The Background to the Imposition of the Straight Baseline System Around the Irish Coast: An Interesting Episode in Anglo–Irish Legal Relations

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ABSTRACT

In the 1930s and late 1950s there were official moves in Ireland to apply a straight baseline system around the Irish coastline. Much internal discussion resulted in Ireland in the post-war period about how the baselines should be drawn. Contemporaneously with such internal official discussion, talks were held with the British authorities. One of the Irish aims was to ensure that as far as possible the UK should approve in advance the proposed baseline system. Despite this, in at least one geographical instance, Ireland ignored the British viewpoint which later led to British diplomatic protest. This disputed part of the Irish straight baselines—and others—may now have to be revised following Irish accession to the new LOS Convention insofar as they infringe international law. This article for the first time analyses recently released Irish archive documents relating to this process.

Introduction

It is not surprising that in the post-war period—and even before[1] Ireland has been concerned to maximise the seaward extent of its maritime zones claimable under the law of the sea, most particularly to preserve its fisheries. As major stretches of this coastline (away from the eastern side) are deeply indented and/or have clusters of islands in close proximity, one obvious means of achieving this maximisation has been by adoption of as extensive a straight baseline system as international law will allow. This system, by enhancing the starting point of such zones from the coast, has the general effect of pushing out maritime limits further than would be the case from the low-tide mark—the normal rule now to be found in Article 5 of the Law of the Sea Convention 1982 (the LOS Convention).

[1] See below.

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Consequentially, such a straight baseline system has another important effect in international law: it increases a coastal state's internal waters;[2] and so in turn this further increases the exclusive preserve of fisheries for Ireland.[3] With the coming into force of the LOS Convention in 1994[4] and Irish accession to and ratification of the LOS Convention on 21 June 1996—and with the endorsement therein of both a 12-mile territorial sea and a 200-mile exclusive economic zone[5]—the maximum utilisation of straight baselines remains of great importance. And, in the context of the present Irish 200-mile fishery zone,[6] Ireland's EU partners also have an interest in maximising its extent under the Common Fisheries Policy.

In the mid-1930s the first (but, as will be seen, unsuccessful) Irish attempt was made to introduce straight baselines through a scheme to enclose certain "bays"[7] on the western seaboard. However, in the post-war period, the decision of the International Court of Justice in the *Anglo-Norwegian Fisheries* case in 1952[8] had a catalytic effect in initiating an extensive Irish study of the application of this more expansive and newly endorsed baseline system to Ireland; and through most of the 1950s an active official study took place as to how such a system might be put in place around the Irish coast. In 1958 the endorsement of this more extensive straight baseline system in Article 4 of the Territorial Sea Convention of 1958 (TSC)—based largely on the *Anglo-Norwegian Fisheries* case[9]—gave increased validation for such a system (although strangely Ireland never went beyond signing this Convention).[10]

The culmination in Irish domestic law of the study of this system was the reference to it in the Maritime Jurisdiction Act (MJA) of 1959, whereby under s. 4(2), the Government was empowered to "by order prescribe straight baselines in relation to any part of the national territory".[11] This prescription of baselines

2 I.e., waters "on the landward side of the baseline of the territorial sea" (Art. 8(1) LOS Convention).

3 See para. 3 of the *Summary of Memorandum*, note 19 below, ("the heavy fishing by foreign trawlers during last winter underlined the urgent need for an immediate extension of our fishery limits by the application of the straight baseline system where applicable").

4 On 16 November 1994.

5 See Articles 3 and 55 respectively. It should be noted that at present Ireland still claims merely a 200 mile *exclusive fishery* zone, not a full EEZ.

6 The fixing of baselines, and the consequent extent of 200-mile fishery zones, remain within the exclusive competence of each Member State of the EU and so are not within the EU's present competence.

7 See note 22 below and accompanying text.

8 [1951] ICJ Rep 116.

9 Art. 4(1) (now Art. 7(1) of the LOS Convention reads: "In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of drawing straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured". This criterion strongly reflects the ICJ's stipulation in the case as to the geographical realities of the Norwegian coastline.

10 See Symmons, *Ireland and the Law of the Sea* (Round Hall, Dublin, 1993), p. 3.

11 See map at p. 54 below.

was effected by the Maritime Jurisdiction Act (Straight Baselines) Order (S.I. 1959 No. 173), which laid down some 44 straight lines linking 50 specified points along the coast from Malin Head in the north-west to Carnsore Point in the south-east.[12] This was after a broad-based committee comprising technical officers from the Fisheries Division, the Department of Lands, the Department of Defence, the Ordnance Survey, the Geological Survey and the Department of External Affairs had considered the parts of the Irish coastline to which the straight baseline system was "in the light of international law applicable".[13]

An obscure section of the badly indexed Irish Foreign Affairs archives[14] contains much fascinating information on how these lines came to be drawn,[15] not least because the exercise evidenced a strong desire on the part of the Irish Government to consult with the UK on its baselines proposals in advance of any legislative action.[16] As a result of such official Anglo–Irish contacts in the 1950s, several changes were made to the original Irish baseline plan.[17] Because of this strong co-operative feature in the matter, i.e. attempting to get outline agreement in advance (as far as possible) with a neighbouring state—and the fact that the Irish straight baselines were some of the earliest to be declared—it is suggested that this small piece of recent history may be of interest beyond the Anglo–Irish context.

The First Irish (Straight) Baseline Exercise, 1934

As far back as January 1934, the Irish Government of the day is recorded in the archives[18] as having decided the basis on which straight baselines were to be drawn around the Irish coastline for the purposes of delimiting its territorial sea, *inter alia* for the purposes of its (then) Sea Fisheries Protection Act. So even then economic factors were the driving force behind moves to expand Irish territorial waters. However, at that time the British Government objected to the baseline system—as submitted to them in advance on charts as being unacceptable, replying that the limits indicated on the charts went "appreciably" beyond what could be properly recognised as Irish "territorial waters".[19] Irish archives indicate that the British authorities at the time had made "special reference" to the following:

[12] See map to this article and accompanying text.
[13] See Memorandum for the Government: Delimitation of the Territorial Seas of Ireland, 10 June 1959 (400/411).
[14] Who would have expected the matter (insofar as it is "unrestricted") to be classified under Irish Embassies Abroad?
[15] See in the "Foreign Affairs" section File No. 5/261.
[16] Both in 1934 (see below) and, more obviously, in the 1950s (below).
[17] See pp. 64–66 below.
[18] See the references in a document entitled "Territorial Seas of Ireland", a Department of Foreign Affairs/Agriculture Memorandum of 31 July 1953, note 15 above.
[19] *Ibid.* See also Summary of the Memorandum to the Government, 31 July 1953, para. 2.9 (the UK had "rejected as unacceptable the charts").

"the closing of certain indentations as bays, attribution of territorial waters to rocks and banks not capable of effective habitation and use,[20] the utilisation of outlying islands as starting points for baselines and the closing of inlets with a line exceeding ten miles in length, i.e., Donegal and Dingle Bays."

In a copy of a memorandum of 1934,[21] it is evident that the then Irish Government was aiming not only at enclosing bays with entrances of less than 10 miles,[22] but even in the case of bays exceeding this distance, proposed drawing a straight baseline within such bays to a distance of 10 miles.[23] Some 68 bays were mentioned for enclosure by straight lines on the basis of one or other of these two criteria. Moreover, two specific bays—Dingle and Donegal Bays— were claimed as "historical bays".[24] These were the only two where the closing lines were more than 10 miles wide.[25] In the 1934 memorandum it was proposed that "the depth and area which would qualify an indentation as a bay should be decided by the Minister of External Affairs and the Minister for Lands and Fisheries".[26] It seems clear from the British complaint at the time that it was the proposed enclosure of the two "historic" bays which caused the British authorities most concern in relation to the then proposed Irish straight baselines claims.

The other element of proposed Irish baselines in 1934—which did not concern *straight* baselines—namely the use of "rocks"[27]—involved what would now be termed in modern law of the sea terminology as "low-tide elevations".[28] Accordingly, it was proposed that such rocks as were "uncovered only at low water" should be "determined by the Minister for External Affairs and the Minister for Lands and Fisheries", so that if they were situate "within three miles

[20] This viewpoint was a common British one in the earlier part of this century: see, e.g. Symmons, *The Maritime Zones of Islands in International Law* (Martinus Nijhoff, The Hague, 1979), p. 46.

[21] Entitled "Government Decisions on 12th January Regarding the Delimitation of the Territorial Sea". See the references thereto in the sources cited above in notes 18 and 19.

[22] See *ibid.* (accompanying as an annex a memorandum of the Department of External Affairs), para. 3 which states: "in the case of a bay not exceeding 10 miles width at the entrance, the three mile limit [advocated in para. 1] should have as its starting point a line drawn across the entrance to the bay."

[23] See *ibid.*, para. 3 ("in the case of a bay exceeding 10 miles in width at the entrance, the three-mile limit should have as its starting point a straight line drawn across the bay at the first point from the entrance at which the width does not exceed 10 miles").

[24] *Ibid.*, para. 6 and note 54 below at p. 10 ("the only two which are more than 10 miles wide at the mouth, are treated as historic bays and the closing lines are drawn accordingly"). For further discussion of such an Irish claim, see Symmons, note 10 above at p. 23.

[25] See note 15 above, and Chart 'B' of the Baseline Committee in a 1953 memorandum of 31 July, note 18 above at pp. 9 and 10.

[26] Note 21 above.

[27] *Ibid*, at para. 6.

[28] See Art. 11(1) of the TSC, as repeated *verbatim* in Art. 13(1) of the LOS Convention ("a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide").

of the mainland or an adjacent island", they should be "included within the territorial sea" (*sic*).[29]

In 1934, Britain had suggested that the matter of the proposed Irish baselines should be discussed by officials and technical advisers on both sides. It appears in fact that protracted Anglo–Irish discussions on these original Irish proposals did, as suggested, ensue during the late 1930s, only to be broken off by the advent of World War II.[30]

A long break in the baseline consultations was to undergo change in the 1950s. For in the early 1950s the decision in the *Anglo–Norwegian Fisheries* case was viewed with great interest by the Irish Government, as it gave the green light to a method compatible with international law of expanding Irish territorial waters in similar fashion.

The Irish Policy on Straight Baselines in the 1950s

The General Plan

In 1953, the Irish Government viewed the *Anglo–Norwegian Fisheries* case as meaning that "an even larger extent of sea than that enclosed by those [1934] decisions could be included in [Irish] territorial seas".[31] The impact of the *Anglo–Norwegian Fisheries* case on Irish official thinking can be seen not only in archival correspondence; it is also referred to with great regularity in the Irish Dáil proceedings of the 1950s[32] insofar as now Ireland's territorial sea could be measured from "straight baselines between the outermost headlands, islands and rocks". Hence it is not surprising that an official Irish memorandum of 1953 views the ICJ decision as having overcome the hiatus with the British of 1934. As the memorandum states, the measurement of the state's territorial seas on the basis of straight baselines as laid down in the *Anglo–Norwegian Fisheries* case would confirm the Irish Government's decisions of 1934, and:

> "at one stroke, remove all those restrictions which the British authorities had hitherto insisted on in regard to the use of islands and rocks as basepoints, the eligibility of certain indentations to be considered as bays, the exclusion of bays more than 10 miles in width of the mouth, etc."[33]

So it is clear that in retrospect the Irish baseline proposals of 1934 were of modest dimensions, the straight baseline element, for example, being seemingly based on the concept of *enclosed bays* rather than the more expansive straight

[29] Note 27 above. An "island" was there defined as an area of land "permanently above high-water mark".
[30] See Memorandum, note 18 above at para. 4; and Summary of Memorandum for the Government, 31 July 1953, para. 2.
[31] Memorandum, *ibid.* at para. 9.
[32] See Symmons, note 10 above at p. 25.
[33] Memorandum, note 18 above.

baseline system subsequently to be found in Article 4 of the 1958 TSC. This is not surprising considering that until the early 1950s and the ICJ decision it was unclear whether the customary law of the sea would endorse such a more expansive straight baseline system. Not surprisingly, then, by the time the Irish legislation was being prepared in the form of the Maritime Jurisdiction Bill in 1954, not only were the old British objections in the 1930s relating to projected enclosure of Irish bays (the drawing of straight baselines across the mouths of bays on the qualifying coasts in the west) then seen as superseded, but it was also[34] stressed that if the *new* straight baseline system were used, there would be no need "to enter into the complexities of international law concerning bays, since on the assumption that the straight baseline method is applied to all coasts except the eastern coasts, no problem will arise in relation to bays on [this coastline]" (e.g., bays more than 10 miles wide).

Despite this assertion, it may be noted parenthetically that even in the early stages of the 1950s exercise, a cautious Irish position was taken in that specific *alternative* lines to enclose the *western* "bays" were also drawn as a "fall-back" position to the more expansive straight baseline system then being proposed.[35]

The Influence of the Anglo–Norwegian Fisheries Case and the TSC 1958

There is no doubt that at an early stage the Irish Government viewed the *Anglo–Norwegian Fisheries* case as laying down general international law. Furthermore, McNair J in his dissenting opinion had specifically referred to the west Irish coast as being similar to the Norwegian coast.[36] This comes out most clearly in an annex to a 1953 memorandum:

> "[I]t seems safe to assume that the opinion of the majority of the Court ... in so far as it enunciated general principles of international law on the subject of territorial waters, will be accepted by the same Court as valid in subsequent cases and will therefore acquire the force of a persuasive authority ... no doubt to be accepted as evidence of a rule of International Law."[37]

Accordingly, the Irish Government at the time wished "not to go beyond what would be warranted by the trend of reasonable international opinion on the subject".[38] After 1958—and the advent of the First UN Conference on the Law

[34] Maritime Jurisdiction Bill, 1954 (Head 4): Department of External Affairs, File 5/261: 27 February 1954.
[35] See Memorandum, note 18 above at pp. 9 and 10.
[36] [1951] ICJ Rep 116 at 169. See the Irish Memorandum of 1953, note 18 above at para. 9 ("Sir Arnold McNair, the British Judge, in his dissenting opinion pointed to the similarities which existed between this [i.e., the Norwegian] coast and the west coast of Ireland").
[37] Note 18 above at para. 43 (entitled "The Application of the Judgment in the Fisheries Case (UK v. Norway) to Ireland").
[38] Department of External Affairs Memorandum, Note 15 above, 1 October 1959.

of the Sea—even then the new treaty provision on straight baselines in Article 4 of the TSC was seen as effectively representing (or reinforcing) customary international law. As an official Irish memorandum then said, while the TSC at that time had not got "any force and hence cannot be formally invoked, it seemed ... to represent a conclusion of international opinion on [the] subject".[39]

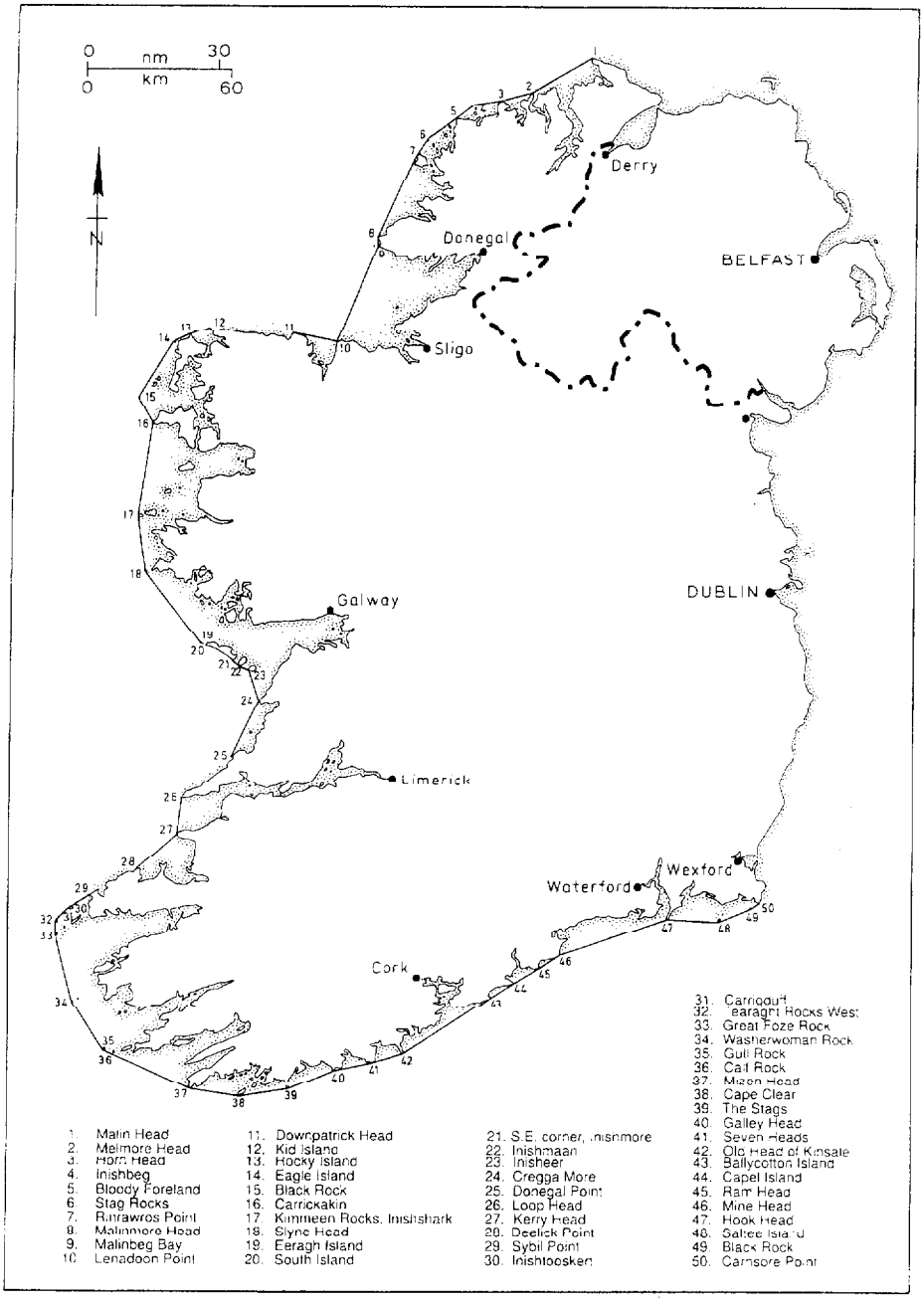
The *Anglo–Norwegian Fisheries* case was also seen by the Irish side as helpful to a projected imposition of straight baselines insofar as it had modified Britain's position against *another state*: for it had already caused Britain in its *aide memoire* to Iceland to admit that this ICJ judgment entitled Iceland to "define her territorial waters by reference to a series of baselines"; and this admission was seen by Ireland at the time as a form of estoppel in the Irish situation which might, for example, preclude Britain maintaining that the ICJ judgment had no more general force in international law.[40] Additionally, the Anglo–Icelandic dispute was seen by Ireland in the early 1950s as being of importance for Ireland, as it allegedly disclosed the UK's "interpretation" of the ICJ decision in 1951.[41]

Parts of the Irish coastline were seen in the early 1950s to be analogous to the Norwegian coast.[42] On the strength of this case, an Irish memorandum as early as 1953[43] had recommended to the Government that "straight baselines should, broadly speaking, be drawn from Inishtrahull off the Donegal coast in an anti-clockwise direction to Tuskar [Rock] off the Wexford coast". These areas were then seen as being "fully justified, not merely on the general principles of international law set out in the judgment ... but also on the basis of the particular considerations which determined the Court's judgment in favour of Norway".[44]

The Initial and Later Straight Baseline Recommendations

It transpires, then, that, on the basis of the *Anglo–Norwegian Fisheries* case, the initial recommendation to the Irish Government would have involved a continuous and expansive straight baseline system stretching from the border region in the far north-west and proceeding to the far south-east. It would have *consecutively* linked points from 1 to 69 along these coasts. As will be seen, the finalised basepoints numbered only 50.[45] As alluded to above,[46] it also involved

[39] *Ibid.* See also Memorandum, note 18 above ("in accordance with a system that Norway has relied upon as not being contrary to international law").
[40] Note 15 above ("Baselines Project"), letter to the Secretary, Dr Ryan, of 22 December 1953.
[41] Memorandum, note 18 above at para. 7.
[42] See e.g. *ibid.* at para. 7 ("only around those portions of the [Irish] coast where a distinct similarity exists to the coast of Norway").
[43] Memorandum, note 19 above (31 July 1953), p. 9.
[44] Memorandum, note 18 above at para. 9. This also refers to the Attorney-General having been consulted and having opined that the ICJ's judgment was applicable to Ireland.
[45] See note 105 below and accompanying text.
[46] See note 35 above and accompanying text.



Irish Straight Baselines under the Maritime Jurisdiction Act (Straight Baselines) Order, 1959

at this earlier stage an Irish "fall-back" provision, in the form of an "alternative" set of baselines enclosing *only* specific bays on the west coast, including Donegal Bay, Dingle Bay, the Kenmare River, Bantry Bay and Dunmanus Bay,[47] so ignoring any offshore island points.

This was followed up by the consideration of the same issue by another committee in the early part of 1959, consisting of technical officers from the Fisheries Division, the Department of Lands, the Ordnance Survey and the Geological Survey Office, as well as representatives of the Department of External Affairs, with a remit to determine "the parts of the [Irish] coastline to which the straight baseline system [was] in the light of international law, applicable". The latter committee's memorandum had attached to it the "general scheme of a Bill" which would "enable the straight baseline system to be applied where appropriate along the coast of Ireland".[48]

Specific Difficulties

Application to the whole of the south coast of Ireland?

The most interesting aspect of the 1959 memorandum was the discussion of the geographical requirements of international law as they related to the Irish coastline. In this regard, no problem was seen on the imposition of a straight baseline system starting at Malin Head in the far north-west and running down to Cape Clear in the south-west. For here there was considered to be "complete justification" for the system, as the coastline was either deeply indented or studded with offshore islands. The problem was whether it could extend further eastwards, where the coastline no longer possessed such geographical attributes. Here the words of the committee merit full quotation:[49]

> "[B]ut it would not be possible to justify the application [of the straight baseline system] to the remainder of the [Irish] coast. Referring in particular to the south coast from Cape Clear to Tuskar ... it was considered that while a substantial proportion of the waters which would lie to landward of straight baselines, if adopted, might properly be described as 'internal waters'[50] the coast itself was not sufficiently indented to warrant the use of straight baselines."

Archival correspondence shows clearly that this recommendation was not, at the time, acceptable to the Department of External Affairs. For as the same 1959 memorandum recites:[51]

[47] See 1953 Memorandum, note 18 above at pp. 9 and 10.
[48] Memorandum of 10 June 1959 (400/411).
[49] *Ibid.* at para. 6.
[50] See the LOS Convention, Art. 7(3) ("the sea areas lying within those [straight] lines must be sufficiently linked to the land domain to be subject to the regime of internal waters").
[51] Note 48 above at para. 7. See also Summary of Memorandum for the Government, June 1959 (400/411).

> "The Minister for External Affairs considers that while an element of doubt exists as to the applicability of the straight baseline system to the southern coast, nonetheless the doubt is not so great [*sic*] as to preclude the application of the system to that part of the coast. Accordingly, he is of the view that the straight baselines should, when the Government comes to make the Order, be continued from Cape Clear to Tuskar or an appropriate point on the mainland."

This important political intervention, with its weak justifications, was out of character with the previous apparent affirmation (as seen above[52]) that Ireland would respect the rules of international law in the matter.

Application to the east coast of Ireland?

A 1953 baselines memorandum had specifically requested a Government decision on "whether the method of straight baselines should also be applied to the east coast from Tuskar Rock to Carlingford Lough"[53]; or alternatively, whether the "present system for measuring the territorial seas [i.e., seemingly the normal low-tide mark baseline] be adhered to for that section of the coast". In its own recommendation, a committee had justifiably pointed out that the rest of the Irish coast (from Tuskar northwards to Carlingford)[54] did not qualify geographically for the straight baselines system, as it was "not deeply indented"; and thus there might be "difficulty in justifying application to it of the [then] decision of the International Court"; nor did it have a fringe of islands off the coast[55] as was the situation in the *Anglo–Norwegian Fisheries* case. Accordingly, they recommended no extension of the system to "the east or north-east coast".

Thus, on this, the earliest predominant Irish official feeling was that the low-tide mark baseline should be retained *on that coast*; i.e., the "existing system ... would apply to the measurement of the territorial seas of these coasts"[56]—that is that the "former" [i.e., low-tide] rule should apply. So that the territorial sea there "would be measured following the sinuosities of the coast by means of envelopes of arcs exactly three miles from the coast".[57]

It appears, then, that there was a strong feeling even at this early stage that any imposition of the straight baseline system on the *east* coast would infringe international law,[58] with reiteration that the straight baselines should only encompass the north-west, west and southern Irish coasts (i.e., from Inishtrahull to Tuskar)—one obvious reason being that the eastern coastline did not qualify

[52] Note 38 above and accompanying text.
[53] Note 18 above at para. 16.
[54] *Ibid.* at p. 9.
[55] *Ibid.*
[56] *Ibid.*
[57] Letter to Secretary, Dr Rynne, note 40 above.
[58] *Ibid.*

geographically under the *Anglo–Norwegian Fisheries* case so as to be "incontestable in international law".[59]

When it came to preparation of the MJA legislation in 1954,[60] the Department of External Affairs also threw its weight behind the recommendation that the straight baselines should be restricted to those Irish coasts which were "analogous to the Norwegian coast", that is, as seen above, just the north-western, western and southern coasts. The same Department made the interesting observation that if the assumption was made to exclude the eastern Irish coastline from the system:

> "It may be remarked that there is no need in dealing with this matter to enter into the complexities of international law concerning bays . . . [as in] this event the territorial sea adjacent to [this] would be measured from the coast according to its sinuosities, *except where a straight line may be drawn across a bay*" (emphasis added).

The latter part of this *dictum* seems to indicate that Ireland could consider some easterly bays to be enclosed by a straight baseline and so containing internal waters. And in fact there is archival evidence that in the early stages Ireland had considered possible closing lines across certain east coast bays, none of which had mouths larger than that then acceptable to the British side, that is to say, they were no more than 10 miles wide.[61] However, one strange lacuna in the 1959 legislative moves was that in fact no straight baselines at all were "prescribed" (by statutory instrument) for the east coast.[62]

At least one other Irish Government department also threw its weight behind such a restriction. The Minister for Defence advised that the straight baseline system should be restricted to the north-west, west and south-west coasts, as the naval service viewed that "there are very few indentations on the East coast".[63]

Archival sources indicate, however, that at one stage the Irish Government attitude on this had been more hawkish. As was revealed in 1953 (relating to a Government decision on 18 September 1953[64]), the Irish Government of the day approved the baselines memorandum suggestion, with one important "amend-

[59] *Ibid.* at p. 3.
[60] Department of External Affairs, Head 4 ("Baselines") (27 February 1954).
[61] *Ibid.* See also File 5/261/Pt II (1965–71) entitled "Irish Maritime Jurisdiction Bill 1954–1959: Baselines Project, 3 Mile Limit and Fishing Limit") which has the handwritten addition: "Map brought by Irish delegation for meeting of 18/6/59 but not shown to British"! This map shows where Ireland might claim straight baselines on bays on the east coast. These included Dundalk Bay (closing line from Cooley Point to Dunany Point) and Dublin Bay (closing line from eastern extremity of Howth Head to Dalkey Island).
[62] See Symmons, note 10 above at p. 24.
[63] Memorandum, note 18 above at p. 12. It was recommended that on the "eastern coast" (i.e., upwards from Tuskar Rock) the straight baseline system should be dropped.
[64] In a letter from the Department of Taioseach to the Department of External Affairs, 25 September, 1953.

ment", namely that the straight baseline system should apply to the *entire* coastline of the Irish state including from Tuskar Rock to Carlingford Lough.[65] If this decision had persisted to the end, it would, of course, have meant inclusion of the east coast in the straight baseline system.

One obvious drawback of this earlier government decision was, of course, that it would have meant fixing basepoints right up to the maritime border with Northern Ireland, that is at Carlingford Lough, so involving the problem of the Republic's claim to the territorial waters of Northern Ireland.[66] In official correspondence at the end of 1953,[67] a suggestion was made for reconvening an inter-departmental committee to consider "in particular, the points from which the straight baselines should be drawn at Lough Foyle and Carlingford Lough respectively". This, it was thought, would involve "a careful analysis of the legal status of these Loughs".

There was thus a feeling among officials that in view of this political implication, the government should reconsider the idea of the "drawing of straight baselines around the entire coast save for the counties of Derry, Antrim and Down", as it involved raising "many awkward and ticklish questions", which were "rather more apparent in Lough Foyle than Carlingford Lough". For such reasons, it was recommended at the time that "it would be safer from the point of view of *incontestable international law* ... to abide by the recommendation originally made" in the Committee's recommendation to the government.[68]

Application to the whole island of Ireland?

As early as 1953 it appears that official Irish consideration was even given to the possible implementation of the straight baselines system around the *whole coastline of the island*, as opposed to merely that of the whole *state* i.e., to "continuing the lines" around the six counties.[69] On this, as in other matters,[70] the Irish Government was specifically asked, for example, whether "any baseline or limit line should be drawn for the *north-east coast*". On 18 September 1953, the government had before it interdepartmental committee proposals that the ICJ in the *Anglo–Norwegian Fisheries* case had "laid down general rules of international law applicable to cases other than the Norwegian"; and that these principles "should be applied to the parts of [the Irish coast] which are analogous

[65] Letter from the Department of External Affairs to the Irish Ambassador in London, 9 March 1954.

[66] See Symmons, "Who Owns the Territorial Waters of Northern Ireland?", (1976) 27 *Northern Ireland Legal Quarterly*, 48.

[67] On 22 December 1953, note 40 above.

[68] The 1953 letter (*ibid.*) ended with the plea that if the government would not reconsider this issue, the committee would have to "ask them to pronounce upon possible solutions for a *de facto* division of the waters of Carlingford Lough [and Lough Foyle]".

[69] Summary of Memorandum, 31 July 1953, 400/1A.

[70] *Ibid.*

to the Norwegian coast", i.e. the north-west, western and southern coasts.[71] Implicit in this statement, then, is the idea that the *north-eastern* (i.e., six-county) coastline did not (wholly at any rate) qualify geographically anyway. More importantly, though, there were obvious *political* reasons against it. This political aspect was typified by the then Attorney General's views on such a pan-Irish application when he commented:

> "It seems to me that we should maintain our constitutional position [i.e., the claim to the six counties and adjoining territorial seas] by formally making a claim in respect of the six county waters, even though it may be necessary later in negotiations to lay that claim aside without prejudice."[72]

The committee recommended confinement of the basepoints to the *coasts of the Republic only*, despite the "valid [Irish] claim to the territorial seas around ... Derry, Antrim and Down",[73] as it was "more prudent, at least for the present", to confine the baseline system to the recommended areas of the Republic of Ireland coastline area.[74]

As seen above, the same political consideration would arise, albeit less acutely, if the baseline system was to be applied to the whole of the *east* coast of the Republic, so taking in the border Lough of Carlingford.[75] However, the committee inclined against such a modestly expansive move for obvious legal and political—and even practical—reasons:[76]

> "[To do this] would undoubtedly result in difficulties with the British Government and might lead to a deadlock which would prejudice the enforcement of the new principles even in respect of the north-western, western and southern coasts. On the other hand [to stop at Carlingford Lough], could be interpreted to mean that our claim to the territorial seas of the whole island has been abandoned. For these reasons, it might be preferable not to raise the issue by confining the basepoints in the manner already proposed [i.e., confined to the north-west, west and south coasts]."

The Irish Government, whilst, as seen, initially overruling exclusion of the east coast of the Republic,[77] appeared to endorse the committee's more general recommendation about omitting all the Northern Irish coastline. As it stated:[78]

71 *Ibid.*
72 Memorandum, note 18 above at p. 11.
73 *Ibid.* at para. 12.
74 Memorandum, note 18 above at para. 11; see also the letter, note 40 above at p. 3 ("more prudent from the point of view of political problems").
75 A similar problem pertained to the starting point of the *north-west* coast. As seen, it was initially overruled as to the east coast's exclusion from the projected system (Summary of Memorandum, note 19 above).
76 Memorandum, note 18 above at para. 12.
77 See note 65 above and accompanying text.
78 Letter of 1953, note 40 above para. 4.

> "in view of the inability of the Parliament and Government ... to exercise jurisdiction over those parts of the national seas off the coasts of Derry, Antrim and Down—but without prejudice to the right to exercise such jurisdiction—no baseline or limit line should be drawn in respect of those parts of the national territorial seas."

Despite this governmental decision in principle, archival correspondence shows some temporary confusion as a consequence (caused, it seems, by loose official interpretation by some of geographical nomenclature). As one official letter stated at the time:

> "[T]he Government decided to apply [the baseline system] to the entire coasts of the island [this proved later to be a misprint: "state" was intended]. This decision immediately raised rather thorny issues concerning the status of Lough Foyle and Carlingford Lough and also the territorial seas adjacent to the counties of Derry, Antrim and Down."[79]

It may be noted that something of this early 1950s internal debate seems to have rubbed off in the MJA 1959 when in s. 4(2) the Government was empowered to "prescribe straight baselines in relation to *any part of the national territory*" (emphasis added). The latter phrase seems to indicate, in keeping with the Irish constitutional claim to the six counties, that the Republic *retains the right to apply baselines* even to the coastal counties of Northern Ireland.[80]

The British Reaction: Specific Official British Objections to the Proposed Irish Baselines

General

It is of interest to note that as early as 1953,[81] Irish officialdom, as seen above,[82] viewed the decision of the ICJ in the *Anglo–Norwegian Fisheries* case as opening the way for the institution of a straight baseline system which would not only "confirm the [Irish] Government decision of 1934" (when Ireland had made its initial attempt to fix its territorial sea baselines) but also "at one stroke, remove all the restrictions previously [i.e., in 1934] insisted on by the British authorities". Furthermore, even the later *Icelandic* action in instituting straight baselines—and the consequent Anglo–Icelandic dispute over fisheries—was seen at that time as being of "importance" for Ireland inasmuch as it disclosed the "interpretation

[79] 400/1B: letter from the Department of External Affairs to the Irish Ambassador in London, 9 March 1954.
[80] See Symmons, note 10 above at p. 41.
[81] See Summary of Memorandum, note 19 above.
[82] See note 31 above and accompanying text.

given by the British Government" to the ICJ's decision in the *Anglo–Norwegian Fisheries* case.[83]

With the resurrection of the matter in the 1950s, Irish archives show a clear concern on the part of the Irish authorities to try to get British approval of any new baselines. As was said in a memorandum as early as 1953:[84]

> "The Ministers for External Affairs and Agriculture consider that before taking steps to apply the decision of the International Court, negotiations should be resumed with the British authorities in order to secure their agreement to the adoption of new baselines and base points."

At least three articulated reasons for this Irish concern to try to obtain advance British approval were evident at the time. One was to avoid the unilateralism of the previous *Icelandic* designation which had upset Britain.[85] Another was the more practical consideration of giving adequate *advance warning* to British fishing interests which might be affected by the Irish baseline. And the third was that it was envisaged that getting advance British approval would lead to easier acceptance of the lines by other European nations who might be affected by the Irish action.[86]

The first reason was undoubtedly seen as the most important. As a 1953 memorandum states:[87]

> "Unilateral action by Iceland was made a major point of complaint by Britain against [Iceland's] delimitation of her territorial waters ... Failure to inform the British authorities in advance of our intention ... could give rise to unfavourable reactions on their side; this would needlessly prejudice their acceptance of what we have every reason to assume is a completely valid claim in International Law."

In September 1959, Irish diplomatic correspondence indicates that an "advance notice" of the proposed Irish baselines was to be sent to the British, in initial response to which the British embassy in Dublin indicated that the British side would have "comments of substance" on the legal aspects of the baselines.[88] Such initial (somewhat negative) British reaction to the proposed Irish baselines led to a British plea to the Irish authorities "not to rush" the

[83] See 1953 Memorandum, note 18 above at para. 7.
[84] Note 18 above at para. 15 (the Ministers for External Affairs and Agriculture considered that before taking any steps to apply the decision of the ICJ, "negotiations" should be resumed with "the British authorities *in order to secure their agreement to the adoption of new baselines and base points*" (emphasis added)).
[85] See 1953 Memorandum, note 18 above ("a major point of complaint by Britain").
[86] See *ibid.* ("recognition of our claim by Britain would probably mean its acceptance by other countries").
[87] *Ibid.*
[88] See letter from the Department of External Affairs to the Irish ambassador in London (September 1959) and a letter from the British embassy, Dublin, of 18 September 1959.

publication of its straight baseline order on 1 October 1959 and urged that time be given for consideration of the British comments.[89]

When the UK expressed concern about the timing of the Irish straight baseline order, Ireland responded that in effect the essential "policy" die had already been cast; and that to delay action would be to defeat "one of the principal purposes" of its maritime legislation, the 1959 MJA, added to the fact that "it would not be easy" for the Government to defend failure to take advantage of the fact that the straight baseline system was already part of the law of the sea, especially as by that stage the MJA itself—the enabling Act—had already been passed.[90] It also expressed the view[91] that it had resisted "strong" domestic pressure to "act unilaterally".

Another reason appearing from the archives against postponement at this stage was the important economic one, namely that the heavy fishing by foreign trawlers the previous year (see below) had underlined the need for an "immediate extension" of new fishery limits.[92]

Despite all these counter-pleas, the Irish Government still expressed the wish to "proceed in these matters in an orderly and reasonable fashion".[93]

By September 1959, the Irish side had offered discussions on the above-mentioned British "comments".[94] Archival evidence shows that by October 1959, a British–Irish meeting of officials had taken place to discuss the proposed baselines[95] at which the main British concerns were expressed. These British concerns may be summarised as primarily being connected with the "implications on the [extent] of the [proposed Irish] territorial sea" and "only indirectly, although more immediately, with fisheries aspects";[96] and the creation of a bad international precedent. As an Irish report of the British attitude stated at the time:[97]

> "[If Ireland] were to make the order envisaged, this would be the first occasion on which any State has drawn straight baselines since the Geneva Conference [of 1958] ... and they argued that [the Irish proposals] would constitute a precedent. For this reason, they are particularly concerned both with the method ... for drawing the baselines and the baselines

[89] CRO letter 26 October 1959. See also Memorandum, note 38 above ("and they called attention in this regard to the dangers of [Ireland] being accused, if the order is made now, of not having given sufficient notice to those concerned").
[90] See Memorandum of 1 October 1959, note 38 above.
[91] *Ibid.*
[92] Summary of Memorandum, June 1959, note 51 above.
[93] Memorandum of 1 October 1959, note 38 above.
[94] Letter of 22 September 1959.
[95] Memorandum of 1 October 1959, note 38 above. And see the letter from the Department of External Affairs, 13 October 1979 (at that time, a "British team" came to Ireland to discuss the Irish baseline project).
[96] See the Dunmore fisheries aspect, note 112 below.
[97] Memorandum of 1 October 1959, note 38 above.

actually drawn. They expressed anxiety lest the [proposed] baselines should be so drawn as on the one hand to constitute a 'bad' precedent (from their standpoint) and, on the other, to lead to the whole issue of the [1958 Conference] being reopened at the forthcoming [1960] Conference. They therefore wondered whether [the Irish Government] could not postpone action until after the next conference.[98]

The More Particular British Objections

The gist of the British concern at the time concentrated on the perceived illegality of the proposed Irish straight baseline not just in principle, but also relating to the actual drawing of some individual lines. Hence arose the British-expressed fear (mentioned above) of the setting of a bad precedent in general international law, including a prejudging of what might come out of the 1960 Second UN Law of the Sea Conference, and with, as seen, a subsidiary concern of the Irish order being rushed through without due publicity to British fishermen.

The Commonwealth Relations Office had, in 1959, indicated that for such reasons as mentioned above the British side had "a number of observations to offer both on the principles which [the Irish Government] had followed in drawing the baselines and on the [proposed] individual lines themselves".[99]

An Irish memorandum of 1 October 1959 clarifies the particular British objections to the proposed Irish straight baselines concerning both the latter observations. The British representatives were seen from the Irish side as taking a "restrictive view" on both counts. It appears that it was the UK "Admiralty representative" who addressed this matter at an Anglo–Irish meeting,[100] namely:

1. that straight baselines were only justified in "special circumstances";
2. that in each particular case the lines should only be drawn where the configuration of the coastline and a precise application of the criteria set out in the 1958 TSC would justify this (it may, of course, be noted by this stage that the TSC had interposed since the straight baseline principles originally laid down in the *Anglo–Norwegian Fisheries* case in 1951); and
3. the resultant lines should be drawn in conformity with the appropriate criteria.

It appears from this important archival source that by 1959—in the period after the First UN Law of the Sea Conference—the UK had accepted that, from the more general point of view, the geographical configuration of the Irish coastline qualified for the straight baseline system on the west and north-west

[98] See also the letter from a CRO official to the Irish embassy, London, 26 September 1959, urging the Irish ambassador not to rush the publication of the order on 1 October and urging that time be given for serious consideration of the British points.
[99] See Memorandum of 1 October 1959, note 38 above.
[100] *Ibid.*

coasts; so that the UK was "prepared to accept, subject to minor adjustments" (these are not specified) "most" of the proposed Irish lines in these areas ("though [the UK] had more serious queries on a few of them"[101]). It is evident also that the British side attached "special importance" to the fact that the Irish baselines on these otherwise generally qualifying coastlines should not form "a continuous series" of lines.[102]

Not surprisingly, the British side took serious objection in principle to the proposed Irish lines along the *southern Irish coast eastward from Cape Clear*, as they viewed this stretch of the coastline as not justifying the drawing of any straight baselines "at all".[103]

The Consequent Irish Compromises

An Irish memorandum of 1 October 1959 had suggested that the Irish Government should accept "the British suggestions" in relation to a "number of lines" on the north-west, west and south-west coasts. One of the main consequences of this was that it would ultimately result in an "interruption" in the proposed *continuous* series of lines—a "point of special [British] interest".[104]

It appears from maps in the archives that the initially proposed Irish straight baselines covered fewer (some 39 in all as compared with the final number of 50), and more distant, points on the Irish coast. Thus, for example, there were original straight lines between the present "hiatus points" (e.g., Loop Head to Donegal Point and the Stags to Downpatrick Head); and some more distant basepoints from the Irish coastline were initially taken in (most notably Tory Island on the north-west coast). In the finalised Order, this north-west corner line was "waisted in" to take in *more obviously inshore* basepoints (namely, Bloody Foreland Headland, the islet of Inishbeg and Horn Head).

It is noticeable also that the far northerly islet of Inishtrahull[105] was omitted at an early stage from the projected lines.[106] And instead of the line starting at the border with Northern Ireland (or the northerly islet of Inishtrahull as originally proposed in 1953),[107] it started instead at Malin Head to avoid obvious political complications on the border. As such it fitted in with the officially expressed Irish view that it would be "better if [Ireland] could avoid raising any question about

[101] *Ibid.* For the consequence of this, see below.
[102] Memorandum of 1 October 1959, note 38 above.
[103] *Ibid.*
[104] See archives Map, 1954–59.
[105] Like Tory, this islet is further from the Irish mainland than most others (outside the then three-mile territorial sea limit). See the Memorandum, note 38 above ("it was agreed [after discussion with the Taioseach] that we should offer to adjust the lines from Malin to Cape Clear").
[106] See file reference, note 15 above (a letter from the Department of the Taoiseach to the Department of External Affairs, 25 September, 1953 ("measured from Inishtrahull, Co. Donegal")).
[107] Letter to the Secretary of 22 December 1953, note 40 above.

the status of [Lough Foyle] and allow the *status quo* to continue", because protection of Irish fisheries interests could be achieved "without necessarily drawing baselines or publishing [Irish] claims in relation to actual headlands which enclose the Lough as a bay".[108]

Similarly, in the south-west and the south-east, a few originally mentioned points were eventually dropped. This applied particularly to the eventual non-use of Fastnet Rock (the more inshore Cape Clear island being used instead[109]). It appears also from Irish archives that a tentative suggestion to "drop one or two" of the proposed lines on this southern stretch of coast between Cape Clear and Carnsore was opposed by the Department of Lands; and that all that came about here by way of Irish compromise was the offer of a "small adjustment", namely the abovementioned substitution of Cape Clear for Fastnet as a terminal point of one of the lines[110] and the dropping of Tuskar Rock as the end point east where Carnsore Point was finally adopted.[111]

As to the most controversial proposed lines on the Irish south coast in the whole proposed baseline system—those from Cape Clear to Carnsore Point—it is clear that the Irish Government was even then very aware of their possible illegality in terms of international law. As Irish officialdom acknowledged at the time, it was "conscious" of the relevance of the British criticisms about these. But the Irish side defended them on the basis of one major policy objective, namely to retain maximum Irish exclusive fisheries in the Dunmore area.[112] As it is rather delicately put in a 1959 Irish memorandum:

> "[The Ministers of External Affairs and Lands respectively] consider that the doubts existing are not sufficient to preclude the application of the system to the southern coast".[113]

As was also stated:[114]

> "It [was recognised on the Irish side] that one of the principal immediate objectives [of the MJA] and the proposed [straight baseline] Order would be

[108] Memorandum of 1 October 1959, note 38 above.
[109] *Ibid.*
[110] This terminal point to the east had been left fluid by the Minister for External Affairs in 1959: see Summary of Memorandum, note 40 above at para. 7 ("Tuskar Rock or to an appropriate point on the Wexford mainland").
[111] Memorandum of 1 October 1959, note 38 above.
[112] *Ibid.*; see also para. 7 of the Memorandum for the Government of June 1959, note 51 above.
[113] Memorandum of 1 October 1959, note 38 above. It appears that this matter was taken to the very highest level, namely to the Taioseach (i.e., the Irish prime minister) himself; and that it was agreed on the Irish side that where the British had expressed strong views on the proposed Irish lines from Malin Head to Cape Clear, Ireland should "offer to adjust" them. But that, "having regard to the history of the case and the difficulty of our taking no action in relation to Dunmore, *we should stand by our baselines on the southern coast*" (emphasis added).
[114] *Ibid.*

lost if [Ireland] could not cover [with the baselines] the area around Dunmore."

One gets the clear impression from reading these records of the time that Ireland felt that the compromises it had offered *elsewhere* to the UK would mollify British objections to the south coast baselines.

Although initially in 1959 the British side expressed disappointment on any Irish concessions,[115] when (as seen above) the Irish Government felt itself able to make "three further modifications to the proposed Irish baselines", official British "thanks" were expressed for these so-called "additional concessions".[116] However, despite these late Irish concessions, subsequent events show the continuing unease of the UK on the Irish baseline system when it was implemented, particularly in the light of the effect on British fisheries in the south-east of Ireland (Dunmore). For example, in December 1959,[117] the UK's Ministry of Agriculture, Fisheries and Food indicated that the UK Herring Fishing Association was concerned that their fishermen would no longer be allowed into the Dunmore fishery in future and then requested a meeting, though not "to discuss the question of Irish baselines as such".

Irish Concern for the Reaction of States other than the UK

As early as 1953,[118] one of the stated reasons for consulting the UK in advance on any proposed imposition of Irish baselines was that (supposedly) "recognition of [the Irish baselines] by Britain would probably mean [their] *acceptance by other countries*", since with the exception of France, Belgium and Spain, "few other countries would be concerned to dispute it".[119] And it was mooted by Irish officials in 1953 that "some other country"—particularly France—might wish to take Ireland before an "international tribunal" over the baselines.[120] In the short period of Anglo–Irish consultations over the proposed baselines in late 1959, the British side did warn Ireland that it had heard that some "continental countries"

[115] Letter from the CRO dated 9 October 1959 to the Irish Department of External Affairs. But see the earlier letter from the CRO to the Department of External Affairs, 1 October 1959 ("we had hoped for more than we got").

[116] See the Irish comments in the Memorandum, note 38 above, on the refusal of the Irish side to budge on the south coast baselines, commenting (it seems hopefully!) that the British seemed "to recognise" the difficulty of an Irish retraction on this; and indicating that "while in their [i.e., British] opinion these lines were not justifiable, they would hardly bring us before an international tribunal".

[117] Letter from MAFF, 1 December 1959 to the Irish "Fisheries Secretary".

[118] See 1953 Memorandum note 38 above.

[119] *Ibid.* During debate on the MJA in the Dáil it was also mooted that foreign fishermen might query the legality of such lines: see DD, vol. 176, col. 1556.

[120] See Memorandum of 1 October 1959, note 38 above.

had been considering how Ireland would apply the straight baselines and were "uneasy" at possible Irish actions.[121]

It seems subsequently that France was one of the main antagonists to the Irish straight baselines and that in January 1960 the French invoked yet again their alleged ancient treaty rights (as they also did in 1934) arising under an 1839 Agreement[122] "in relation to the straight baselines" under the MJA 1959. A letter from the Department of External Affairs in 1963[123] purported to deny any such French past treaty fishery rights within the proclaimed baselines:

> "The Department of External Affairs does not consider that the Convention of 2nd August, 1839, between Great Britain and France affects the validity in relation to French nationals of the Maritime Jurisdiction Act, 1959 (Straight Baselines) Order, 1959. In the opinion of the Department, the Convention of 1839 cannot be held to govern the position of French fishermen in Irish waters."

This Irish interpretation on alleged nineteenth century fishery rights of the *Irish* coast seems to be (even then) controversial,[124] and the convention has been described as the "first to establish by international agreement the three-mile boundary of exclusive fishing on the British coasts, so far as French fishermen were concerned".[125] It seems that an additional reason for Irish denial of such French claimed rights was because Ireland did not consider itself to be a party to

[121] *Ibid.*

[122] This treaty was entitled "Convention between Her Majesty and the King of the French, Defining and Regulating the Limits of the Exclusive Right of the Oyster and other Fishery on the Coasts of Great Britain and France", and was signed in Paris on 2 August 1839.

[123] Letter of 24 April 1963 from the Department of External Affairs to the Irish embassy, London: 400/1/3.

[124] For a good account of this 1839 British/French fishery treaty, see T.W. Fulton, *The Sovereignty of the Sea* (Blackwood, Edinburgh, 1911), pp. 612–21. The treaty only applied to "subjects of Great Britain and France respectively", but applied (under Art. IX) to give such *British* fishermen "the exclusive right of fishery within the distance of *three miles from the low water mark, along the whole extent of the coasts of the British islands*", though there was a proviso in the case of "bays" with mouths not more than ten miles wide; in which case the exclusive three-mile limit was to be measured from "a straight line drawn from headland to headland" (*ibid.* at pp. 612 and 614 respectively; emphasis added). *Prima facie*, then the treaty could apply to the island of Ireland (indeed it initially incurred Irish protests; *ibid* at p. 620). But a second fishery convention of 1867 between the two countries (but never ratified by France) used different terminology—it expressly applied "police regulations" to "the seas surrounding and adjoining Great Britain *and Ireland*" (emphasis added) (*ibid.* at p. 619). In fact French fishing for oysters off the Irish coast did cause problems for the *Irish authorities* (*ibid.* at p. 620); and an Act of 1843 expressly empowered the Board of Trade to suspend the operation of the convention in "the whole coasts of Ireland or any part thereof"; so that by subsequent Order in Council, fisheries "of the whole coasts of Ireland, so long as such fisheries shall be carried on exclusively by the subjects of Her Majesty" were *excluded* from the ambit of the 1839 convention. If the convention had had no application to the coasts of Ireland, such a statutory amendment would have been unnecessary.

[125] *Ibid.* at p. 614.

another (but multilateral) nineteenth-century fishery treaty—the 1882 North Sea Fisheries Convention.[126]

Other "third state" concerns related to an alleged lack of publicity about the Irish baselines. For example, in January 1963, an Irish memorandum of the time[127] admits, in response to a Soviet embassy request for information about the Irish territorial sea following arrest of a Soviet trawler in the Waterford area, that the Russians had "not been notified" about the 1959 baselines in 1959 because of an alleged lack of Soviet inshore fishing at that time. Consequently, the Soviet counsellor complained, *inter alia*, that the USSR was not "aware of the question of [the Irish] baselines".[128]

Conclusion

As the above analysis shows, Ireland made continuous and determined efforts during the 1950s to reappraise its baseline system. This was an aspect of the law of the sea that was of predominant interest to Ireland at the time because it entailed expansion of its exclusive fishery area. Indeed, implementation of this system was then seen as one of the three main purposes of the 1959 MJA itself.[129] Domestically, opinions in the 1950s varied as to how extensive the baseline system should be—particularly if it should envelope the whole (or at least most) of the island of Ireland or just selective parts of the Irish coast which qualified geographically under the *Anglo–Norwegian Fisheries* case. In this process Ireland was concerned with, and sensitive to, potential foreign reaction to its straight baseline proposals, particularly by the UK. Thus it took pains to have consultations with the latter—its most important neighbour—on how the baselines should be drawn. The result was that in the late 1950s prior to the bringing in of the Straight Baselines Order, Ireland was, as seen,[130] to make several changes to the then proposed lines in the spirit of compromise.

However, in one important instance at least—the straight baselines drawn in the south-east, particularly around Dungarvan Bay—Ireland refused to

[126] See the note (file, note 15 above) of 23 April 1963 from the Irish embassy, London. This convention essentially covered fisheries in the *North Sea* "outside territorial waters" except that an implementing British Act of 1883 did apply the convention as regards *British* fishing vessels to the whole of the seas around the British isles. See Fulton, note 124 above at pp. 637 and 638; but at p. 643 he points out that Art. 2 of the 1882 convention did further apply to the "whole extent of the coasts" of the signatory states; so that "there appears to be some obscurity as to how far the 3-mile limit operates on coasts that lie outwith the boundaries of the North Sea—such, for example, as the west coasts of England and Scotland, *and the coasts of Ireland*" (emphasis added); but he concludes (p. 644) that notwithstanding this "obscurity", the 1882 convention "only applies to the coasts of the *North Sea*" (emphasis added); whilst, by contrast, the 1839 British–French treaty mentioned above did apply a three-mile limit to "all parts of the coasts of Great Britain" (*ibid.*).

[127] Dated 14 January 1963 (file, note 15 above).

[128] *Ibid.*

[129] See Symmons, note 10 above at p. 4.

[130] See above, pp. 64–66.

compromise with the British. As a result, it would appear, for example, that the baseline across Dungarvan Bay (25.1 miles wide) has infringed the provisions of Article 4 of the TSC (now Article 7 of the LOS Convention) in terms of the more general straight baseline system or, alternatively, Article 7 of the TSC (now Article 10 of the LOS Convention) in respect of the definition of a *bay* and its permissible closing line.[131] And the drawn baselines generally in other sections along the south coast[132] appear also not to be wholly legal, as the coastline here is not "deeply indented or cut into" nor does it have a true "fringe of islands in its immediate vicinity". Even on the western seaboard (which does *generally* qualify geographically for the system and where Ireland did make compromises on particular lines), Ireland may (albeit to a lesser degree) have not strictly complied with all the requirements of Article 4 of the TSC (Article 7 of the LOS Convention).[133] And this is despite the fact, as seen above, that Ireland purported to be acting in accordance with international law.[134]

It is not surprising, therefore, that it was reported in the Dáil as late as 1976 that the Irish straight baseline system had been "strongly contested" by "another government".[135] There is no doubt that this cryptic reference was in fact to the UK which appears to have made an early protest against the illegality of the Irish lines in the south-east. In this particular instance, the official Irish doubts so evident in the archives and British objections—but overruled at government level—have come home like chickens to roost. In any new straight baselines exercise undertaken by Ireland under the 1982 LOS Convention (to which, as seen, it is now a party), the opportunity will, it is hoped, arise to put right such past subjective and seemingly unjustified Irish appraisals of the law of the sea requirements.

[131] See Symmons, note 10 above at p. 24.
[132] *Ibid.* at p. 30.
[133] *Ibid.* at pp. 28–31.
[134] See, e.g., note 38 above and accompanying text.
[135] See Symmons, note 10 above at p. 31.