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THE VALIDITY OF UNILATERAL DECLARATIONS ON MARITIME OUTER LIMITS CONCERNING FUNDAMENTAL CHANGES DUE TO SEA LEVEL RISE

TRAN THI KIM NGUYEN
Faculty of Law, Ho Chi Minh City Open University, Vietnam
E-mail: nguyen.ttk@ou.edu.vn
NGUYEN MAI HUONG
National Boundary Commission, Ministry of Foreign Affairs, Vietnam
E-mail: nguyemaihuong.mofavietnam@gmail.com

Abstract

The maritime outer limits of a coastal State depend profoundly on the structure of its coastline, which is likely affected by rising sea levels. This paper clarifies the legal effect of unilateral declarations by States in general and when establishing maritime outer limits in particular, and the impact of fundamental changes in circumstances on the validity of such declarations in order to offer recommendations for Vietnam.

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Unilateral declarations of a state have long been recognized as a subsidiary source of international law. Their legally binding character depends significantly on the circumstances in which such declarations were issued. Therefore, fundamental changes in circumstances raise a legal question regarding the validity of such unilateral declarations under Article 62 of the 1969 Vienna Convention on the Law of Treaties (VCLT). Notably, this provision excludes issues relating to national territory and borders from the impact of fundamental changes in circumstances. Most maritime outer limits within national jurisdiction (internal waters, territorial sea, contiguous zone, exclusive economic zone, and continental shelf) are established on the basis of the unilateral declarations of a state provided that they are aligned with the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Meanwhile, sea level rise due to global climate change has become a current worrying phenomenon. This raises the question of whether the increasing sea levels could impact the maritime outer limits previously declared by the state. The outer limit of the territorial sea, constituting a national sea border, may stabilize despite fundamental changes, as per Article 62 of the VCLT. However, it is crucial to note that the outer limits of the exclusive economic zone and the continental shelf or extended continental shelf beyond 200 nautical miles (if applicable) do not serve as the national border. Notably, most of these outer limits are measured from the baselines, thus, the central

point is to examine the validity of the state's declarations on the baselines in case of sea level rise.

This paper analyzes the legality of unilateral declarations of states in generating maritime zones and the application of the principle of fundamental changes in circumstances to such maritime outer limits. Finally, the paper refers to the practice of establishing maritime zones under Vietnam's jurisdiction and recommends appropriate positions.

1. The binding nature of unilateral declarations of states in establishing maritime outer limits

1.1. The validity of unilateral declarations of states

In a book entitled "Unilateral Acts of States in Public International Law", Saganek refers to the resemblance of the foundation for the validity between unilateral declarations and treaties in the 1969 VCLT.[1] Additionally, a special rapporteur of the International Law Commission writes in his report that "without doubt, the rules applicable to treaty acts are largely applicable to unilateral legal acts of states".[2] Accordingly, the legitimacy of unilateral declarations is based on the principle of *pacta sunt servanda* or good faith, the role of subsequent conduct (recognition, acquiescence, and *estoppel*), and the full powers to represent state.[3]

First, the principle of good faith (*pacta sunt servanda*) is generally acknowledged as one of the fundamental principles of international law, stated in the 1945 United Nations Charter, and interpreted in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations.[4] Pursuant to these two documents, it is the responsibility of each state to implement its obligations under international law honestly and completely. The International Law Commission also proves that official statements of states that indicate a desire to be bound may have the impact of establishing such obligations. Consequently, the principle of good faith is regarded as the foundation for the legal effect of unilateral declarations.[5] In the *Nuclear Tests case,* the International Court of Justice (ICJ) states that international cooperation is inherently based on "trust and confidence",

1 Saganek P. (2015), *Unilateral Acts of States in Public International Law*, Queen Mary studies in international law, Vol. 22, Leiden: BrillNijhoff, ISBN: 978-90-04-27461-7 (E-Book), pp. 112-115, https://doi.org/10.1163/9789004274617_006 [accessed 10 August 2023].

2 The International Law Commission (2000), *Yearbook of the International Law Commission*, Vol. I, p. 2628. meeting, p. 131, p. 13, cited in Saganek P. (2015), *supra* note 1, p. 115.

3 Article 7(2) of the VCLT.

4 Resolution 2625/70 of the United Nations General Assembly.

5 The International Law Commission (2006), 'Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, with commentaries thereto of the International Law Commission', *Yearbook of the International Law Commission*, Vol. II, Part Two, pp. 369-381. Retrieved from: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf [accessed 10 August 2023].

especially in contemporary times when cooperation across numerous disciplines is becoming more and more crucial. Notably, the ICJ emphasizes that "just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus, interested states may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected."[6]

Second, subsequent conduct may be significant to the legal duties of unilateral declarations in order to identify the states' true intentions.[7] Shaw emphasizes the role of consent as the basis for all of the many "manifestations" that the relevant states have proceeded in the subsequences, albeit in various forms.[8] The three concepts of recognition, acquiescence, and *estoppel* differ significantly in theory, despite the fact that in practice the distinctions between them are frequently ambiguous. He further specifies that recognition "is a positive act by a State accepting a particular situation" even if the acts of recognition are of implicit understanding as it may be inferred from any relevant facts, it is still a confirmation of the presence of a certain factual intention of state.[9] Acquiescence "occurs in circumstances where a protest is called for and does not happen or does not happen in time in the circumstances". When circumstances seem to call for a reaction indicating disagreement but there is nothing in response to the new status, the state is deemed to "have accepted the new situations".[10] He also defines *estoppel* as a "legal technique" that prohibits states that are thought to have given their consent to a situation from changing their minds later on.[11] The basic concept of *estoppel* is that a state cannot later modify its position after having made or agreed to a statement that another party uses as a reason for future actions that either benefit or harm it.[12] *Estoppel* can result from prior recognition or acquiescence, but it is crucial to consider "the nature of the consenting state's interest".[13] Tran T. L. clarifies that "*estoppel* doctrine is said to stem from fundamental notions of justice and fairness".[14] Three requirements must all be satisfied concurrently for *estoppel* to

6 International Court of Justice, *Nuclear Tests Case (Australia v. France)*, Judgment of 1974, p. 46. Retrieved from: https://www.icj-cij.org/sites/default/files/case-related/58/058-19741220-JUD-01-00-EN.pdf [accessed 10 August 2023].

7 Article 31(3)(b) of the VCLT.

8 Shaw M. N. (2021), *International Law* (9th edition), Cambridge: Cambridge University Press, p. 438.

9 *Ibid*.

10 *Ibid*.

11 *Ibid*., p. 440.

12 *Ibid*., pp. 440-441.

13 *Ibid*., pp. 438-439.

14 Tran T. L. (2019), 'The application of estoppel in international law and experiences for Vietnam', *Vietnamese Journal of Legal Sciences*, Vol. 01, No. 01, 2019, pp. 89-114, https://doi.org/10.2478/vjls-2020-0006 [accessed 10 August 2023].

be constituted: (i) the intention of states in delivering the declaration "must be clear and unambiguous"; (ii) the declaration must be issued in a legitimate manner; and (iii) a state's declaration must be the subject of "a goodwill reliance from another state", which may do damage to the other states with this belief or benefit the owner of the declaration.[15]

Third, only if it a unilateral declaration is issued by competent authority binds a state. According to Article 7(2) of the VCLT, Heads of State, Heads of Government, and Ministers for Foreign Affairs are competent to make such declarations. This can be regarded as a well-established principle of international law: Heads of State, Heads of Government, and Ministers for Foreign Affairs are deemed to represent the State solely when exercising their authority, including making unilateral declarations that hold legal standing as international commitments on behalf of the respective state. Additionally, it is conceivable that individuals representing the state in specific fields may also have the authority to bind it through their declarations within their areas of competence.[16]

1.2. Maritime outer limits derived from unilateral declarations

As is mentioned in the book of Saganek, the jurisdiction or sovereignty and sovereign rights of coastal states over certain maritime zones are the core contents of the law of the sea. Acts of the establishment of state sovereignty over land territory bear similarities with sea territory.[17] However, unlike land territory, which is mainly established through territorial acquisition methods, effective occupation for example, a state's sea territory (including internal waters and territorial sea) is mostly established through unilateral declarations of coastal states. The first unilateral declaration is of baselines for measuring the breadth of the territorial sea and other maritime zones. Articles 5 and 6 of the 1982 UNCLOS use the words "on […] charts officially recognized by the coastal states", whereas Article 7 uses the term "general international recognition". It may be inferred from these provisions that a normal baseline depends more crucially on the will of coastal states than straight baselines.

Each coastal state generates maritime zones from their land territory and "unilaterally declares" these projections. Article 2 of the 1982 UNCLOS shows coastal States have an entitlement to a territorial sea as well as to its bed and subsoil; the seabed under the territorial sea is national underground territory.[18] Árnadóttir confirms that "this entitlement exists *ipso facto ab*

15 *Ibid*.
16 The International Law Commission (2006), *supra* note 5, pp. 372-374.
17 Saganek P. (2015), *supra* note 1, p. 216.
18 Árnadóttir S. (2021), *Climate Change and Maritime Boundaries: Legal Consequences of Sea Level Rise*, Cambridge: Cambridge University Press, p. 5 and pp. 13-82.

initio as an extension of the land territory".[19] The breadth of each maritime zone follows the coastal states" unilateral declarations adhering to the 1982 UNCLOS, or customary law, except for the extended continental shelf beyond 200 nautical miles which is grounded on the recommendations from the Commission on the Limits of the Continental Shelf (CLCS).[20]

Outer limits to maritime zones are unilaterally prescribed by coastal states through maritime projection under the principle the land dominates the sea. Baselines represent the starting point from which almost all maritime outer limits are calculated by the method that is contingent upon the will of coastal States as long as their breadths are within the 1982 UNCLOS framework.[21] In particular, coastal states may select different types of baselines (normal baselines or straight baselines) and the breadth of each maritime zone. On one hand, a normal baseline is determined by the low-water line along coastlines.[22] Notably, coastal states have the absolute authority to establish this low-water line regardless of methods and equipment. There can be no doubt from other states about the result or technical level of coastal states' tidal observation. On the other hand, depending on the factual shore geography, states may establish straight baselines or archipelagic baselines if it is an archipelagic State.[23] The 1982 UNCLOS framework records the concerns about the "abuse of rights"[24] and requires charts or lists of geographic coordinates shall be given "due publicity" and copies must be deposited with the Secretary-General of the United Nations.[25] However, except for the extended continental shelf beyond 200 nautical miles, it is obvious that a maritime zone establishment cannot be invalid as a result of objections from other Parties.

2. Fundamental changes in circumstances due to sea level rise

2.1. The doctrine of fundamental changes in circumstances (rebus sic stantibus)

Circumstances play a significant role in interpreting unilateral declarations. Waldock argues that according to the law on treaties, the circumstances in which these agreements were concluded may clearly affect their interpretation or even their validity.[26] Cambridge dictionary indicates that circumstance means "a fact or event that makes a situation the way it is".[27] A fundamental

19 Árnadóttir, S. (2021), *supra* note 19, p. 14.
20 Articles 76(4), (5) (6) (7) and (8) of the UNCLOS 1982.
21 Articles 3, 8, 33(2), 57 and 76(1) of the UNCLOS 1982.
22 Article 5 of the UNCLOS 1982.
23 Articles 7 and 47 of the UNCLOS 1982.
24 Article 300 of the UNCLOS 1982.
25 Article 16 of the UNCLOS 1982.
26 Waldock H. (1969), 'Second report on succession in respect of treaties', *Yearbook of the International Law Commission*, Document: A/CN.4/214 and Add.1 & 2, Vol. II, p. 54. Retrieved from: https://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_214.pdf&lang=EFS [accessed 10 August 2023].
27 Cambridge dictionary, 'Circumstance', *Dictionary.cambridge.org*. Retrieved from: https://dictionary.cambridge.org/dictionary/english/circumstance [accessed 10 August 2023].

change of circumstances (*clausula rebus sic stantibus*), thus, raises a question about the legal effect of a state's declarations. Shaw indicates that "the doctrine of *rebus sic stantibus* is a principle in customary international law providing that where there has been a fundamental change of circumstances since an agreement was concluded, a party to that agreement may withdraw from or terminate it".[28] It is supposed that significant changes may have happened throughout the periods that some treaties were in force. If the conditions of implementation of the treaty are altered, one state may require further actions if the other states are generally unwilling to accept the modifications. He expresses concern that this fact may undermine the rule of the commitments made by states while the international order does not have any "system for compulsory jurisdiction".[29] This doctrine, thus, could be used as proof of treaty withdrawal in a very restrictive manner.

In international law, the doctrine of *clausula rebus sic stantibus* is not only part of customary international law but is also documented in the 2006 Guiding Principles applicable to unilateral declarations of states capable of creating legal obligations, under Article 10(c), which recalls Article 62 of the 1969 VCLT.[30] It is clear from the text of Article 10(c) of the 2006 Guiding Principles that a unilateral declaration cannot be "revoked arbitrarily" if it has provided the existence of legal obligations for the state that made it. The application of the principle *rebus sic stantibus* for a unilateral declaration may follow the "meaning" and the "strict limits" of Article 62 of the 1969 VCLT. The application of Article 62 of the 1969 VCLT has been well interpreted by the ICJ's judicial practices. Particularly, this provision was examined in the *Fisheries jurisdiction case* and recalled in the *Gabčíkovo-Nagymaros Project* case.

First, the ICJ acknowledges the existence of customary law for ending a treaty relationship due to a change in circumstances. In the *Fisheries jurisdiction* case, the Court states that according to international law, a fundamental change in the circumstances that led to the Parties' decision to accept a treaty may provide the Party impacted a basis for requesting the termination or suspension of that treaty under certain conditions if it has resulted in "a radical transformation of the extent of the obligations imposed by it".[31] The Court, thereby, asserts that Article 62 of the VCLT "may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances."[32] This statement

28 Shaw (2021), *supra* note 8, pp. 828-829.

29 *Ibid*., p. 829.

30 The International Law Commission (2006), Vol. II, *supra* note 5, pp. 380-381.

31 ICJ, *Fisheries jurisdiction (Germany v. Iceland)*, Judgment of 2 February 1973 on Jurisdiction of the Court, p. 36. Retrieved from: https://www.icj-cij.org/sites/default/files/case-related/55/055-19730202-JUD-01-00-EN.pdf [accessed 10 August 2023].

32 *Ibid*.

is recited in the *Gabčíkovo-Nagymaros Project* case with the awareness of avoiding misapplication.[33] In this case, the ICJ notes that the expression of the language of Article 62 of the VCLT being in a conditional and negative form is "a clear indication moreover that the stability of treaty relations requires that the plea of a fundamental change of circumstances be applied only in exceptional cases".[34]

Second, the ICJ indicates strict conditions that a fundamental change could affect the validity of a treaty. The considerations involve (i) a "fundamental change of circumstances" crucial for a Party's "existence and economic development"; (ii) a "radical transformation of the extent of the obligations still to be performed", stemming from a new status of circumstances. This modification must render the treaty obligations so burdensome that the performance is fundamentally altered from the initially agreed terms; (iii) the circumstances during the treaty negotiation must have constituted "an essential basis of the consent of the parties to be bound" by the document, and any change in these circumstances must have been "unforeseen".[35]

2.2. The impacts of sea level rise towards the coastlines of coastal states

Global sea levels are rising at unprecedented rates, exceeding observations from the past 2,500-plus years,[36] primarily driven by human-induced global warming which leads to the expansion of saltwater and the melting of glaciers and ice sheets.[37] Griggs and Reguero report that different landforms such as beaches, dunes, high cliffs, low bluffs, steep mountains, and estuaries can be observed along the coast, along with varying densities of development.[38] Because of the interaction of hurricanes, big storm waves, extremely high tides, and projected future sea levels, lower-lying coastline areas are more susceptible to flooding. Higher-elevation regions, like cliffs, mountains along the coast, and bluffs, are more susceptible to wave assault during high tides or higher sea levels, which can cause coastal erosion. Future sea level rise will result in two scenarios: (i) more frequent and elevated flooding of low-relief shoreline areas, which will eventually cause permanent inundation and the loss of beaches and coastal wetlands; and (ii) more frequent wave action that will affect the base of coastal cliffs, bluffs, and dunes, increasing the rate of erosion.[39]

33 ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment of 25 September 1997, p. 104. Retrieved from: https://www.icj-cij.org/sites/default/files/case-related/92/092-19970925-JUD-01-00-EN.pdf [accessed 10 August 2023].

34 *Ibid*.

35 ICJ, *Case concerning the Gabčikovo-Nagymaros Project (Hungary v. Slovakia)*, *supra* note 36.

36 The Earth Science Communications Team (2023), *Sea Level*, California: NASA's Jet Propulsion Laboratory - California Institute of Technology. Retrieved from: https://climate.nasa.gov/vital-signs/sea-level/ [accessed 11 November 2023].

37 *Ibid*.

38 Griggs G. and Reguero B. G. (2021), 'Coastal Adaptation to Climate Change and Sea-Level Rise', *Water*, 13(16): 2151, https://doi.org/10.3390/w13162151 [accessed 10 August 2023].

39 *Ibid*.

In alignment with the variation of the coastline due to sea level rise, the normal baseline, which is determined by the low-water line, might be changed. Conversely, straight baselines are rarely affected because the selected points for straight baselines are high tide features. Low tide elevations are only used to determine straight baselines when upholding strict conditions as mentioned in Article 7(4) of the 1982 UNCLOS. Straight baselines 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 or except in instances where the drawing of baselines to and from such elevations has received general international recognition.

2.3. The legal implication of maritime outer limits in case of sea level rise

In terms of the legal implication of maritime outer limits in case of changing the coastline as an impact of seawater moving landward, there are three viewpoints.

First, all maritime outer limits need to be altered to follow the coastline. Árnadóttir argues that "there is an inherent difference between boundaries delimiting land territory and those delimiting maritime zones".[40] There are various factual and legal distinctions between land delimitations and maritime delimitations. Among these variations is the fact that certain maritime outer limits are only "lines of allocation" and are not boundaries in accordance with Article 62(2)(a) of the VCLT.[41] It is appropriate to use the term "boundary" to refer to a line that separates a state's contiguous land areas from other states. According to this observation, boundaries solely serve to define land areas, therefore boundaries that are referred to as maritime boundaries are purely outer limits.[42] To be more specific, Árnadóttir explains that the demarcation and underlying principles of land and maritime boundaries are also different.[43] He argues that land boundaries hold significance due to their permanence, despite potentially arbitrary demarcation, necessitating stability in treaties.[44] Conversely, maritime boundaries, often ambulatory, rely on precise geographical features and must adapt to changes in the coastline. Thus, he disagrees that maritime boundaries are of the exclusion when occurring fundamental changes as reflected in Article 62 of the VCLT.[45]

40 Árnadóttir S. (2016), 'Termination of Maritime Boundaries Due to a Fundamental Change of Circumstances', *Utrecht Journal of International and European Law*, 32(83), pp. 94-111, http://dx.doi.org/10.5334/ujiel.335 [accessed 10 August 2023].

41 Marston G. (1994), 'The Stability of Land and Sea Boundary Delimitations in International Law', in Blake G. H. (ed) (1994), *Maritime Boundaries: World Boundaries*, Routledge, p. 152, cited in Árnadóttir, S. (2016), *supra* note 44, pp. 94-111.

42 *Ibid*.

43 Árnadóttir S. (2016), *supra* note 44, pp. 94-111.

44 *Ibid*.

45 *Ibid*.

Second, the baselines and maritime boundary of the territorial sea need to be revised while the outer limits of the exclusive economic zone and (extended) continental shelf shall remain unchanged. Tran H. D. M opines that coastal states will have to adjust baselines and territorial sea boundaries but maintain the outer limits of the exclusive economic zone and continental shelf.[46] He has two reasons: (i) the baseline of the territorial sea boundary needs to be adjusted in order to guarantee the balance between the "sovereignty" of the coastal State and "the freedom of navigation rights of other countries". He notes that maintaining the outer limits of maritime zones is crucial for law enforcement and economic benefits vital to coastal states and their populations. However, shifting baselines landward without adjusting the outer limits of exclusive economic zones and the continental shelf could extend these zones beyond UNCLOS limits. To balance the interests of coastal and other states, he views this adjustment as *de lege ferenda* a necessary evolution in maritime law. [47]

Third, all maritime outer limits upholding international law when establishing shall remain stable along with the existence of a coastal state regardless of changes in the coastline. The authors support this approach. The revision of baselines is not the wish of coastal states. These states would suffer "triple damage"[48] due to rising sea levels because they would lose (i) land territory, (ii) previously established maritime zones, and (iii) underground territory if the baselines were supposed to move landward. State sovereignty over land and sea territories (including internal waters and the territorial sea) is absolute and undisputed. The right of innocent passage and specific immunities for non-commercial vessels in the territorial sea, as outlined in Articles 21, 22, and 25 of the 1982 UNCLOS, do not diminish this sovereignty. Sovereign rights over the exclusive economic zone and continental shelf stem from this sovereignty, implying no need for adjustments unless sovereignty itself changes.

As is evident in precedents, the general direction is to treat the two types of territory (land and sea) the same. In the *Aegean Sea continental shelf* case, the ICJ recognized the principle of maintaining border stability by noting that both land an continental shelf boundaries involve an inherent need for stability and permanence, and are governed by the rule that boundary agreements

46 Tran H. D. M. (2022), 'The impacts of sea level rise on baseline and outer limits of the maritime zones under the 1982 United Nations Convention on the Law of the Sea', *Journal of State and Law*, No. 8(412), 2022, pp. 62-73.

47 *Ibid*.

48 In comparison with Tran H. D. M.'s paper, *supra* note 53, he figures out that there would be "double damage" as a consequence of increasing sea height because he does not mention the loss of underground territory of a coastal State by moving the baselines toward land.

are not subject to change due to altered circumstances.[49] Moreover, in the Bay of Bengal maritime boundary arbitration between Bangladesh and India, the Permanent Court of Arbitration emphasized the importance of stable and definitive boundaries, both maritime and land, for maintaining long-term peaceful relations between states. Echoing the International Court of Justice's remarks in *the Temple of Preah Vihear* case, the tribunal highlighted that establishing boundaries aims primarily to secure stability and finality, a principle that applies equally to maritime delimitations.[50]

In scholarly works, Tran H. D. M. also suggests that coastal states are to preserve their baselines and maritime outer limits, provided that those lines "are consistent with the provisions of the 1982 UNCLOS at the time of establishment".[51] If the baselines and outer limits are adhered to the 1982 UNCLOS, they will be "frozen" whatever variates the coastline, if not, coastal states shall modify.[52] If the revision is delayed, a coastal State will "lose more areas within its maritime zones"[53] because of the landward movement of the seawater. In his viewpoint, this option is reasonable because it "preserves the rights and benefits that a coastal State has had for a long time" and is supported by member countries of the Pacific Islands Forum (PIS).[54] In 2021, PIS joins five other Pacific Island countries (Micronesia, Kiribati, Palau, Marshall Islands, and Nauru) in issuing the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise. Those states declare that, after establishing and reporting our maritime zones to the UN Secretary-General in line with the Convention, they will maintain these areas unchanged, regardless of sea-level rise due to climate change.[55] Additionally, they will not alter the baselines or outer limits of their zones in response to these environmental changes.[56]

49 ICJ, *Aegean Sea continental shelf case (Greece v. Turkey)*, Judgement of 1978, p. 85. Retrieved from: https://www.icj-cij.org/sites/default/files/case-related/62/062-19781219-JUD-01-00-EN.pdf [accessed 10 August 2023].

50 PCA, 'Award in the matter of the Bay of Bengal maritime boundary arbitration between Bangladesh and India', 2014, p. 216. Retrieved from: https://www.pcacases.com/web/sendAttach/383 [accessed 10 August 2023].

51 Tran H. D. M. (2022), *supra* note 53, pp. 62-73.

52 *Ibid*.

53 *Ibid*.

54 *Ibid*.

55 Declaration on Preserving Maritime zones in the face of climate change-related sea-level rise made on 6 August 2021 at the fifty-first Pacific Islands Forum: Australia, the Cook Islands, the Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, *Forumsec.org*. Retrieved from: https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/ [accessed 13 October 2023], cited in Tran H. D. M. (2022), *supra* note 53, pp. 62-73.

56 *Ibid*.

3. Practice of Vietnam in determining maritime outer limits

On 12 November 1982, Vietnam announced the Baselines consisting of 10 straight lines connecting 11 points.[57] This Declaration was officially enacted by the Government of Vietnam and has been public properly, which ensures the validity of the Statement and becomes the legal basis for determining Vietnam's maritime zones. However, these baselines are not complete because there are still several parts that have not yet determined the baselines, specifically in the Gulf of Tonkin, the Gulf of Thailand, and numerous high-tide features in the Paracel (Hoàng Sa) and Spratly (Trường Sa) Islands.[58] Pursuant to these baselines, Vietnam issued the Statement on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf on 12 May 1977.[59] It is notable that all of the breadth of maritime zones under Vietnam's jurisdiction is of the maximum legitimate distance measured from the 1982 Baselines. Particularly, the outer limits of the territorial sea, contiguous zone, and exclusive economic zone are 12, 24, and 200 nautical miles respectively. Therefore, any movement of the 1982 Vietnam's Baselines directly affects the outer limits of maritime zones under Vietnam's jurisdiction.

According to the worst sea level rise scenario[60] by the end of 21st century, the average sea level rise in the entire South China Sea region is 77 cm, and the highest in the Paracel Islands is 78 cm and the average for the entire coastline is 73 cm. The average sea level rise in coastal areas of the Southern provinces tends to be higher than in the Northern region.[61] In general, as all 10 points on Vietnam's Baselines are high-tide features, their legal status will not change in response to the worst sea level rise scenarios. Point A8 at Đại Lãnh Cape is the only one located on the mainland, which is 84 meters above the sea. Consequently, there exists no "radical transformation" that invalidates the 1982 Vietnam's Declaration on Baselines. Hence, there is no

57 Tran H. D. M. (2020), 'The natural and social conditions of the islands/rocks which are the base point on Vietnam's straight baseline', *Iuscogens-vie.org*. Retrieved from: https://iuscogens-vie.org/2020/05/10/dieu-kien-tn-xh-cua-cac-dao-la-diem-co-so-tren-duong-co-so-thang-cua-viet-nam/ [accessed 11 October 2023]. See also the co-ordinates of the points establishing the straight baseline from which the breadth of the territorial sea of Vietnam is measured (Attached to the 12 November 1982 Statement by the Government of the Socialist Republic of Vietnam). Retrieved from: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/VNM_1982_Statement.pdf [accessed 10 August 2023].

58 *Ibid*. The altitude of Đại Lãnh Cape is added from Le D. Q. (2016), 'Go to Dien cape to watch the sunrise', *Nhan Dan Newspaper*. Retrieved from: https://nhandan.vn/den-mui-dien-ngam-binh-minh-post257096.html [accessed 10 August 2023].

59 The Statement on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf on 12 May 1977.

60 Vietnam Meteorological and Hydrological Administration (2020), 'Climate change scenario', *Hanoi: Vietnam Ministry of Natural Resources and Environment*, p. 91. Retrieved from: http://vnmha.gov.vn/upload/files/kich-ban-bien-doi-khi-hau-phien-ban-cap-nhat-nam-2020.pdf [accessed 13 October 2023].

61 *Ibid*.

necessity to revise the system of points determining baselines or the maritime zones measured from those baselines, even in the face of potential changes in the coast resulting from rising sea levels, for the following reasons.

First, maintaining stable sovereignty and sovereign rights over the sea is the core foundation for sustainable economic development, national defense and security. Vietnam is regarded as one of the most damaged countries due to rising sea levels.[62] Therefore, if Vietnam had to move the baselines landward, this coastal state would suffer "triple damage" as mentioned above with the loss of land territory, sea territory, and underground territory. As a result, the sovereignty and economic development of Vietnam would be severely demolished. Moreover, Vietnam's land territory is narrow with a long coastline on the eastern side of the Indochina peninsula. Therefore, protecting the country against threats from the sea is one of the top prioritized national policy issues. Although the actual coastline may have certain changes due to rising sea levels, it does not reduce the connection between marine economic development and national defense and security between Vietnam's land and sea territory. This is also the practical basis for declaring the 1982 Baselines within the basis of Article 7(5) UNCLOS.[63]

Second, the existence of the 1982 Baselines does not have a negative impact on peace and security in the region. Although there has been opposition since it was first established,[64] from 1982 until now, Vietnam has always maintained a firm stance on respecting freedom of navigation and the right of innocent passage of foreign vessels[65] and made efforts to contribute to safety and good order on sea lanes.[66] Therefore, stabilizing this baseline is a foundation for Vietnam to contribute more to maritime security in the region.

62 Lafrance S. (2023), 'International Law of the Sea and Climate Change: Some Key Factual and Legal Issues for Vietnam', *International Law and the Global South*. See also VA (2023), 'Vietnam actively responds to climate change', *Communist Party of Vietnam online newspaper*. Retrieved from: https://dangcongsan.vn/xay-dung-xa-hoi-an-toan-truoc-thien-tai/viet-nam-tich-cuc-ung-pho-voi-bien-doi-khi-hau-640859.html [accessed 13 October 2023].

63 Thao T. (2021), 'Regulations on straight baselines in international law of the sea (Part 2 and the end)', *Vietnam Border Guard's official website*. Retrieved from: http://bienphongvietnam.gov.vn/quy-dinh-ve-duong-co-so-thang.html [accessed 11 November 2023].

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65 *Viet Nam News* (2021), 'VN responsible member of international community, observes international law: Spokesperson'. Retrieved from: https://vietnamnews.vn/politics-laws/887203/vn-responsible-member-of-international-community-observes-international-law-spokesperson.html [accessed 13 October 2023].

66 Such as Decree No. 16/2018/ND-CP dated February 2, 2018 of the Government on sea-lanes and traffic separation schemes in the territorial sea of Vietnam; Decision No. 06/2014/QD-TTg of the Prime Minister promulgating the Regulation on coordination of search and rescue at sea and in seaport waters; etc.

Third, Vietnam needs to actively promote the process of resolving South China Sea disputes to complete determining baselines for all land territory. As a result, the well-defined maritime outer limits stabilize the legal status of maritime zones under Vietnam's jurisdiction amid rapid changes in coastlines. ●

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Author Contribution

All authors contributed to the study conception and design. All authors read and approved the final manuscript.

Declarations

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