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A comprehensive review of the territorial integrity of the international law of the sea

Muaiyid Rasooli, PhD Candidate[1*], Prof. Dr. Mohammad Ekram YAWAR[2]

[1] School of Law, Xi'an Jiaotong University, China

[2] Dean of the Faculty of Law, International Science and Technology University, Warsaw, Poland.

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***Corresponding author:** Muaiyid Rasooli, PhD Candidate
School of Law, Xi'an Jiaotong University, China

Abstract

Insularity—the idea of islands as unique landforms—has been around for ages in international law. Even with its long history at global conferences, the concept keeps showing up in articles of the Convention on the Law of the Sea. Sounds simple enough: an island is just land surrounded by water. But it's not that easy. Countries can't agree on exactly what counts as an island, or how this definition should work in practice.

Things get even trickier when it comes to drawing maritime boundaries. Insularity plays a big part in deciding how far a country's rights stretch into the sea, and in sorting out where one country's waters end and another's begin. Naturally, this leads to plenty of legal debates.

In this article, I dig into what "island" really means in international law. I use library research and a descriptive-analytical lens to pin down the legal status of islands, and to look at how much island status actually matters when countries set their maritime boundaries. I bring in what states have argued, what international courts and arbitrators have decided, and what legal experts have to say.

When you look closely, the standard definition of islands mostly lines up with customary law, and it's usually straightforward when just figuring out a single country's maritime area. But when it comes to splitting up sea zones between countries, things get messy. The outcome often depends on what the countries involved want, and on the judgment of legal authorities. Because of that, island status often has only a limited effect—or sometimes hardly any effect at all—on how those lines get drawn.

Keywords: coastal elevation, delimitation of maritime zones, international law of the sea, coastal base, tide levels.

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1. Introduction

Island formations play a big role in how countries claim and expand their maritime zones. In the world of international law, these tiny bits of land spark endless debate—mainly around three things: who owns them, who gets rights from them, and how they affect the drawing of boundaries at sea. Even though islands matter a lot in how states interact, the rules about them in international law are surprisingly thin. The few that exist are often tough to interpret, even when most countries agree on them.

One particular twist is the "island formation" that only shows up during certain times—think land that's visible only at low tide. This idea started gaining legal attention in the 1800s, when Britain decided to treat outposts near its coast as islands. Scandinavian countries took a similar view.

Fast forward to 1930: at the League of Nations' first big conference on codifying international law, some countries wanted islands and archipelagos to be treated equally. Others disagreed, pushing to keep archipelagos out of the same legal category as islands. The Sub-Commission's final report backed the stricter approach, saying that seabed outcrops inside territorial waters only count toward territorial claims if they're above water at high tide. That meeting was the first time anyone clearly separated claims to islands in the territorial sea from claims out on the high seas. But for all the talk, the conference didn't produce any binding international agreement.

Things picked up again at the first United Nations Conference on the Law of the Sea in 1958. Britain tried to draft Article 5 so that baselines for territorial seas couldn't be drawn from rocks or dry land. Sweden and Iceland pushed back, since they used their islands' elevations for baselines. To bridge the gap, Mexico suggested a compromise: unless the structures in question were lighthouses or similar installations permanently above water. Despite Norway's objections, the commission approved Mexico's proposal.

Later, another tweak came in: instead of talking about rocks and dry shoals, the language shifted to "insular outcrop," thanks to a push from the U.S. representative and agreement from the rest. In short, the rules about islands keep evolving, and the legal debates about what counts as an island—and what rights those islands give—are far from settled. Back in 1982, the Convention on the Law of the Sea pretty much repeated how the 1958 Convention defined an insular outcrop. But it didn't stop there—it also dug into what these outcrops mean for drawing boundaries at sea.

This research looks at how international law—think treaties, custom, and court decisions—handles territorial succession. Why does this matter? Well, for one, it helps clear up confusion about what territorial succession even means. Is it just a straightforward continuation of territory, where the same land rules apply? Or does it belong to the seabed, falling under a completely different set of rules from the law of the sea?

On a practical level, the way we define these insular features can seriously affect how countries expand their territory or maritime zones. That's why taking a closer look at this topic is so important (Tanaka, 2006: 190). So, what's on the table here? First, we'll break down exactly what counts as "insular." Then, we'll get into whether these places are really part of a country's territory, what the usual rules say, and finally, how all this shapes where countries can draw their starting lines along the coast and set their borders with neighbors.

2. Definition of an island prominence

Article 11, paragraph "A" of the 1958 Convention on the Contiguous Sea and the Contiguous Zone lays it out pretty clearly: an island prominence is a natural patch of land, surrounded by water, that stays above water at low tide but slips below the surface when the tide is high. Article 13 of the 1982 Convention on the Law of the Sea echoes the same idea.

So, breaking it down, both treaties say an island needs to be a natural landform, surrounded by water, and only visible at certain tides. Since the definitions for "island" and "island prominence" are almost the same—except for that one detail—we can lean on what legal scholars and court cases have already said about what counts as an island. Their work helps make sense of these definitions.

2.1 Land Area

To count as land, an area needs two things: it has to be connected to the seabed and actually be solid ground—stable and continuous, like what you'd expect from land (Tanaka, 2019: 76). The International Court of Justice gets pretty specific about what "terrestrial" means. For them, it's solid stuff attached to the seabed—not just soft material or animal remains, no matter what it's made of (ICJ Rep, 2012: Para.37).

They made this clear in the Nicaragua v. Colombia case. Nicaragua argued that a whale skeleton—made mostly of coral—wasn't really land, so it couldn't count as an island (ICJ Rep, 2012: Para.32). Some scholars back Divan's view that an island-like feature doesn't need any special geological makeup. It could be rocks, sand, mud, coral—whatever (Symmons, 2017: 136). But others push back, saying you can't just ignore the word "land" in these definitions. It's been in international rules and documents since 1930 (Evans & Lewis, 2020: 28).

Judge Bajwa criticized the majority in Qatar v. Bahrain for calling Qatal-Jarada an island, pointing out that its shape and features don't really fit the bill—it isn't landlocked, for example (Tanaka, 2019: 76). When it comes to interpreting these rules, the courts usually stick to the plain meaning of words. If something isn't land in the ordinary sense, it shouldn't count. But another question always pops up: how big does a piece of land need to be for the law to care about it?

Courts have said over and over that size doesn't matter here. Even the tiniest island gets maritime rights (ICJ Rep, 2012: Para.36,37; PCA Rep, 2016: 538). So, if the size of an island doesn't limit its rights to the sea around it, then the size of an outcrop doesn't really matter much either, at least when it comes to its limited legal effects.

2.2 Natural Formation

The second part of the definition is "natural formation." That doesn't just mean what you see right now—new island outcrops can pop up any time. They show up after things like tsunamis or landslides, so what's considered "natural" isn't locked in the past. But here's the catch: the formation can't be man-made. States can't just pour concrete along the coast or build barriers to stop erosion and claim they've created new islands.

There are really two ways governments get involved with these formations. The first is when an island or its reefs are getting worn

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away, and the government steps in to protect what's left. Take the Tokelau and Taliki (Tanga) islands, for example. They were basically just a few coral reefs. Tonga reinforced those reefs, hoping to keep control over the waters around them. Something similar happened with Akini island near Torishima. In the late 1980s, it was at risk of sinking, and Japan faced losing control over a huge stretch of seabed and fishing grounds. So, in 1988, Japan built steel breakwaters and set up concrete blocks to keep the island from disappearing (Salari 2013: 23-24).

The second way states get involved is by actually building up islands themselves. In 2014, the Philippines released photos showing China constructing reefs in the South China Sea. The Philippines took the case to an arbitral tribunal, arguing that even if China built artificial islands on formations like Mischief Reef, those structures are still just insular—they don't create new maritime zones on their own (Symmons, 2017: 147). So, the real question is whether what these states did in those two cases actually holds up under international law. Looking at it, the natural state of things matters most. Governments can't just change what a structure is or what it can do by their actions. If they try to fix up or preserve something that's already eroding, that doesn't suddenly make it something else. It doesn't mess with its original, natural character (Lewis & Evans, 2020; Murphy, 2017; Tanaka, 2019; Symmons, 1995). The Permanent Court of Arbitration in the South China Sea made it clear: you judge a structure based on how it is in nature, not what people do to it.

Legally, you can't just build something and turn part of the seabed into a peninsula or make a rock into an island (PCA Rep, 2016). There's an exception, though—if you put up a lighthouse or something similar on a peninsula and it stays above sea level, that's allowed.

In that case, Article 7, paragraph 4 of the Convention on the Law of the Sea says you can use tidal outcrops as reference points when you're drawing the baseline (Symmons, 2017). So, bottom line: if a tidal outcrop forms naturally, that's what counts. Whatever states do afterward doesn't change its legal status.

2.3 Water Environment

Honestly, people haven't argued much about this part of how we define island structures. Sometimes, the idea of an island "being in water" just doesn't hold up. Take, for example, when someone builds a causeway or a road that links an island to the mainland or to another island (Tanaka, 2019: 77). Or think about the polar regions, where floating ice sometimes bridges the gap between the island and the mainland. In cases like these, you can't really call it an island or islet anymore, since it's no longer completely surrounded by water. But that doesn't actually cause any trouble for the coastal state. Once there's a physical connection—by land or by structure—it just becomes part of the coastal regime. The coastal state can then use that new coastline when figuring out its baselines (Salari, 2013: 25).

2.4 Above the sea

The key thing that sets a tidal feature apart from an island is when you can actually see it. Tidal features only show up at low tide, while islands have to be visible even at high tide. So, if you're looking at a natural chunk of land surrounded by water, whether it's called an island or just a tidal feature depends on the tidal base level. But what exactly is this tidal base? It's basically the reference point for sea level — the fixed spot from which we measure tides, water depths, and tide heights (Chegini 2011:60). Some call it a fuzzy definition, but in practice, everything gets measured from that base (Mirhaidar et al. 2019:28). Oddly enough, neither the Convention on the Territorial Sea and the Contiguous Zone nor the Convention on the Law of the Sea lays out any details about it. States don't agree either. They all pick their own standards in their internal laws: some use the lowest tide, some pick astronomical tide, others go with average high tide, average sea level, or even the average tide over a 19-year span (Salari, 2013:26). Because the treaties are silent and states can't seem to agree, legal experts say there's no universal rule, treaty, or principle for setting this base level (Tanaka, 2006:192-196; Symmons, 2017:138; Llanos, 2002:263; Antunes, 2000:21,23). Every method has its pros and cons. The International Hydrographic Organization suggests one thing: when tides really matter, use the lowest astronomical tide as the reference. But in places where the tides hardly change — say, if the difference is less than 0.3 meters — it's fine to use the mean sea level instead (Antunes, 2000:6,7).

This advice is just that: advice. It doesn't force anyone to do anything (Mirhaider et al. 2019:30, 31). Some argue, like in Article 5 of the Convention on the Law of the Sea, that countries should stick to the base level shown on their official maps when figuring out where islands or tidal features begin and end (Salari, 2019:1046).

States don't agree on how to measure the base of the sea or the tide. That's already a mess. Things get even trickier when a country, like the UK, uses different data along different parts of its own coastline—one method for drawing the sea line, another for figuring out the sea's yield (Symmons, 2017: 145). When every country has its own approach and builds its legal arguments around different data, their legal positions just don't match up (Tanaka, 2019: 70).

Next, I'll go over some of these legal differences. But first, there's one question lingering: How obvious or visible does a structure need to be, based on all this tide and water data? Sometimes a structure pops up above water, sometimes it's hidden, depending on the season or the weather. For something to count as an island—or at least look like one—it has to be somewhat "permanent." People should be able to see it at least once every 24 hours. If it doesn't meet that test, it's just part of the seabed.

Still, if an island disappears now and then because of certain weather or seasonal cycles, that's not a problem for its status (Symmons, 2017: 140, 141).Most people say the structure has to be above water at high tide. But if it goes underwater during freak tides or storms, that doesn't mean it suddenly stops being an island. Some countries go by the average—meaning the structure only needs to be above the mean spring tide. So if it's underwater at high tide, even 200 times a year, that's okay.

Others use the minimum standard, which looks at the average tide over 18-19 years. The benefit here? This method smooths out weird seasonal spikes and balances out changes caused by the moon, the seasons, or the weather over those 19 years. But it's not perfect. You need almost two decades of tidal data, and not every country has that. Plus, this approach only works if the sea's height stays pretty steady—otherwise, you can't really compare the numbers.Maybe it's better for states to use something in the middle, like the average spring tide, since it takes a bit from both the maximum and minimum standards (Symmons, 1995: 23, 24).

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Some real-life court cases help make sense of all this—especially when it comes to how different states define islands, handle tidal averages, and pick their reference points. It's worth digging into those to see how these rules play out in practice.

2.4.1The level of the tide and the tide base in the case

The Anglo-French arbitration ran into trouble over whether to use the tiny, out-of-the-way Eddystone as the key reference for setting boundaries in the Channel. England and France couldn't even agree on the basics—each had its own system for measuring tides. The English used mean spring tide, while the French went with sidereal tide and a different tide base.

Depending on which standard you picked, Eddystone sat either 2 feet or just 0.2 feet above the water. Both sides ended up treating it as an island and a rocky outcrop poking out of the sea. The tribunal pointed out that the real issue here was Eddystone's role in drawing the boundary—not its legal status as an island. France had already accepted Eddystone as a reference point, so the Court treated it as an island for the calculations (Tanaka, 2019: 89). They relied on the principle of non-estoppel and focused on Eddystone's actual characteristics, brushing aside debates over the details of its measurements or nature.

A similar fight played out between Qatar and Bahrain over a spot called Qat al-Jarada. Bahrain argued that at high tide, the structure was underwater, and they brought eyewitnesses to back them up. Qatar countered that Qat al-Jarada was a tidal outcrop, always shifting, and they brought out charts to show it. Bahraini experts insisted it always stayed above water, but Qatari experts disagreed and said the evidence wasn't conclusive.

In the end, the court sided with Bahrain and ruled that Qat al-Jarada was above water at high tide. The decision settled things, but the court didn't really explain how it reached that conclusion. Some legal scholars think the Qatari experts only argued against Bahrain's claims but didn't offer strong alternative evidence, so the court just went with the Bahraini expert's opinion (Murphy, 2017: 45).

Then there's Nicaragua v. Colombia. Nicaragua claimed a big stretch of Caribbean coast—Kitasono, about 57 kilometers long and 20 wide—saying it was an islet that never rose above water, not even at low tide. Colombia pushed back, insisting some parts sat above water and counted as islands. Colombia argued there's no accepted high-tide standard in international law and backed up the existence of islands off Kitasuno using the Grenoble high-tide model—basically, they picked the highest astronomical tide as their benchmark. When facing Nicaragua, Colombia switched it up and used the British Hydrographic Office standard. By that measure, only the QS32 structure stood out, sitting 70 cm above high tide (Evans & Lewis, 2020: 26).

The International Court of Justice, looking at all this, made some pretty interesting points about what actually counts as an island. They decided that one of the structures on Kitasuno's coast—QOS 32—does qualify as an island (ICJ Rep, 2012: 37).

Here's how the Court broke it down: First, they didn't care much about old data, since these structures change over time, and what matters is how things look now. Second, they didn't put much stock in nautical charts and diagrams, since those are meant to warn ships and don't really show the difference between high and low-tide features. Third, real-life observation and scientific checks of the structures are a lot more reliable than just analyzing secondhand info. Fourth, what the structure is made of—rock, mud, coral—doesn't matter. Fifth, the key thing is that the structure stays above water at both high and low tide; it doesn't have to be high—just 40 centimeters above water was enough to count as an island. Sixth, the size of the structure isn't a dealbreaker, since there's no rule in international law that says an island has to be a certain size. Seventh, there are lots of ways to measure tides and barriers, and picking the right method depends on the location and conditions—you have to use the method that gives the most accurate result (Murphy, 2017: 46-47). Eighth, it's up to the state making the claim to prove the structure is there through all tidal conditions. The Court also pointed out that the model Colombia used for shallow waters wasn't reliable.

In the end, the Court's decision—and their confirmation that "highest astronomical tide" is the right standard in this case—pretty much undercuts Colombia's argument that there's no standard for measuring tides in international law.

The Court's stance doesn't really line up with what it's said before. It leans on the idea that there's no specific treaty or customary rule about how to define the level of an island or the media, and it basically overlooks the freedom that States have to set their own criteria. Some writers push back on this, saying the Court's approach makes sense if you see a difference between a State's freedom to choose criteria and the act of deciding the status of one particular feature.

Honestly, both sides have strong arguments, each grounded in different rules, but in the end, it all comes down to which authority makes the final call (Evans & Lewis, 2020: 27). Take the 2016 South China Sea arbitration, for example. Out of all the disputed spots, the tribunal named Hughes Reef, Gaon Reef (South), Sobi Rock, Devil's Reef, and Thomas Shoal as insular features (Tanaka, 2019: 90). But the reasoning they used doesn't totally match what the International Court of Justice found in previous cases. For one, the Arbitral Tribunal said in paragraph 311 that neither UNCLOS nor customary international law demands that you judge an island's territorial sea based on the level of that island's base.

UNCLOS actually lets States claim something is an island or islet if the land base—or even the data about the islet—fits what you'd normally call an "islet" (Murphy, 2017: 43). Plus, unlike in the Nicaragua-Colombia case where the claimant State had to convince the Court, here the tribunal itself takes a look at any structure it needs to (Evans & Lewis, 2020: 28) The real challenge for the tribunal was figuring out how to legally prove the status of these marine features.

To figure out if a structure sits above water at high tide, the tribunal said you have to look at its original, natural state—basically, before people started changing things. The architect didn't just rely on one trick. They used all sorts of methods: watching the spot over a long stretch of time, checking it out in different weather and tide conditions, digging into old surveys from England in the 1860s and Japan in the 1930s, and even looking at canoe routes mapped out by a few states. Historical evidence really mattered here (Evans & Lewis, 2020: 28; Tanaka, 2019: 90).

Honestly, the Permanent Court of Arbitration tends to be pretty practical about these things. The Court of Appeals hasn't nailed down exactly what "high water" means when deciding the nature of a structure (Evans & Lewis, 2020: 28). In practice, the courts focus more on solving the immediate problem than on spelling out

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a clear-cut definition of what counts as an island. Since every case comes with its own twists, their approach shifts—and that only adds to the confusion.

3. Legal Status of the Definition of Marginal Erosion

One tricky part of the Convention on the Law of the Sea is figuring out exactly how it handles marginal erosion. When you look at the maritime laws from different countries, you see some patterns, but also a lot of small differences. For example, countries like Canada, the UAE, Kuwait, Australia, South Africa, Ireland, Yemen, Samoa, and Tonga say that an island is a natural bit of land in the water — it's above water at high tide but goes under at low tide. But then you've got places like England, New Zealand, Trinidad and Tobago, Tuvalu, Papua New Guinea, and Kiribati. They stick with that basic idea but tweak it to fit their own rules, adding extra criteria. Egypt, Syria, and Saudi Arabia take a slightly different path. For them, tidal outcrops or inlets are any bits of land surrounded by shallow water, as long as some part stays above water even at high tide.

If you step back, most countries seem to agree on a few key points: an island has to be a piece of land, naturally formed, surrounded by water, and above water at high tide. The real debate is about how you pick the base level for the island and the tide. That's where things get messy. Looking at international treaties, the Convention on the Territorial Sea and the Contiguous Zone includes the same definition for an insular outcrop. The 1958 Convention on the Law of the Sea repeats it, which shows this idea has probably become part of customary law. The International Court of Justice even said so in the Qatar-Bahrain case, calling this rule a part of international custom.

So, when you put it all together, legal experts agree: this rule has become a standard part of customary international law.

4. Claiming sovereignty over insular outcrops

One big question about insular outcrops is pretty simple: what exactly are they? Are these features considered "land" under international law, so a country can claim them, or are they just part of the seabed with no such rights?

With islands, the answer's straightforward. Courts have made it clear: islands fall under sovereignty, and that depends on how a state actually controls or uses them. The International Court of Justice (ICJ) even spelled this out in 2007. But when it comes to insular features—those smaller outcrops that don't quite meet the definition of islands—things get a lot murkier. Here, you really have to look at specific legal decisions.

Take the Qatar/Bahrain case. Both countries agreed the Al-Dibal Reef was an insular feature, but they couldn't agree on what that meant. Bahrain argued that because Al-Dibal had emerged as part of an archipelago, it could generate a territorial sea, making it part of Bahrain's territory. Bahrain said you can only use land as a reference point for creating maritime boundaries, so if Al-Dibal could serve that purpose, it had to count as land and could be claimed.

Bahrain also pointed out that it had exercised sovereignty over the Al-Dibāl Strait, so that area should count as its territory and as a reference point for drawing boundaries. Qatar didn't see it that way. They insisted the Al-Dibāl Strait, even as an island projection, wasn't really land, so the usual rules about claiming territory didn't apply. Here's something interesting: when an insular outcrop ends up under a state's jurisdiction, it's usually just because it sits within waters already controlled by that state (Tanaka, 2006). It's not about the outcrop itself—it's about where it is. When the Court looked at this issue, they said the law doesn't really offer a clear answer. International treaties don't spell out whether insular outcrops count as territory, and countries haven't settled on any common practices either. Even though the Law of the Sea Convention has a bunch of rules for territorial seas, that doesn't mean all insular features get the same treatment as islands or count as territory. In fact, insular seas outside a territorial sea don't get their own maritime zones either (Lavalle, 2014).

In the end, the Court decided the islet in question was part of the seabed—not land that Bahrain or Qatar could claim. There's no treaty or established custom here, so the Court basically took the lead—kind of setting its own path, like in the France-UK-El Salvador-Honduras arbitral award (Tanaka, 2006: 204). That's actually the opposite of what happened in the 1999 Eritrea/Yemen case. There, the tribunal said straight out that "the small islands, rocks, and islets" belonged to either Eritrea or Yemen, tying them directly to territorial sovereignty (Symmons, 2017: 137).

Tanaka points out that the Tribunal's stance in the Qatar-Bahrain case doesn't really clash with the Eritrea/Yemen opinion. Those words just confirm who owns the islet as part of the islands—they don't claim that islands and land are the same thing (Tanaka, 2006: 205). One thing's for sure: the International Court of Justice has gotten much clearer about what counts as an island. Just look at paragraph 26 of its 2012 Nicaragua-Colombia Land and Maritime Disputes decision. The Court said, plain as day, that under international law, islands—even tiny ones—are manageable. But then, when you look at the island's output, it's a different story. That can't be managed (Schofield, 2021: 63).

The arbitral tribunal in the South China Sea case went down a similar road. They said that even if you call something "land" because of how it looks, that doesn't mean it actually counts as territory legally. Instead, it's just part of the submerged land, under the sovereignty and legal regime of the inland sea or continental shelf.

A coastal state has sovereignty over an island promontory in its territorial sea, but that doesn't mean it can just annex it (PCA Rep, 2016: Para. 309). If an island sits outside the territorial sea, it falls within the state's continental shelf or exclusive economic zone. In that case, the coastal state gets to control the seabed resources and build structures or even create artificial islands there (Schofield, 2021: 65).

So, what does this really mean? First, just picking an island as a reference point doesn't automatically mean it works like any other island (Tanaka, 2006: 206). Usually, its influence is pretty limited if it's just near the coast and can't create its own separate zones. Second, a coastal state rules over an island inside its territorial sea simply because it already controls the sea itself, including everything under it (Schofield, 2021: 63). This authority isn't about what the structure actually is. Some island outcrops get covered by tides and currents and barely have any land. States can't really govern these spots effectively (Tanaka, 2006: 205).

Bottom line: Even though some writers push back against the ICJ's logic and argue that coastal states should have sovereignty over insular outcrops (Lavalle, 2014: 478, 479), right now, outcrops

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outside the territorial sea are seen as part of the seabed (Symmons, 2017: 134).

5. The capacity of island formations to determine a state's maritime territory

Islands play a big role when it comes to setting a country's maritime zones. The more land a country has jutting out into the sea—no matter how small—the more water and rights that country gets. This isn't just theory; before we even had official treaties, the International Court of Justice made this clear in the 1951 Fisheries case. Both sides agreed back then: the edge of the high-water mark was where you started measuring the territorial sea.

Things got more official a few years later. In 1958, the rules about islands were written into the Convention on the Territorial Sea and the Contiguous Zone, and those same rules show up again in the Convention on the Law of the Sea. When you look at the Law of the Sea, there are basically two ways to draw the starting line for a territorial sea—the regular way and the straight-line method. Islands and similar features matter in both approaches, each in their own way.

This next part breaks down exactly when and how islands count when you're figuring out these two kinds of baselines, especially looking at what Article 13(1) and Article 7(4) of the Convention on the Law of the Sea have to say.

5.1 Article 13, paragraph 1, of the Convention on the Law of the Sea

The paragraph starts by laying out a rule: if a coastal feature—or even just part of one—sits within the territorial sea of a state or an island, you can use the lowest low-water line on that feature as your baseline for measuring the territorial sea.

In the Law of the Sea Convention, states mark the limits of their territorial seas using two kinds of baselines: ordinary and straight. But here's something odd. Article 13 doesn't spell out whether insular features get treated as part of the ordinary baseline or the straight one. The Convention stays silent on this, but if you dig a bit, you can figure things out. First, Article 13 doesn't define an islet in terms of straight baselines or pick and choose convenient points. Second, that line in Article 13—"the high-water mark shall be used as the baseline for measuring the breadth of the territorial sea"—is lifted straight from Article 5, which deals with the normal (or ordinary) baseline (Symmons, 2017: 133). So, the Convention treats these features as part of the usual baseline, not some special exception.

There's another piece to notice: the rule says the feature has to be "wholly or partly within a distance not exceeding the breadth of the territorial sea." There's really not much to argue about here, except in tricky cases—like Subi Reef—where people can't agree if a feature actually falls within that distance. In the Philippines v. China arbitration, for example, both countries argued over exactly how far Subi Reef was from the nearest island. One thing's clear: if an island or reef somehow shifts and ends up outside the territorial sea, it stops being a valid reference point (Symmons, 2017: 142). So here's the thing: does an island outcrop have to sit inside the territorial sea—measured from the regular coastline—to count as a reference point, or is it enough if it's inside a direct baseline? Looking at Article 13, paragraph 1, it sounds like "breadth of the territorial sea" doesn't just mean from the physical shore. You can also measure from any direct baseline allowed under Articles 7 and 10 of the Convention (Symmons, 2017: 144).

There's another tricky part: how far does this idea stretch? If you have an island sitting inside the territorial sea of a coast or another island, you can definitely use it as a reference point. But what if there's another island outcrop inside that territorial sea—can you use that new one as a fresh reference, and keep leapfrogging out to more and more islands, each time pushing the territorial sea further? Actually, this kind of leapfrogging is already happening with islands.

To answer this, you've really got to dig into Article 13 of the Law of the Sea Convention and how the courts have interpreted it.

If you pay close attention to the wording, when it says "that [first] insular outcrop," it doesn't let you jump from one outcrop to the next in a chain reaction. The article is clear: the island outcrop has to be in the territorial sea of either the mainland or an island—you can't just swap in a new outcrop for those two. So, the rules don't let you keep extending the territorial sea by hopping from one island to another (Schofield, 2021: 64).

Courts have made it clear: the leap-of-the-moat method just doesn't hold up. Take the Qatar-Bahrain case. Qatar tried to set its baseline at Qat al-Jarada Island, which sits inside the territorial waters of the Great Barrier Reef. Then, Qatar argued that Qat al-Dibal Reef—found inside Qat al-Jarada's territorial sea—should also count as a baseline for drawing the territorial sea boundary. The Court shut this down. In paragraph 207 of its judgment, the Court said sure, you can use an island projection within the territorial sea to figure out its reach, but you can't do the same with an island projection that's less than 12 nautical miles from the first one, but outside the territorial sea. The Eritrea-Yemen (Phase I) Arbitral Tribunal did something similar and rejected Eritrea's claim between island states (Llanos, 2002: 271).

This all comes down to how islands depend on the mainland—and on each other—when you set reference points. That's why people sometimes call these "English or Thai" points of reference (Schofield, 2021: 64).

One last thing: if you're picking an islet as a baseline, you don't need a lighthouse or any kind of facility on it. There's also no rule that says you have to mark it as a baseline on charts or in an official statement under Article 16 or anywhere else in the Convention. Still, being upfront about it helps with transparency and keeps things safer at sea (Symmons, 2017: 145).

5.2 Article 7, paragraph 4, of the Convention on the Law of the Sea

Normally, you can't use the elevation of an island to set straight baselines. Article 4, paragraph 3, of the 1958 Convention on the Territorial Sea and the Contiguous Zone actually banned drawing straight baselines from most coastal features. But there's an exception: lighthouses or similar structures get special treatment—they can be used as starting points for baselines.

"Similar facilities" basically means any structure that helps with navigation and stays above water at high tide—think lighthouses, buoys, radar reflectors. Some experts even say you can use island outcrops with non-navigational structures like wind turbines as reference points (Symmons, 2017: 79).

They kept this rule word-for-word during the talks for the 1982 Convention on the Law of the Sea, but Norway's proposal added a

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new twist: the structures have to be "generally recognized internationally."

Norway's suggestion got accepted because the International Court of Justice had already backed Norway's approach to setting baselines for its islands and islets (Llanos, 2002: 261). Most lawyers say there's no other legal source for this rule, and they think the bar is set pretty high if a country wants the world to accept its way of drawing baselines (Symmons, 2017: 79).

There's one more thing—the 1982 Convention, unlike the 1958 Treaty, actually lets countries draw straight lines directly from and between island settlements in an archipelago (Lavalle, 2014: 458). That's a real change from how things worked before.

Here's something people don't talk about much: When it comes to drawing a direct baseline, the rules aren't as strict as they are for a normal baseline (see Article 13). You don't actually need the coastal outcrop to sit inside the state's territorial sea. Still, it has to be close and connected to the coast (Murphy, 2017: 131, 135).

Once you realize the outcrop can mark the start of both ordinary and direct baselines for the territorial sea, a new question pops up—what exactly are the waters between the baseline drawn around a tidal elevation and the land behind it?

Honestly, there's no straightforward answer. Some legal experts say the waters landward of a tidal elevation aren't internal waters like those behind a direct baseline. Instead, they're just part of the territorial sea (Symmons, 2017: 146). Others disagree, insisting these waters count as internal (Llanos, 2002: 265). One last thing to consider: If a coastal elevation can serve as a reference point for the territorial sea, can it also set the line for the continental shelf or exclusive economic zone?

This part's still up for debate. There are two main theories. The first one says an insular outcrop shouldn't affect the outer limits of the continental shelf or exclusive economic zone at all. The reasoning? These outcrops don't have their own continental shelf or exclusive economic rights. Article 121, paragraph 3, of the Law of the Sea backs this up: Rocks that can't support people or an economy don't get an exclusive economic zone or continental shelf. So, if rocks can't create these maritime zones, neither can island outcrops (Tanaka, 2006: 208). But the other theory pushes back. It argues that an island outcrop inside the territorial sea can still act as a starting point for the limits of the continental shelf and exclusive economic zone.

Article 57 of the Convention on the Law of the Sea says the exclusive economic zone can't stretch more than 200 nautical miles from the baselines where a country measures its territorial sea. If you read this literally, you'll see that when an island counts as part of that baseline, it's possible for the island to create its own exclusive economic zone. You get the same idea with the continental shelf. Article 76, paragraph 1, spells out that the shelf also extends just as far—200 nautical miles—from the nearest baseline points (Tanaka, 2006: 209).

So, if a country's territorial sea doesn't overlap or clash with a neighbor's, an island can serve as the starting point for measuring both the exclusive economic zone and the continental shelf.

6. The Capacity of the Island to Delimit Maritime Zones Between States

The baseline in international law of the sea connects points along the coast and islands, setting the starting line for a country's maritime territory and marking boundaries with other states. Earlier, we talked about how countries pick certain islands as baseline points. If a state uses an island in its baseline system, that choice can shape the outer edges of the sea areas it controls. Countries know this and take advantage of it.

Ireland and the UK, for example, have written the Law of the Sea Convention into their own laws, giving themselves a solid legal foundation. Belgium does things a bit differently—it uses spring tide lines for small islands near the French border, like Trappeyre.

But things get complicated when another country sits nearby, across the water or next door. Suddenly, picking islands as reference points for boundaries isn't so simple. It sparks disagreements over who owns what, and who controls which resources. The International Court of Justice said as much in the Fisheries case, pointing out that setting maritime zones always involves more than just one country's wishes or domestic laws.

So, here's the big question: If an island qualifies as a baseline for a country's territorial sea, does it also count when drawing the boundary between two states? To answer that, we need to look at how countries approach the issue and what the courts have decided.

6.1 The Perspective of States

States usually try to work out their disputes by sitting down together and talking things through. Sorting out maritime boundaries isn't any different. They go this route because it's cheaper and doesn't force them into any strict legal requirements about how the agreement should look or what the final outcome has to be. Here, you'll see some real examples of how states have settled on boundaries—both in their territorial waters and on the continental shelf.

6.1.1Delimitation of the Territorial Sea

Article 12 of the Convention on the Territorial Sea and the Contiguous Zone says that when two countries have coasts that face each other or sit side by side, neither one can extend its territorial sea beyond the line that sits exactly in the middle—unless both countries agree to something different. If there's a historical claim or some special situation, they don't have to stick to this rule.

Article 15 of the Law of the Sea Convention repeats this rule but adds that it applies only if the countries can't work out a deal.

Looking at these articles, it's clear that coastal features like outcrops can serve as valid reference points when drawing boundaries. Many countries have recognized this. Take the 1973 agreement between Indonesia and Singapore—the boundary points were set so they were equally distant from both countries' coastal outcrops. In another case, when the Netherlands and Belgium divided up their territorial seas, the Dutch island of Rossen counted in full, even though it's just three kilometers off the Walcheren Peninsula. France and Britain did something similar in 2000. There were several small French islands in the area. To draw the boundary, both sides ignored the overlapping territorial seas and set the end of the line so it was equally spaced from three French territorial seas.

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But not every agreement gives these outcrops or islands full weight. Sometimes they're ignored or don't count as much. In 1974, France and Spain agreed to a boundary that left out an island claim. In 1990, Belgium and France agreed to count the French island claims of Banque d'Ismail and Banque d'Erde. (Tanaka, 2006: 210, 211).

6.1.2Delimitation of the Continental Shelf

The rule for dividing up the continental shelf and the exclusive economic zone is basically the same. Articles 74 and 83 of the Convention on the Law of the Sea lay it out: countries with opposite or neighboring coasts need to come to an agreement, based on international law (specifically, Article 38 of the Statute of the International Court of Justice), and they're supposed to do it fairly. If they can't agree in a reasonable amount of time, then they have to turn to the procedures in Chapter 15.

Different agreements between countries have shaped how these disputes get resolved. Take the 1971 deal between Italy and Tunisia—Article 1 of that agreement openly accepted the use of island projections. The two countries settled on a median line as their boundary, with each point based on the closest points of their baselines, while also considering islands, islets, and those island projections—except for four specific islets that were left out.

Then there's the 1982 agreement between France and Britain. It said that, when drawing the median line, both the French outcrop at Bryde Bank and the British outcrops at Godwin Sands and Longsandhead would count.

Negotiations for the 1990 Belgium-France agreement got a bit more complicated. France pointed to the 1982 Franco-British deal, which gave full effect to the Bank of Britain in exchange for Godwin Sands, and asked to use the elevation of an island as a factor for the continental shelf limit. This structure sat at the French island's base level, above the Mediterranean, so France considered it an island elevation. But according to Belgium, it was underwater at the time. Eventually, they just drew two separate lines, ignored the bank, and used the midpoint between them as the actual boundary—the effect was split in half.

In the 1991 agreement, Belgium and Britain let two islet protrusions fully determine the boundary point for the continental shelf line. Besides that, three more border lines were set up, each equidistant from two Belgian coastal salients, the main coast, and a Dutch salient called the Rasen.

The Rasen came up again when Belgium and the Netherlands tried to settle their continental shelf boundary. Belgium argued that the Rasen should only matter for the territorial sea, not for the continental shelf. In the end, both sides agreed that the Rasen would only count for a quarter of the continental shelf boundary.

Back in 1965, the Netherlands and Britain agreed that Britain would use a small island near Lowstaff 2 as a reference point for drawing the equidistant line. Then, in 1974, Iran and Oman decided that the isthmus would play a full role in setting the boundary for their continental shelf (Tanaka, 2006: 212).

When it comes to drawing maritime boundaries for exclusive economic zones and the continental shelf, some countries have picked the isthmus as their starting point for the equidistant line. Take the 1977 agreement between the United States and Cuba—an islet in the Florida Keys became part of the equidistance calculation. Another example: in 1982, Australia and France (for New Caledonia) used Australia's Middleton Island, sitting 125 nautical miles offshore, to shape the boundary line.

In 1980, the Cook Islands and the United States (American Samoa) agreed to give every island, no matter how small or remote, full weight in deciding the equidistant line. New Zealand (Tokelau) and the United States (American Samoa) did the same that year.

But not everyone takes this approach. Some agreements ignore island projections entirely when drawing boundaries. For instance, the 1988 deal between Ireland and the UK left out all insular projections when marking the continental shelf boundary. The 1969 agreement between Iran and Qatar went even further, ignoring islands, rocks, reefs—basically anything sticking out—in their equidistant boundary.

And sometimes, countries use a different method altogether, like drawing the boundary along a parallel of latitude. When that happens, islands tend to matter less—or not at all—in the final line (Tanaka, 2006: 213).

So, looking at all these examples, there's no single rule. Sometimes islands and isthmuses play a big role in setting maritime boundaries. Other times, they don't matter at all. It really depends on the agreement.

6.2 Boundary Delimitation in Judicial Proceedings

Before we dive into how territorial integrity matters when countries draw their borders, let's clear up two things.

First, if you look back at the previous paragraph, you'll notice that countries don't always stick to territorial integrity when making agreements. They're often hesitant, and this hesitation shows up even more in international courts and similar bodies. Why? One big reason is something called the "doctrine of small geographical structures." The International Court of Justice talked about this in the case about the maritime boundary between Canada and the United States in the Gulf of Maine.

This doctrine mostly comes up with islands, but it can apply to things like rocky outcrops too. In that case, Canada wanted the boundary line drawn parallel to where these little features spread out. The Chamber wasn't a fan. In paragraph 210 of its opinion, it pointed out that doing that would mean the boundary would rely mostly on a handful of tiny rocks—some far from the main coast—or a few outcrops. The Court's view? These small features shouldn't have much influence. If you let them decide the line, you end up with a boundary that makes no sense and isn't really fair (Llanos, 2002:263).

Second, let's talk about islands and how they affect dividing up the sea. After looking at what countries and courts have done, it's clear that if both sides agree, sometimes islands can matter more in drawing boundaries—like Algeria, for example. But in court disputes, especially when it goes to international tribunals, there's rarely a consensus to use the island as a main reference point. Usually, the court will only give the islands a limited role in shaping the boundary (Salari, 2019: 1049-1050).

The bottom line? Even if an island is big, has high elevation, and could have its own maritime areas, courts usually stick with this narrow view. They don't let islands seriously affect the outcome when they're deciding boundaries. With that out of the way, let's look at a few cases where islands played a part in maritime boundary disputes.

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In England v. Norway, England argued that Norway's way of drawing its fishing zone and baselines broke international law. England wanted

In England v. Norway, England argued that Norway's way of drawing its fishing zone and baselines broke international law. England wanted the Court to accept only the normal baseline and the points where gulfs opened into the sea (ICJ Rep, 1951: 128).

The Court didn't agree with England. They pointed to Norway's historical use of its baseline system. If you accept drawing straight baselines, the Court said, there's no reason to limit those lines to just the mouths of bays—you can use them for the indents made by islands too (Salari, 2013: 87-88). In the end, the Court decided any part of the Norwegian coast, even tidal outcrops, could serve as a reference point (Murphy, 2017: 129).

Move over to the Anglo-French arbitration, and you get another fight—this time over Addiston. The question was whether Addiston counted as a reference point. It sat outside the English territorial sea, less than ten miles from shore. Using the English standard (mean spring tide), Addiston was two feet above water; by the French standard (tidal and astronomical), it barely cleared the water at 0.2 feet. So, Britain called it an island, while France saw it as an insular outcrop. But here's the thing: during negotiations, France already accepted Addiston as a reference point. So, the Court just went with that, without weighing in about what Addiston really was (Llanos, 2002: 266).

Then came the Tunis-Libya case. The Court had to figure out what role the islands of Kerkenna and its surrounding islets played in drawing the boundary. Tunisia argued these islands, along with Djerba and their outcrops, counted as part of Tunisia's coastline—so they should factor into the boundary. Libya, on the other hand, wanted Djerba and the Kerkenna islands included but never even mentioned the outcrops between them.

In the end, the International Court of Justice said in paragraph 128 that, because of their size and where they sit, the Kerkenna Islands and their outcrops really do affect how you draw the boundary (Llanos, 2002: 266). When the Court drew the boundary for the continental shelf, it just ignored the insular outcrops around the Kerkenna Islands—without offering any real explanation. Instead, the Court looked at how other states handle similar situations and decided to give the Kerkenna Islands only half effect, not full effect.

This move changed the whole geometry. The angle between the Tunisian coast (42 degrees) and the Kerkenna Islands (62 degrees) basically got cut in half, and the new border settled at a 52-degree angle (Tanaka, 2006: 214). Honestly, this doesn't add up with the Court's earlier position, which said the Kerkennah Islands and the nearby islets should count as relevant circumstances in the case. Some judges didn't agree with the decision at all.

Judge Schäuble pointed out that the Court never actually proved that giving full effect to the Kerkennah Islands would be unfair or go too far. These islands aren't trivial—they have a big population, active maritime trade, and a long tradition of fishing.

Judge Onson, on the other hand, thought the Court was right to give the islands only half effect and to disregard the surrounding outcrops, saying it fit with law and justice (Salari, 2013:130:130). Then there's Judge Oda, who offered a possible reason for the Court's decision. He argued that while it might make sense to count small outcrops when measuring the territorial sea—since it's just a narrow strip of water hugging the coast—the situation changes when you're talking about the continental shelf. If you let an island push the starting line of the boundary further out to sea, that effect can be huge.

He went on to say that if an outcrop sits right near the coast, you might include it in measuring the inland sea or even the continental shelf. But can you really let it affect the extension of the territorial sea to 12 miles? The difference between a 3-mile and a 12-mile limit is massive and totally changes how important a coastal outcrop becomes in setting the boundary. So, even with the rules from the 1958 Continental Shelf Convention, it makes sense to ignore certain outcrops when drawing the continental shelf line.

At the very least, when a coastal outcrop could mess up the fairness of the boundary, international courts might just leave it out altogether (Tanaka, 2006: 214,215). Later, in the Qatar-Bahrain case, the International Court of Justice tackled these same issues when it reviewed the parties' claims and set the maritime boundary.

Down in the southern part of the delimitation zone, the main job was to set the territorial sea boundary. One of the big arguments? The construction called Great Barrier Reef 3. Bahrain said it belonged to Sitra, but Qatar insisted it was just a projection off Sitra—basically, not really part of the island. The Court didn't settle this debate directly. Instead, they said: if Great Barrier Reef 3 counts as part of Sitra, then its eastern edge should be the reference point for drawing the median line. But if it's just a separate projection, then you leave it out of the calculation.

The Court then looked at both scenarios. If Great Barrier Reef 3 is part of Sitra, it shouldn't factor into the median line, since less than twenty percent of it stays above water at high tide. Including it would push the border unfairly close to Qatar's coast. And if it's just a tidal elevation, the boundary skips over it.

In this spot, there are some special reasons to draw the boundary between the Great Depression and the tidal elevation called Qait al-Shujarah 1. Because of this, the Court decided the Great Seal should only count for half its effect when drawing the median line (Salari, 2013:140).

There was another dispute over the Seal of the Great Seal, which sat in the territorial waters of both countries. Bahrain argued that this insular outcrop was just as valid as any island, so the country that owned it should be able to stretch its territorial sea from that point. The Court, though, treated the outcrop like an island with the usual land features, but didn't see it as anyone's private property. They said that if an isthmus like this sits in the shared territorial sea of two countries—even if it's closer to one state or one of its islands—it still counts as a base point for both countries.

Basically, what this means is that the isthmus doesn't really count when it comes to setting the maritime boundary. (Llanos, 2002: 270)

Some legal experts aren't buying the Court's reasoning. They wonder how the Court can let both countries measure their territorial sea from a little offshore rock. It gets stranger when you look at Article 13, paragraph 1, of the Convention on the Law of the Sea—it specifically allows for insular outcrops in the territorial sea to play a role in shaping a country's territory. So, why ignore a state's rights tied to these projections? How does it make sense to treat an insular projection as if it doesn't matter? The better way is

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to figure out which coast the projection belongs to, then decide how much it actually affects things. (Tanaka, 2006: 216)

All in all, the Court's approach here means the points and lines they use to set up maritime zones don't automatically work when it comes to drawing the outer boundaries between those zones and the high seas.

7. Conclusions:

Archipelago formations always stir up debate in international maritime law. Countries argue over them all the time, especially when there are disputes at sea. Even though people started talking about these issues way back at the 1930 International Law Conference, the actual rules we have now are still pretty sparse and not very clear. When it comes to "insularity," it basically lines up with what we call an island. Over time, states have hashed out some details in court cases, but the definition is still murky. States tend to stick to their own laws, and the International Court of Justice has backed some of these practices, so now there's a sort of unofficial standard. Still, nobody agrees on every detail. The problem is, arbitration tries to settle disagreements between countries, and every case is different. So, states keep offering their own interpretations, which just makes things messier.

Instead of clearing up legal confusion, court decisions sometimes make things even less clear—especially when they contradict each other over the same issue.

Now, it's easy to see how islands matter when deciding a country's maritime territory. Claiming an island is usually a one-sided move under international law. But the minute another country's interests are involved—say, drawing maritime boundaries—it gets complicated. A country can only pick its baseline points if it sticks to international law's rules. Looking at treaties, sometimes islands get full weight in drawing boundaries; other times, they barely count or aren't considered at all. If we start relying on international decisions instead, islands might matter even less, especially since boundaries often get drawn using the equidistant line method.

In earlier cases about continental shelves and exclusive economic zones, islands were seen as important. Now, that influence is shrinking. International courts say that the starting points for drawing maritime zones don't always have to match the points picked for figuring out a state's continental shelf. This is probably because courts focus on the main geographic features and aim for fair results, not just technical rules.

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