- states and confers upon them certain rights arising out of the sovereignty which it exercises over its maritime territory (Anglo-Norweigan Fisheries).

(a) Width of the Territorial Sea

Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Baselines Generally

- Normal Baseline: Corresponds with the lower water line along the coast, including the coasts of islands. Under the convention, normal baselines can be drawn around low tide elevations.
  - A low tide elevation may be defined as naturally formed areas of land surrounded by and above water at low tide, but submerged at high tide, provided they are wholly or partly within 12 nautical miles of the coast.
- Straight Baselines: A system of straight lines joining specified or discrete points on the low-water line, usually known as straight baseline end points. These are used in localities where the coastline is deeply indented or cut into (e.g. Norway), or where there is a fringe of islands along the coast in its immediate vicinity (e.g. Philippines) (Qatar v Bahrain (Merits) Case).
- Bay or River closing lines: Are straight lines drawn between the respective low-water marks of the natural entrance points of bays or rivers.

** Except as provided by Part IV (Arts 49-54 on archipelagic states), waters on the landward side of the baseline of the territorial sea form part of the internal waters of the state.

Applying the rules associated with baselines

** General rules are outlined within Articles 4-15, 121 of the Convention on the Law of the Sea

- The baseline usually refers to the low water mark (article 5), except Islands with fringing reefs, where the territorial sea will start at the low water line of the reef: Article 6
- Where a coastline is deeply indented, or there is a fringe of islands adjacent to the coast (as in Anglo-Norwegian Fisheries)
  - The base line can be a straight like to factor in for those bays
  - The islands must however still follow the direction of the coast, but straight baselines can be drawn at low watermarks even across bays (Article 7(1)).
- Where you are dealing with bays and deltas or other low tide elevations/land submerged at high tide
  - If it is within the territorial sea, you can use the low tide mark of the elevation to determine the territorial sea width.
  - If the bay is not within the territorial sea, it has no territorial sea of its own (China v Philippines)
  - Artificial islands or installations that are not naturally formed and are not islands for the purpose of the convention cannot maintain their own territorial sea (Article 60(8)).
    - For a definition of islands see Art 121.
    - Rocks which cannot sustain their own life can have no EEZ or continental shelf.
- Archipelagic states, are entitled to use straight baselines to connect the outermost points of their islands (as opposed to the low water mark of every one of their islands) e.g. Indonesia
  - This rule however, only applied to mid-ocean archipelagic states, as distinct from states which have islands off their territory e.g Australia.
- Where the territorial sea will overlap between two states (because there is not sufficient distance between two states for each to have a territorial sea), the general rule is that the territorial sea will extend to the median line between the two unless otherwise agreed to between the parties.

- Where straight baselines is applicable under paragraph 1 of Art 7, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned.
  
  o The system of straight baselines may not be applied by a state in such a manner as to cut off the territorial sea of another state from the high seas or an exclusive economic zone (Art 7(6)).
  
  o Where the establishment of a straight baseline in accordance with the methods of Article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.

Relevant Case: Anglo-Norwegian Fisheries Case (UK v Norway)

Facts: A Norwegian decree of 1935 delimited Norway’s Fishery Zone (territorial sea) along almost 1000 miles of coastline north of latitude 66. The zone, which the U agreed was as a matter of historic title, four miles wide, was measured not from the low-water mark at every point along the coast, but from straight baselines linking the outermost points of land. The preamble to this decree justified this decision on the basis of well established national titles of right, the conditions prevailing on the Norwegian coasts and the safeguard of the vital interests of the inhabitants of the north most parts of the country. The UK challenged the legality of Norway’s straight baseline system and the choice of certain baselines used in applying it.

Court Finding/Established Precedent

  1) In the case of low-tide elevation, the outer edge at low water of this low tide elevation may be taken into account as a base point for calculating the breadth of the territorial sea.
  2) Where a coast is so firmly indented, the methods of baselines may within reasonable limits, depart from the physical line of the coast.
  3) It is not true that straight baselines will only be able to be drawn across bays; may draw between islands, islets and rocks.
    
    a. There is a general rule however, that the drawing of baselines must not depart to any appreciable extent from the general direction of the coast.
      i. One cannot confine this assessment to examining one sector of the coast alone, except in a case of manifest abuse.

Low-tide elevations

  - Straight baselines may not be drawn to and from low tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built upon them (Art 7(4)).
  - When a low tide elevation is situated in the overlapping area of the territorial sea of two states, both states in principle are entitled to use its low water line for measuring the breadth of their territorial sea.
    o This is the case even where the low tide elevation is closer to one state than the other.
  - These few existing rules do not justify the general assumption that low-tide elevations are territory in the same sense as islands.
  - Whereas a low tide elevation that is situated within the limits of the territorial sea may be used for the determination of its breadth. This does not hold for a low-tide elevation which is situated less than 12 nautical miles from that low-tide elevation but is beyond the limits of the territorial sea.
    o The law of the sea does not in this regard allow for ‘leap frogging’
      - In this respect it is irrelevant whether the coastal state has treaty such a low tide elevation as its property and carried out governmental acts with regard to it. It does not generate a territorial sea. 
Archipelagic States

- The 1982 Convention on the Law of the Sea contains provisions allowing the use of straight baselines by mid-ocean archipelagic states (but not by continental states with ‘off-lying archipelagos’). This is outlined in Art 47.
  - An archipelagic state may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of land, including atolls is between one to one and nine to one.
  - The length of such baselines shall not exceed 100 nautical miles, except that up to three per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum of 125 nautical miles.
  - The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
- These waters are thus considered to be within the sovereignty of the state, but are subject to the convention right of innocent passage: Article 52.

Rights over the Territorial Sea

- The Coastal state has sovereignty over the territorial sea including the airspace above and the seabed and subsoil that is below.
- Submarines and other underwater vehicles are required to navigate on the surface and to show their flag when navigating within the territorial sea (Article 20).
- Suspend temporarily in specified areas of the territorial sea the right of innocent passage, provided this suspension is essential for the protection of its security.
  - Any suspension made under this part will only take effect after it has been duly published (Art 25(3)).
A. DID THE REPRESENTATIVE PURPORTING TO REPRESENT THE STATE ALLEGEDLY BOUND HAVE ‘FULL POWERS’?

Establish: Article 8 VCLT: Any act relating to the conclusion of a treaty performed by a person who cannot be considered under Article 7 as authorised to represent a state for that purpose is without legal effect unless afterwards confirmed by that state.

1. A treaty will only have been concluded validly where the person/circumstances:
   a. Produced appropriate full powers (Art 7(1)(a))
   b. It appears from state practice or circumstances there was an intention to dispense with the need for full powers (Art 7(1)(b)
   c. A person by virtue of their functions who need not produce full powers (Art 7(2):  
      i. Heads of State, Heads of Government and Ministers of Foreign Affairs  
         1. For the purpose of all functions relating to concluding a treaty: Art 7(2)(a)
      ii. Heads of diplomatic missions  
         1. For purpose of adopting text of a treaty: Art 7(2)(b)
      iii. Representatives accredited to an international conference or organisation  
         1. Purpose of adopting text of a treaty at that conference, organisation or organ:  
            Art 7(2)(c).
   d. If the authority of a representative to express the consent of the state to be bound was subject to restriction, his omission to observe this restriction will only invalidate the states consent if the restriction was notified to other negotiating states prior to his expression of consent: Article 47

C. WAS THE TREATY RIGHTFULLY PASSED?

1. Adoption of the text will only be valid where all states that have participated in the drawing up of the treaty have consented: Article 9(1).
   a. Unless, at an international conference, where two thirds of the states present and voting must agree: Article 9(2)  
      i. Unless, decided by a two thirds of the states present and voting agree to use a different metric. (Art 9(2)).
   2. Was the treaty registered with the United Nations?
      a. Treaties not registered with the UN cannot be heard in disputes before UN organs (e.g ICJ: Article 102

C. IS THE STATE BOUND TO THE TREATY?

Establish: Unlike CIL, to be bound by a treaty, a party must consent to be party to it. This can be conveyed in a multitude of ways.

1. Article 11 VCLT outlines the ways in which a state may consent to becoming bound by a treaty.
   a. Signature  
      i. Unless expressly stated however, signature will not automatically make a state bound to the terms of the treaty.
   b. Exchange of Instruments constituting a treaty  
   c. Ratification  
   d. Acceptance  
   e. Approval  
   f. Accession  
   g. By other agreed means
2. States only to be bound after they become a party to the treaty/the treaty has come into force (Article 28)
   a. A state will only be bound by the terms of a treaty they have consented to from the point at which the treaty comes into effect.
   b. If a state has become party to an existing treaty, the treaty will only have effect from the point at which they consented. It will not apply retrospectively: Article 28
   c. However, where the act has result in a continuing situation, the court may have jurisdiction *ratione temporis*: *Chiragov v Armenia*

3. Mere fact that a treaty violates a provision of internal law regarding competence to conclude treaties will not undermine this consent unless that violation was manifest, and the rule was of fundamental importance: *Article 46 (1)*
   a. A violation is manifest if it would be objectively evident to any state conducting itself in the matter in accordance with normal practice in good faith (Art 46(2))
      i. This violation MUST be manifest at the time of concluding the treaty.
   b. *Land and Maritime Boundary between Cameroon and Nigeria Case*
      i. Violated constitution but held to be valid
   c. *Legal Status of Eastern Greenland Case*
      i. Attempted to argue PM had no power; not held to be valid.

4. *Pacta Sunt Servanda*: Treaties are binding
   a. Domestic law will not excuse non-performance: Article 27

E. IS THE STATES CONSENT TO BE BOUND VALID?

Establish: A states consent to be bound to the terms of a treaty may not be valid where there is error, where there is fraud or corruption, or where there is coercion.

1. Treaty may not be valid if there is an error
   a. A state may only invoke error as invalidating its consent to be bound if the error relates to a fact or situation assumed to exist at the time the treat was concluded AND if this formed an essential basis of its consent to be bound: Article 48(1)
   b. This will not apply where the state contributed to its own conduct to the error, or the state was put on notice of the possible error: *Article 48(2)*
      i. *Temple of Preah Vihear*