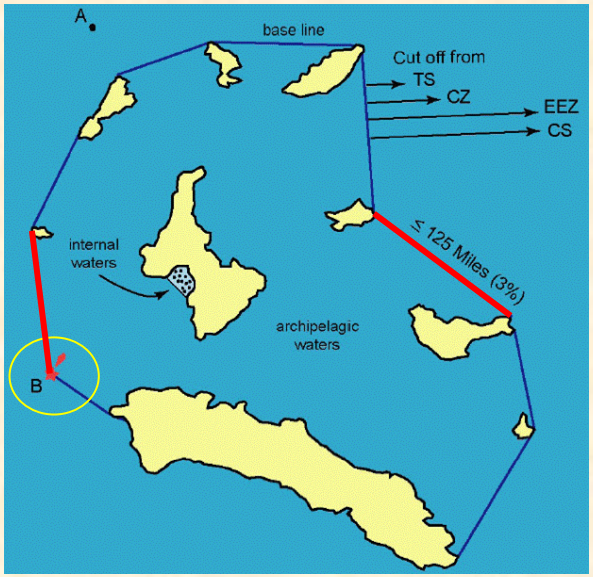
HOW…??

Technical Aspect of Article 48

- TALOS Manual:

  "*a base point is any point on the baseline. In the method of straight baselines, where one straight baseline meets another baseline at a common point, one line may be said to "turn" at that point to form another baseline. Such a point may be termed a "baseline turning point" or simply "base point*"'

- How to draw boundary line involving straight/archipelagic baselines?



METHOD OF DELIMITATION INVOLVING ARCHIPELAGIC BASELINES

- During a negotiation, the parties are free to agree any methods to delineate the boundary
- Archipelagic State vs non-archipelagic State

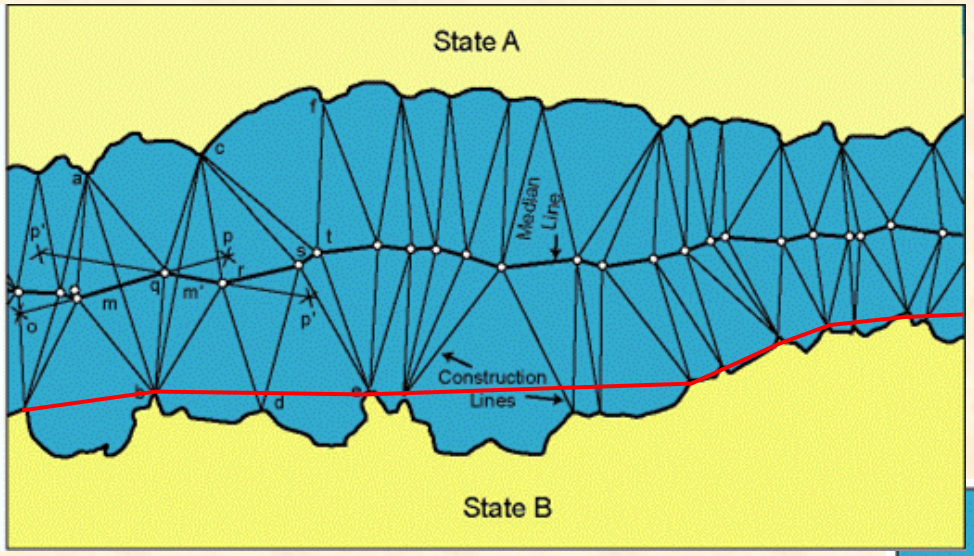
long discussions to agree the method (technical aspect):

Base point to base point method

OR

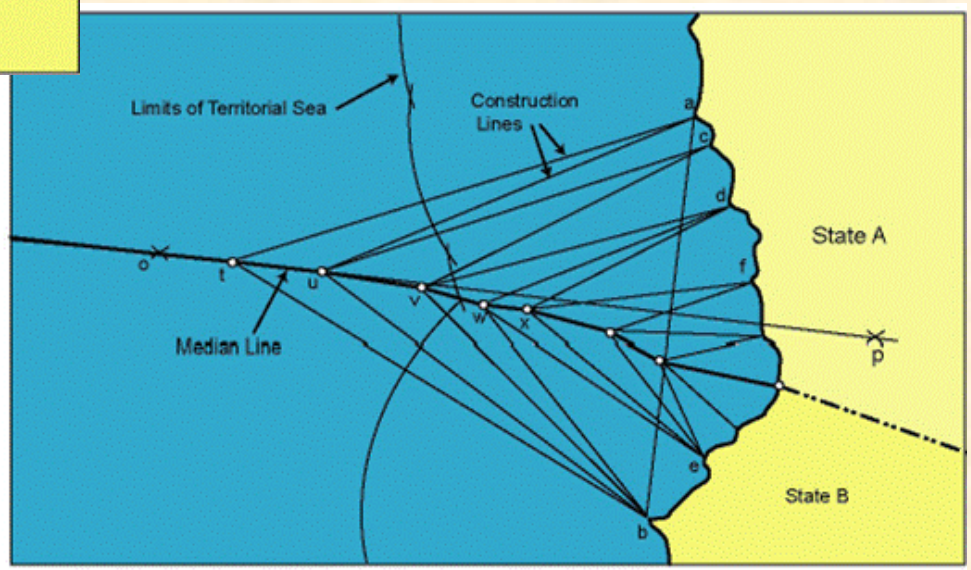
Straight Baseline to base point method

MEDIAN LINE



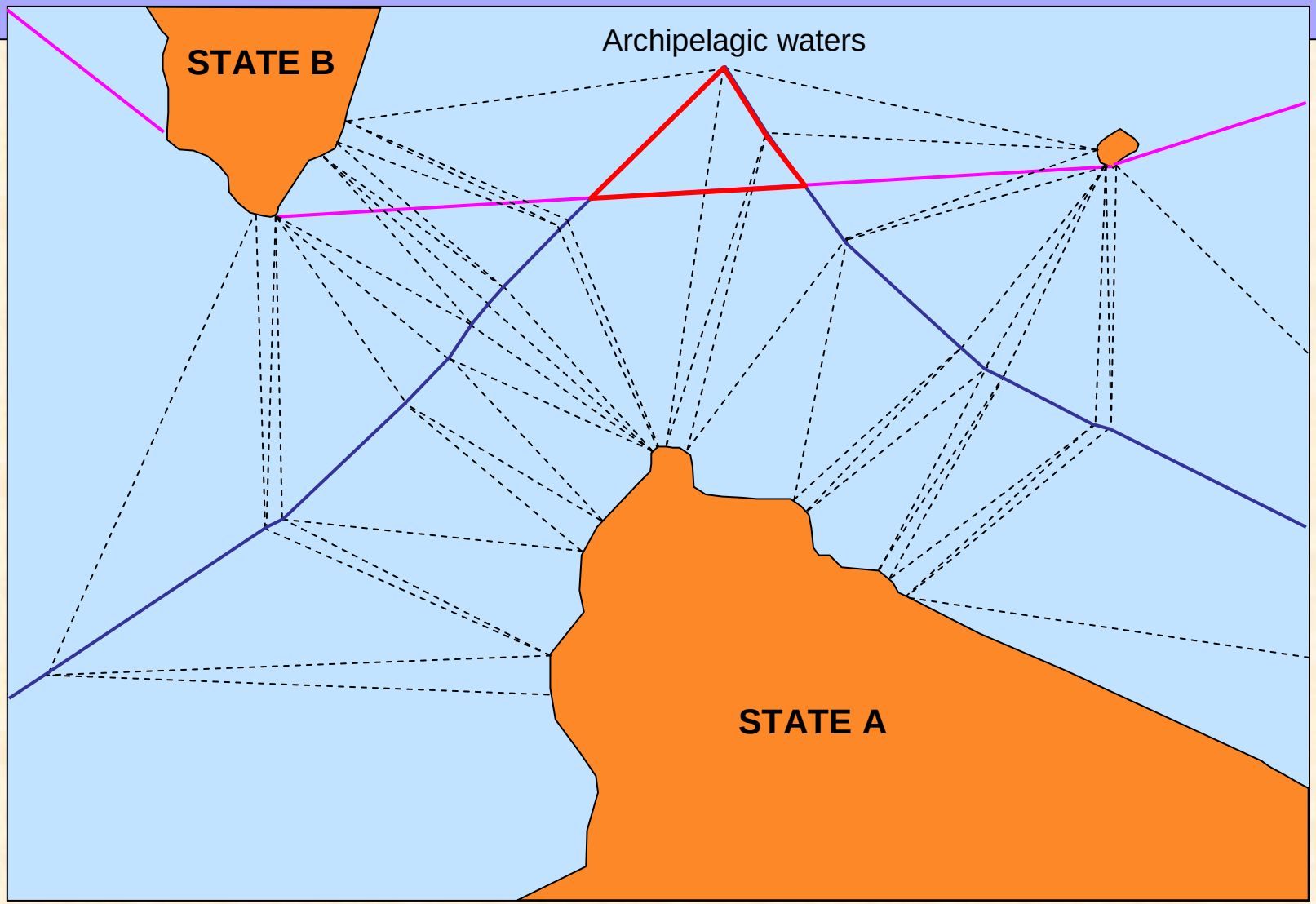
Base point to base point method to construct a median line between opposite States.

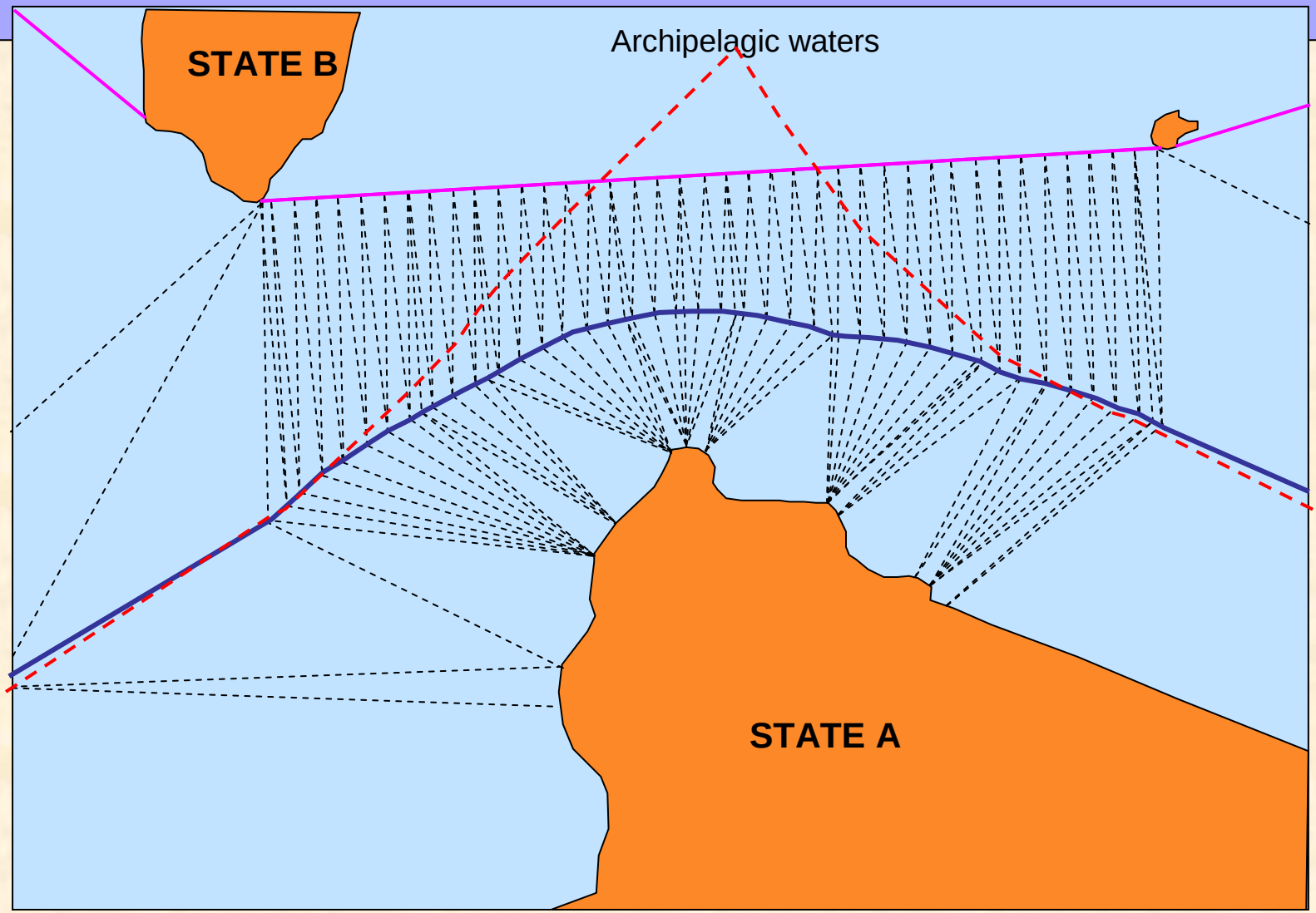
Base point to base point method to construct a median line between adjacent States



Source: TALOS Manual

If the relevant area of delimitation involving a very long segment of archipelagic baseline, connecting two far separated base points, the base point to base point method will, most likely, result in a boundary line which lies significantly closer to the archipelagic State


STATE B
Archipelagic waters
STATE A


STATE B
Archipelagic waters
STATE A

'the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured' (Qatar-Bahrain)

+

ARTICLE 15 LOSC

⇩

the baseline is constructed from two or more points which are not necessarily base lines turning points. In practice, that would be an infinite series of points which form a segment of baseline.

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specific median line algorithm NEEDED

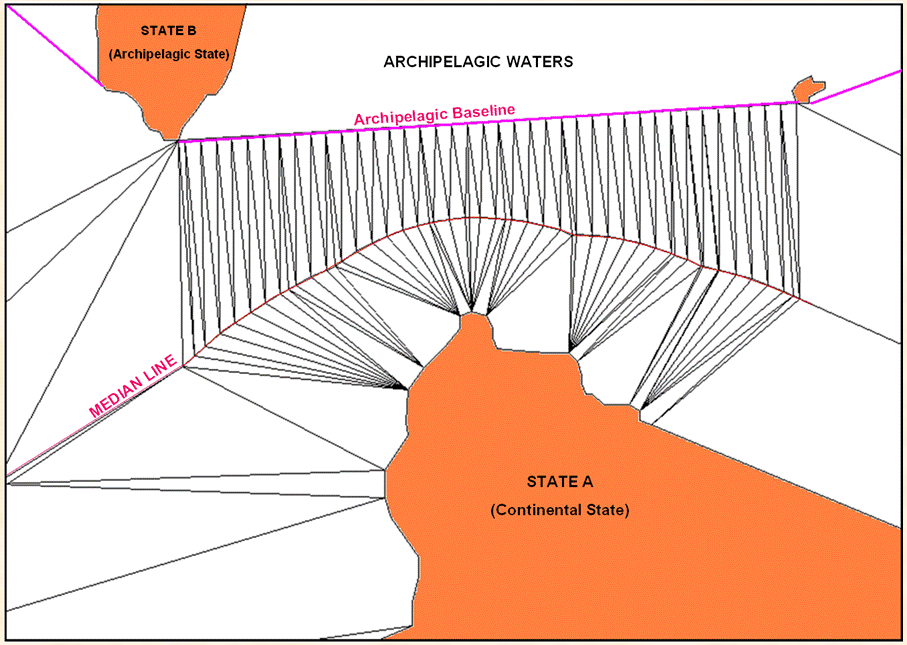
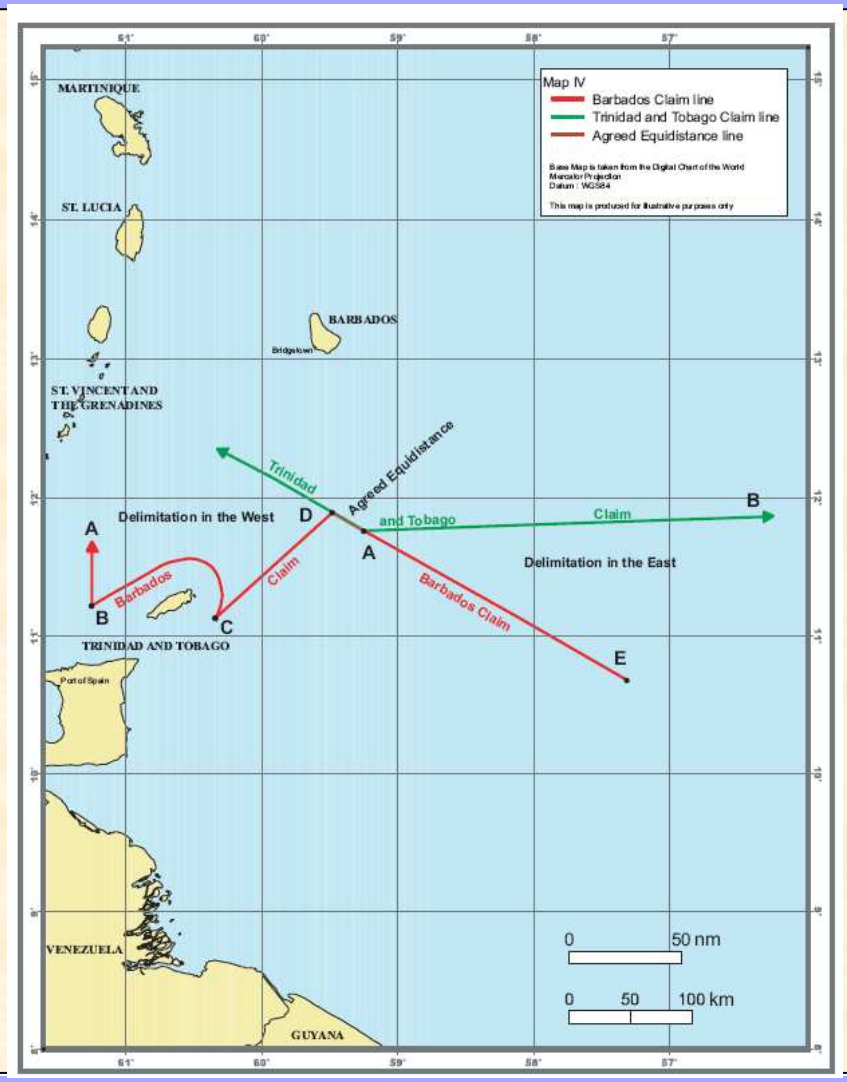


Illustration of a Median line generated from the archipelagic baseline using CarisLOTS' median algorithm

Trinidad and Tobago *v.* Barbados (Tribunal Case)

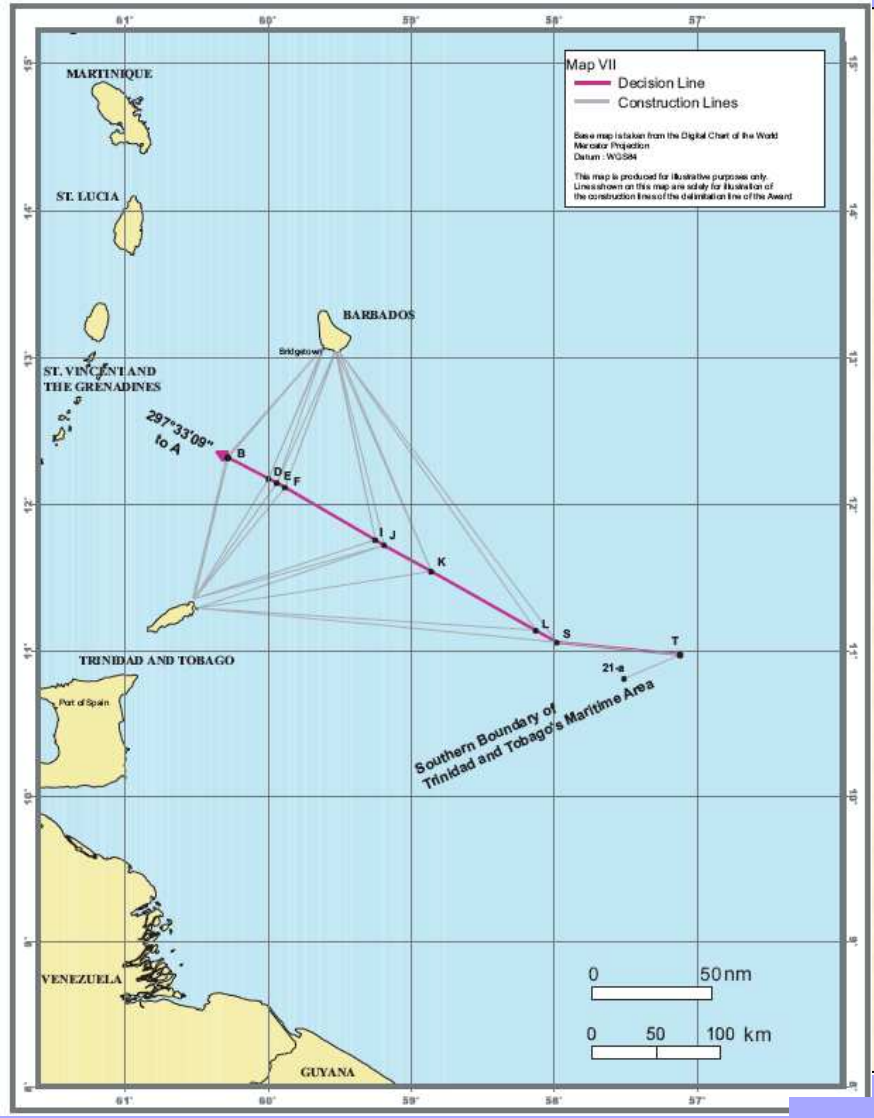


Trinidad and Tobago *v.* Barbados (Tribunal Case)

The Tribunal provided that:

"The delimitation shall extend from the junction of the line that is equidistant from the low water line of Barbados and from the nearest turning point of the archipelagic baselines of Trinidad and Tobago with the maritime zone of a third State that is to the west of Trinidad and Tobago and Barbados. The line of delimitation then proceeds generally south-easterly as a series of geodetic line segments, each turning point being equidistant from the low water line of Barbados and from the nearest turning point or points of the archipelagic baselines of Trinidad and Tobago until the delimitation line meets the geodetic line that joins the archipelagic baseline turning point on Little Tobago Island with the point of intersection of Trinidad and Tobago's southern maritime boundary, as referred to in paragraph 374 above, with its 200 nm EEZ limit. The boundary then continues along that geodetic line to the point of intersection just described"

Trinidad and Tobago *v.* Barbados (Tribunal Case)



Point	From	From	From	Latitude	Longitude
A.	T4	T3	B1	12° 38′ 53.80651″N,	60° 54′ 22.44157″W
B.	T3	T2	B1	12° 19′ 33.70864″N,	60° 16′ 33.00194″W
C.	T2	B1		12° 13′ 09.28660″N,	60° 03′ 52.68858″W
D.	T2	B1	B2	12° 10′ 57.11540″N,	59° 59′ 31.68810″W
E.	T2	B2	B3	12° 09′ 12.13386″N,	59° 56′ 06.33455″W
F.	T2	B3	B4	12° 07′ 19.07138″N,	59° 52′ 45.59547″W
G.	T2	B4	B5	12° 05′ 41.88429″N,	59° 49′ 54.18423″W
H.	T2	B5	B6	11° 48′ 07.35321″N,	59° 19′ 00.16556″W
I.	T2	B6	B7	11° 45′ 48.23439″N,	59° 14′ 56.37611″W
J.	T2	T1	B7	11° 43′ 38.75334″N,	59° 11′ 11.23435″W
K.	T1	B7	B8	11° 32′ 53.69120″N,	58° 51′ 26.05872″W
L.	T1	B8	B9	11° 08′ 37.26750″N,	58° 07′ 34.14883″W
M.	T1	B9	B10	10° 59′ 42.54270″N,	57° 51′ 32.71969″W

NOTE:

Check the relevant area of the delimitation

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STRAIGHT BASELINES under Article 7 LOSC

"…the issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying base points for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the exclusive economic zone between adjacent/opposite States are two different issues."

(*Black Sea Case* para.137)

STRAIGHT BASELINES under Article 7 LOSC

"In the first case, the coastal State, in conformity with the provisions of UNCLOS (Articles 7, 9, 10, 12 and 15), may determine the relevant base points. It is nevertheless an exercise which has always an international aspect"

"In the second case, the delimitation of the maritime areas involving two or more States, the Court should not base itself solely on the choice of base points made by one of those parties. The Court must, when delimiting the continental shelf and exclusive economic zones, select base points by reference to the physical geography of the relevant coasts"

(Black Sea Case para.137)

STRAIGHT BASELINES under Article 7 LOSC

- The Court tended not to use them in the delimitation of a maritime boundary
- Straight baselines can be characterised “excessive” – ambiguous language of article 7
- Archipelagic baseline should comply with article 47 – not excessive – greater justification to use in maritime delimitation
- There is no clear guidance on how straight archipelagic baselines should be treated in maritime boundary delimitation in the context of a case before an international court or tribunal

ANALYSIS OF STATES PRACTICE

Archipelagic States Based on United Nations Table of claims to maritime jurisdiction

- Antigua & Barbuda
- The Bahamas
- Cape Verde
- Comoros
- Dominican Republic
- Fiji
- Indonesia
- Jamaica
- Kiribati
- Maldives
- Marshall Islands
- Papua New Guinea
- Philippines
- Saint Vincent & the Grenadines
- Sao Tome & Principe
- Seychelles
- Solomon Islands
- Trinidad & Tobago
- Tuvalu
- Vanuatu

ANALYSIS OF STATES PRACTICE

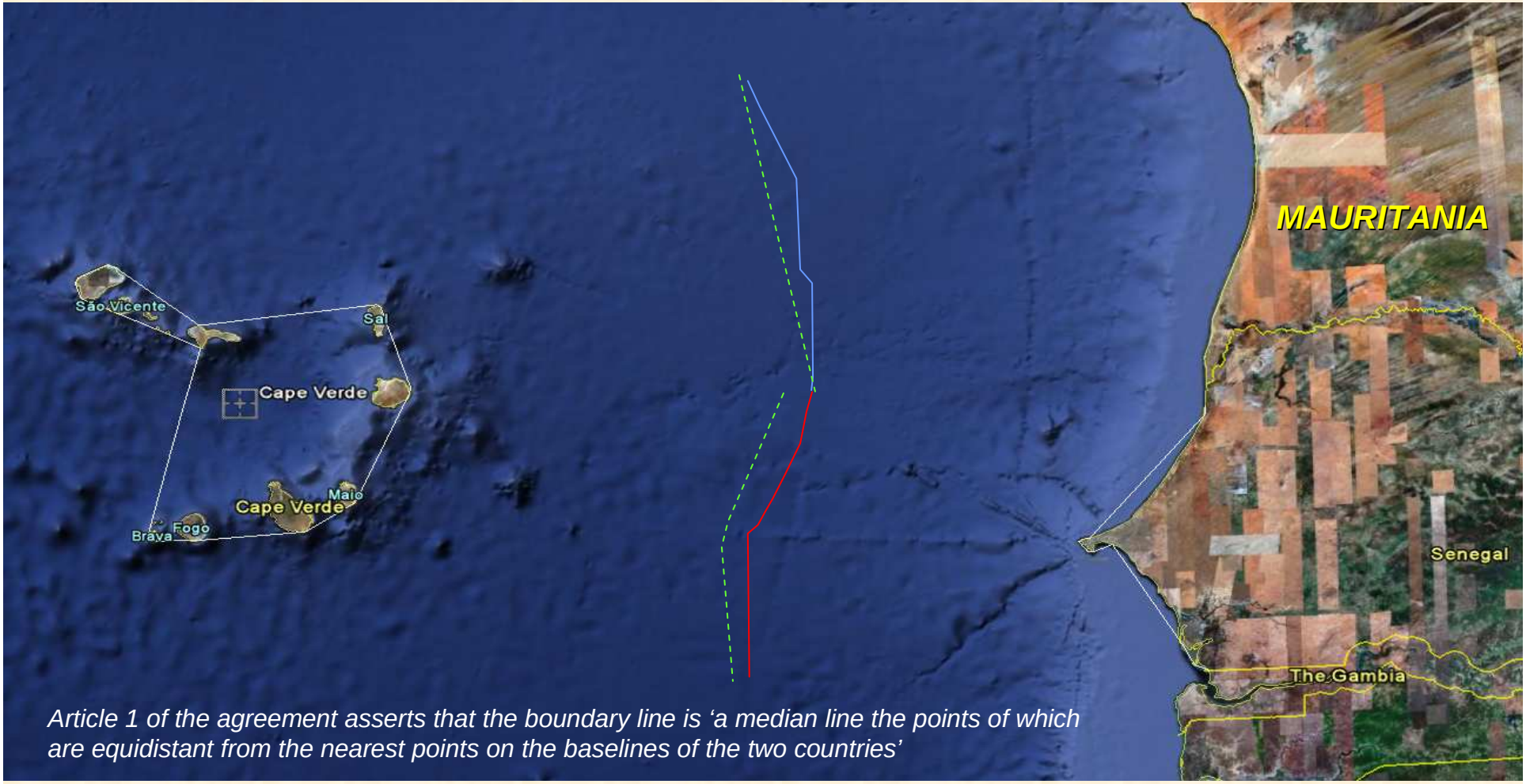
1st category: *the agreed boundary lines generated using methods which resulted in negotiated lines, thus it is not necessarily clear whether baselines are given certain weight in the delimitation.*

2nd category: *the agreed boundary lines generated by completely disregarding the baseline.*

3rd category: *the boundary lines presumably generated with fully reference to the baseline.*

NOTE: *Suspect geospatial analysis of each case would reveal more.*

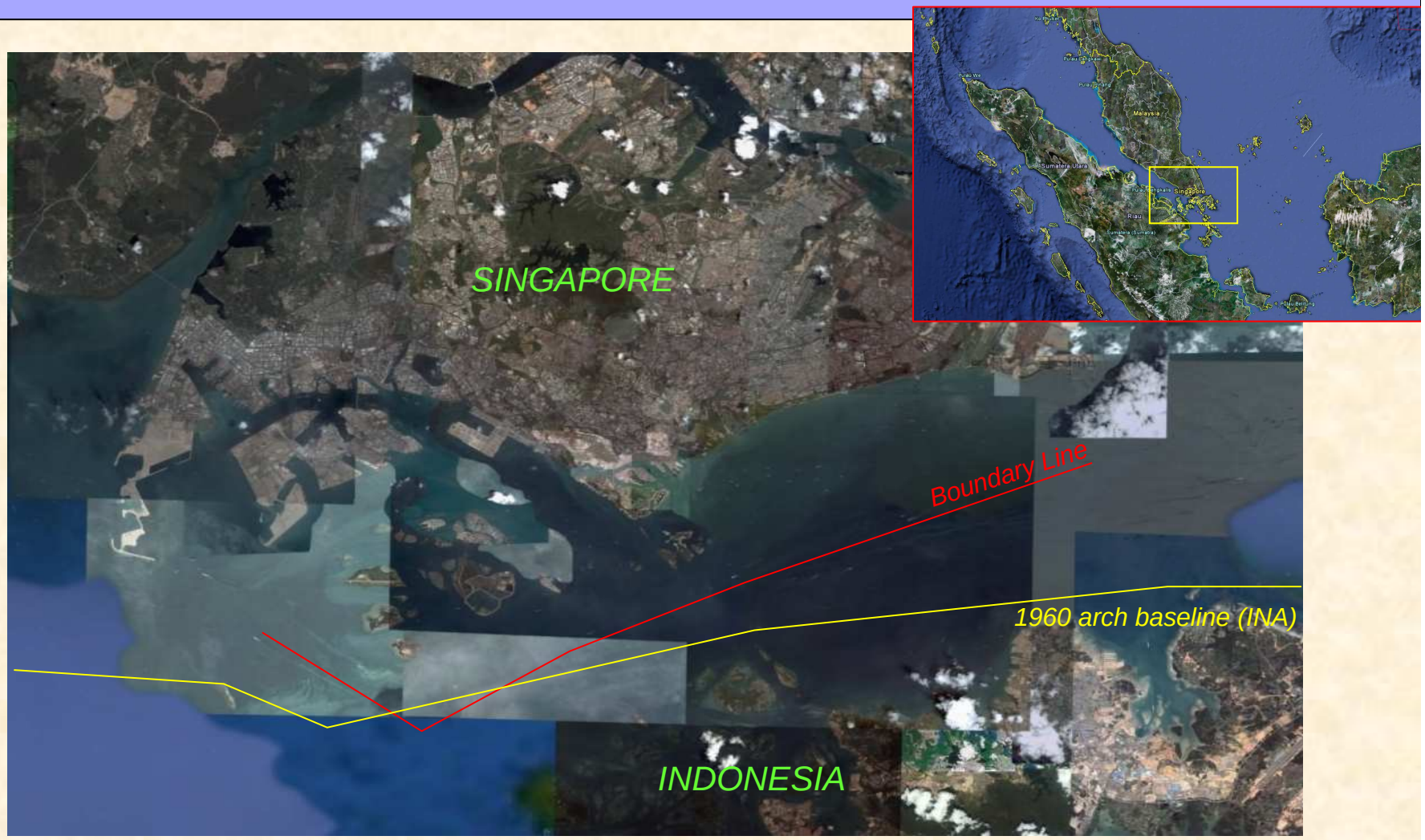
CAPE VERDE – MAURITANIA
CAPE VERDE – SENEGAL



Article 1 of the agreement asserts that the boundary line is 'a median line the points of which are equidistant from the nearest points on the baselines of the two countries'

2nd category

INDONESIA – SINGAPORE (1973)



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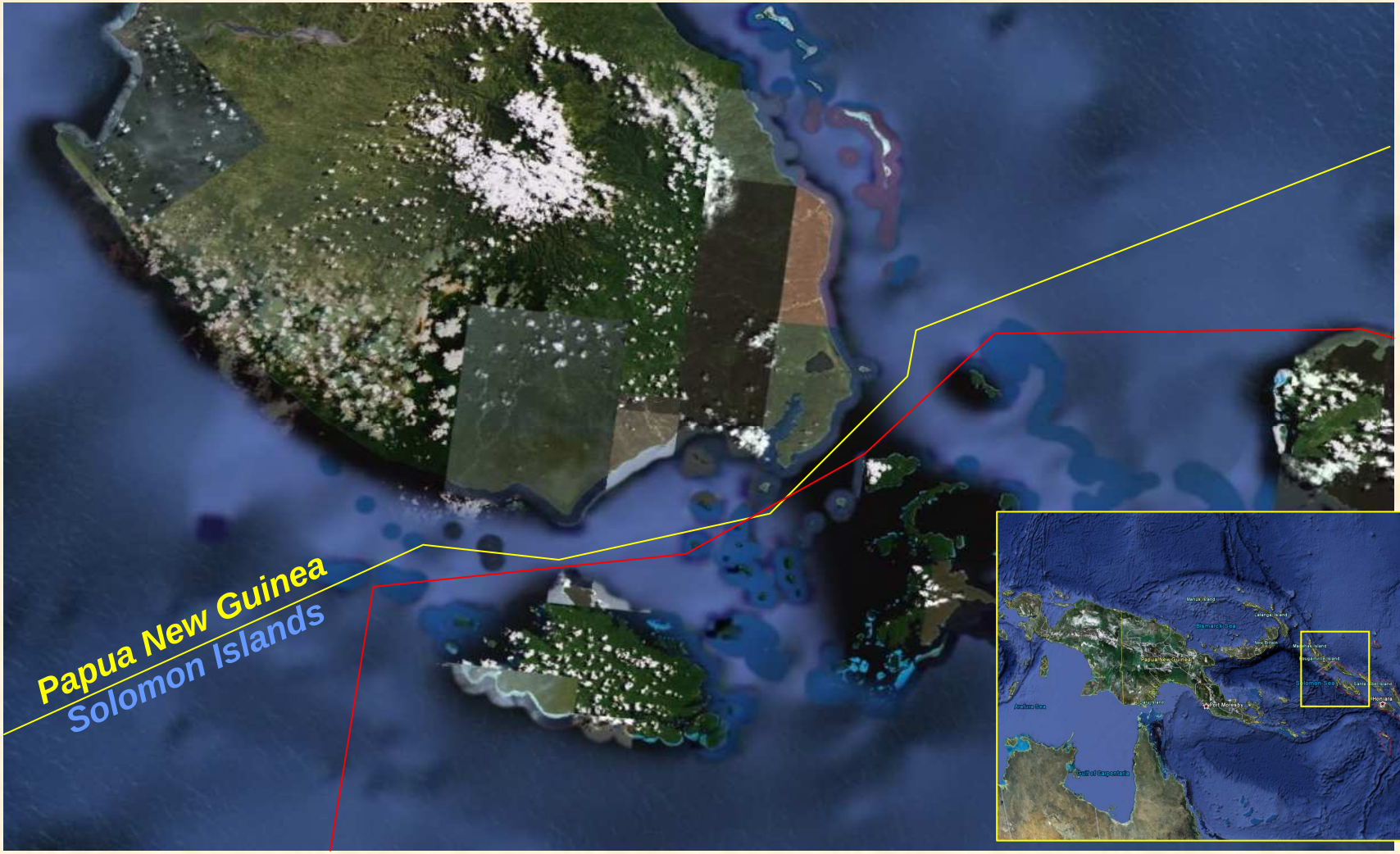
2nd category

SOLOMON ISLAND - PNG



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Sao Tome and Principe – Gabon

CONCLUSION

- Part IV of the LOSC represents one of the more innovative aspects of the Convention.

- It is often unclear whether a particular system of straight archipelagic baselines had any real significance in determining the final location of the maritime boundary delimitation line. This is arguably due to the lack of legal and technical guidance on how provisions of maritime boundary delimitation involving archipelagic baselines should be implemented

- There is greater justification for the application of archipelagic baselines in the delimitation of maritime boundaries.

- Negotiation still represents the best way to delimit maritime boundaries between States.

Thank You ☺