(1985) and the arbitral tribunal in the *Guinea/Guinea-Bissau* case (1985) have indicated that the EEZ now forms part of customary international law.

11.5.1 Rights within the EEZ

Article 57 of the LOSC provides that the EEZ can extend to a distance of up to 200 miles from the baseline. The regime of the EEZ provides that coastal states do not enjoy full sovereign rights but only sovereign rights for the purpose of exploiting and exploring, conserving and managing the natural resources, whether living or non-living, of the sea bed and subsoil and the superjacent waters. So, for example, a coastal state can set fishing quotas within its EEZ with a view to conserving resources. If the coastal state is unable to catch the amount of fish allowed by the quota then other states will be allowed access to take the remaining amount. The coastal state is not the owner, but rather the guardian of the natural resources of the EEZ. Within the EEZ the coastal state can construct artificial islands and other installations for the purpose of exploring and exploiting the zone which are subject to the coastal state's exclusive jurisdiction. Although such installations are not to be regarded as islands and do not therefore possess territorial seas of their own, it is permissible for the coastal state to establish reasonable safety exclusion zones around them. Other states enjoy the right of free navigation, overflight, pipe-laying and cable-laying provided they respect the rights of the coastal state, which is under a duty to ensure the safety of navigation.

It should be noted that the EEZ has to be specifically claimed; it is not inherent in statehood. At the present time over 70 states have claimed an EEZ. There is further reference to the issue of marine resource management and conservation in Chapter 17.

11.6 The continental shelf

Strictly speaking the continental shelf is a geographical term to describe the sea bed, which is covered by shallow water of generally less than 200 metres, projecting from the coast before a relatively steep descent (the continental slope) to the deep sea bed. The breadth of the continental shelf varies enormously: off some parts of the Pacific coast of the USA the continental shelf extends for less than five miles, while in contrast the whole of the North Sea constitutes continental shelf.

The traditional freedom of the high seas meant that all states enjoyed the rights to explore the sea bed. Disputes began to arise as the oil reserves of the continental shelf became exploitable. In 1945 President Truman claimed exclusive rights to the resources of the contiguous continental shelf in the Proclamation with respect to the natural resources of the subsoil and sea bed of the Continental Shelf. No outer limit to the claim was specified in the Proclamation although an accompanying press release indicated that the continental shelf was only considered to exist to a depth of 200 metres. A large number of similar claims followed and it became clear that there was an urgent need for the law to be clarified and settled.

The outcome of discussion in the 1950s was the Continental Shelf Convention (CSC) agreed at UNCLOS I in 1958. This provides in Article 1 a definition of the continental shelf which includes the sea bed and subsoil to a depth of 200 metres or beyond that limit to where the depth of superjacent waters admits the possibility of exploitation. Part VI LOSC gives an amended definition in terms of maximum distance of 200 miles from the baseline or, exceptionally, to the geophysical limit of the continental shelf up to a maximum of 350 miles.

11.6.1 Continental shelf rights

Part VI LOSC proved to be the least controversial sections of the convention and for the most part is generally regarded as being a codification of customary international law. This point appeared to be confirmed by the ICJ in the *Continental Shelf* case (1985). The rights of the coastal state over the continental shelf are inherent and, unlike in the case of the EEZ, do not have to be expressly claimed. The coastal state has exclusive rights to the exploitation and exploration of the natural resources of the continental shelf, although it may permit other states to undertake exploitation or exploration. Natural resources are defined in Article 2 of the CSC and Article 77(4) of the LOSC.

At UNCLOS I sedentary species were said to include, 'coral, sponges, oysters, including pearl oysters, pearl shell, the sacred chank of India and Ceylon, the trocus and plants'. Disputes have arisen over the status of lobsters and crabs, and in 1963 Brazil raised protests over French fishing of *langoustes* on the Brazilian continental shelf. Adult *langoustes* are normally sedentary but will swim if pursued. The dispute was eventually settled by a compromise which allowed the French limited access to the *langoustes*. Both the UK and the USA have indicated that they consider lobsters but not crabs to be sedentary species. What are excluded are species generally referred to as fish. Of course, rights to fish are dealt with in the EEZ regime. The rights pertaining to the continental shelf do not affect the status of superjacent waters.

As with the EEZ the coastal state is permitted to establish artificial islands and other structures on the continental shelf and to authorise and regulate drilling. Safety zones up to a maximum of 5,000 metres can be established around such structures. Article 79 of the LOSC retains the right of all states to lay submarine cables and pipelines on the continental shelf, although they should not impede the coastal state's right to explore and exploit the area and the course of such pipelines and cables requires the consent of the coastal state.

One aspect of Part VI LOSC which has proved controversial and does not reflect customary law is Article 82 which provides that the coastal state must make payment to the International Sea-bed Authority in respect of exploitation of non-living resources of the continental shelf beyond the 200-mile limit. The role of the International Sea bed Authority and the precise nature of charges will be discussed at 11.8.

11.6.2 Delimitation of the continental shelf and the EEZ

Given the areas of sea and sea bed involved it is not uncommon for two or more states, either opposite or adjacent, to share the continental shelf and the EEZ.

Many issues of delimitation have been dealt with by agreement but there have been a number of disputes which have required settlement by international tribunal. Through looking at the agreements and the decisions of tribunals a number of principles governing delimitation can be ascertained.

Under Article 6 of the CSC delimitation was to be by agreement or failing that in the case of an opposite state the boundary should be the median line, every point of which is equidistant from the nearest point of the baselines of each state. This rule could be departed from if there were special circumstances. In the case of adjacent states, in the absence of an agreement, the boundary should be determined by application of the principle of equidistance from the nearest point of the baselines of each state, unless special circumstances justify some other boundary. In the *North Sea Continental Shelf* cases (1969)[6] the ICJ refused to accept that the equidistance principle was a rule of customary international law and thus it was not binding on West Germany which was not at the time a party to CSC. Instead the Court seemed to favour the application of equitable principles to ensure that each state had a fair allocation of continental shelf which reflected the general configuration and length of the coastlines of the claimant states.

In the *Anglo-French Continental Shelf Arbitration* (1979)[7] an *ad hoc* Court of Arbitration was called upon to consider the delimitation of the continental shelf between France and the UK. Both states were parties to CSC but were unable to reach an agreement. The Court accepted that Article 6 formulated a single special circumstances-equidistance rule rather than two separate rules. This meant that there was no requirement to prove special circumstances, the Court was only obliged to apply the equidistance principle if no other boundary were justified by special circumstances. The Court understood this to require it to ensure an equitable delimitation. It stated that:

> Even under Article 6 it is the geographical and other circumstances of any given case which indicate and justify the use of the equidistance method as the means of achieving an equitable solution rather than the inherent quality of the method as a legal norm of delimitation.

In both the *Continental Shelf* cases (1982[8] and 1985[9]) involving Libya the ICJ stressed the principles of equity and recognised that there should be a reasonable degree of proportionality between the area of shelf appertaining to a state and the length of its coastline. The customary law requirement, simply that an equitable result is achieved in the delimitation of continental shelf and EEZ boundaries, was confirmed in both the *Gulf of Maine* case (1984)[10] and the *Guinea/Guinea-Bissau Maritime Delimitation* case (1985).[11] The most recent case concerning delimitation of the continental shelf and the EEZ involved Denmark and Norway (*Case Concerning Maritime Delimitation in the Area Between Greenland*

6 [1969] *ICJ Rep* at p 3.

7 (1979) 53 ILR 6.

8 {1982] *ICJ Rep* at p 18.

9 [1985] *ICJ Rep* at p 1.

10 [1984] *ICJ Rep* at p 246.

11 [1985] *ICJ Rep* at p 127.

and Jan Mayen (1993))[12] where the ICJ again confirmed the need for delimitation to be made according to equitable principles. The case is notable for the separate opinion of Judge Weeramantry who discussed the role of equity in international law at some length. Article 83 of the LOSC provides that delimitation of the continental shelf between opposite or adjacent states shall be achieved by agreement on the basis of international law in order to achieve equitable principles. If no agreement can be reached states are required to seek peaceful settlement of the dispute according to Part XV of the Convention. It seems therefore that the main rule of international law regarding the delimitation of the continental shelf and the EEZ is that an equitable distribution shall be achieved. It therefore follows that each case will depend upon its particular facts although factors such as length and configuration of coastline will be significant.

11.7 High seas

Traditionally, the high seas were defined as 'all parts of the sea not included in the territorial sea or in the internal waters of a state' (Article 1 of the HSC). With the advent of the EEZ and the concept of archipelagic waters, this definition has now to be modified. Article 86 of the LOSC states that the high seas rules apply to: '... all parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic state.' The dominant principle on the high seas is the presumption of the exclusiveness of flag-state jurisdiction. The legal concept of the high seas also extends to the superjacent air space. It used to extend also to the sea bed, but the emergence of special regimes for the continental shelf and the sea bed beyond national jurisdiction has eroded this wider definition.

The high seas are open to all states and no state may validly purport to subject any part of them to its sovereignty (Article 2 of the HSC, Articles 87 and 89 of the LOSC). This is a fundamental rule of customary international law, although it has not always been so. In the 15th and 16th centuries, national claims were made to sovereignty over extensive areas of the oceans. In 1493, for example, Pope Alexander VI divided the Atlantic Ocean between Spain and Portugal. It was during the great period of maritime exploration in the 17th century that the present rules began to emerge. Grotius in his book *Mare Liberum* argued for the importance of freedom of navigation and by the 19th century it was settled that the high seas were juridically distinct from territorial waters and were not susceptible to appropriation by any state.

11.7.1 Freedom of the high seas

From the rule that no state can subject areas of the high seas to its sovereignty or jurisdiction, it follows that no state has the right to prevent ships of other states from using the high seas for any lawful purpose. Article 2 of the HSC listed the freedoms of navigation, fishing, laying of submarine cables and pipelines and overflight as examples of high seas freedoms but accepted that the list was not

12 [1993] *ICJ Rep* at p 1.

exhaustive. All exercise of such freedoms shall be with reasonable regard to the interests of other states, for example, the stringing out of long fishing lines across busy shipping lanes would not be permissible. The exercise of the freedom of the high seas is of course subject to the general rules of international law, such as those governing the use of force. The list in Article 2 has been extended by Article 87 of the LOSC to include the freedom to construct artificial islands and other installations and freedom of scientific research. But LOSC also places greater restrictions on some of the freedoms, particularly in relation to the sea bed and continental shelf. The fact that both conventions give non-exhaustive lists of freedoms means that arguments do ensue over what other freedoms exist. It is generally accepted that some naval manoeuvres and conventional weapons testing may be carried out on the high seas despite the fact that Article 88 of the LOSC provides that the high seas should be used for peaceful purposes. Mariners are notified of the areas and times at which these take place, and although they are not usually forbidden to enter the areas and care is taken to avoid busy areas of the sea, there is a clear expectation that foreign vessels should keep out of such areas. The position with regard to nuclear weapons testing is slightly different. At UNCLOS I the Soviet Union had proposed that nuclear tests should be expressly prohibited by HSC but the conference agreed to refer the matter to the UN General Assembly. In 1963 the Nuclear Test Ban Treaty came into force which expressly prohibits nuclear testing on the high seas. An opportunity to establish whether such testing was contrary to international law was missed in the *Nuclear Tests* cases (1974).[13] France, which was not a party to the Nuclear Test Ban Treaty, had been carrying out tests in the South Pacific to which New Zealand and Australia and a number of other states objected. New Zealand and Australia sought a declaration from the ICJ that such tests were unlawful but before the case was heard France announced it would henceforth cease such tests. The ICJ therefore decided that there was no longer a case to hear. The use of nuclear weapons in armed conflict will be discussed in Chapter 14.

11.7.2 Jurisdiction on the high seas

In general, the flag state, the state which has granted to a ship the right to sail under its flag, has the exclusive right to exercise legislative and enforcement jurisdiction over its ships on the high seas (Article 6 of the HSC and Article 92 of the LOSC). The fiction that a ship is a floating piece of territory is not now approved. The exclusiveness of the flag state's jurisdiction is not, however, absolute. It admits of several exceptions, in which other states share legislative or enforcement jurisdiction, or both, with the flag state.

11.7.2.1 The flagging of ships

Traditionally it has been up to each state to decide itself the grounds on which it will grant the right to fly its flag to a ship. The only restriction on this right was that a state could not confer its 'nationality' on a vessel already under the flag of another state except in consequence of a change of registration. This position

13 [1974] *ICJ Rep* at p 253.

was confirmed in Articles 5 and 6 of the HSC. However, in addition to the traditional doctrine HSC attempted to impose a requirement that there be a genuine link between ships and the flag state. The requirement of a genuine link was repeated in Article 91 of the LOSC. The practice of states, however, has not always followed the conventions and there is still widespread use of 'flags of convenience' resulting in there being an absence of any genuine link between flag state and ship. The requirement of a genuine link was also questioned during the Iran-Iraq war and the run up to the Gulf War when the practice of 're-flagging' oil tankers was used to bring the tankers of smaller states under the protection of the US, UK and Soviet navies. Both HSC and LOSC require that ships sail under the flag of one state only and ships which sail under more than one flag are considered to be without nationality.

11.7.2.2 Collisions at sea

Collisions at sea may involve two states, each of which considers the collision and those responsible for it to be within its jurisdiction. The existence of concurrent jurisdiction was upheld by the PCIJ in the *Lotus* case (1927).[14] The rule was much criticised and the position is now set out in Article 11 of the HSC and Article 97 LOSC which provide that penal and disciplinary jurisdiction in cases of collision or other navigational incidents may only be exercised by authorities of the state in whose ship the defendant served or the state of which he is a national.

11.7.2.3 Exceptions to the flag state's exclusive jurisdiction

Piracy: all states have the right and duty to act against piracy (Article 14 of the HSC and Article 100 of the LOSC). Piracy is defined in both conventions (Article 15 of the HSC and Article 101 of the LOSC) as consisting of the following:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or aircraft, and directed:
    (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
    (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;
(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
(c) any act of inciting or of intentionally facilitating an act described in sub-para (a) or (b).

The conventions allow the visiting and boarding of any ship, flying whatever flag, reasonably suspected of being engaged in piracy. If the suspicions prove to be correct the ship may be seized and those engaged in piracy may be arrested and tried in the courts of the seizing state. If the suspicions of piracy prove to be unfounded and unjustified by any action of the ship boarded compensation must be paid for any loss or damage that is sustained.

14 PCIJ Ser A, No 9 (1927).

Unlawful acts against maritime safety: following the *Achille Lauro* incident (1985), which was discussed in Chapter 7, the International Maritime Organisation adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 together with a Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988. Neither convention nor protocol is yet in force but they aim to deal with the issue of acts of violence or detention committed on board ships or oil rigs carried out for non-private ends. Such acts would not come within the definition of piracy and the convention and protocol therefore create the specific offence and provide for the jurisdiction of states other than the flag state.

Slavery and drug trafficking: all states are under a duty to suppress the trade and transport of slaves and narcotic and psychotropic drugs and ships suspected of being engaged in such activities may be visited and boarded but it is the right and responsibility of the flag state to proceed with action against those involved in such activities.

Unauthorised broadcasting: Unauthorised broadcasting refers to any radio or television transmission from the high seas which is intended for reception by the general public contrary to international regulations. It is more commonly known as pirate broadcasting. HSC contained no provisions relating to so-called pirate radio broadcasting and there are no clear customary law rules on the subject although reference should be made to the general rules relating to protective and security jurisdiction discussed at 7.4. Article 109(3)(4) of the LOSC does give wide powers of enforcement jurisdiction over pirate radio stations and allows the flag state, the defendant's state, and any state which can receive transmissions or suffer interference to authorised broadcasts to exercise jurisdiction. This jurisdiction includes the right to prosecute offences together with the right to exercise powers of arrest and seizure.

Ships of uncertain nationality: states may visit and enforce their laws against their own ships on the high seas. Consequently where a ship, though flying a foreign flag, is reasonably suspected of being of the same nationality as a warship it may be visited and boarded. If the suspicions prove to be unfounded and unjustified by action of the ship boarded then compensation must be paid.

11.7.3 Hot pursuit

The right of hot pursuit, recognised at customary international law in cases such as the *I'm Alone* case (1933)[15] and in Article 23 of the HSC, allows a coastal state's warships or military aircraft to pursue a foreign ship which has violated the coastal state's laws within internal or territorial waters and to arrest it on the high seas. Pursuit must begin while the foreign ship is within territorial waters (or, in the case of customs, fiscal, immigration or sanitary laws, within the contiguous zone). Article 111 of the LOSC extends the right of hot pursuit to cover offences committed within archipelagic waters and the EEZ. The foreign ship must first be given a visual or auditory signal, within range, to stop. Pursuit must be immediate and continuous upon refusal to stop. Hot pursuit

15 (1933) RIAA 1609.

cannot be continued into the foreign ship's own territorial waters or the territorial waters of a third state. The pursuing vessel may use reasonable force to effect the arrest, but compensation is due for unjustifiable hot pursuit.

11.7.4 Safety of shipping

Article 110 of the HSC provides that every state shall take such measures for its vessels as are necessary to ensure safety at sea with regard to communications, the prevention of collisions, crew conditions and seaworthiness of ships. A slightly tougher regime is spelt out in LOSC. Additionally, there are some specific conventions mostly the work of the International Maritime Organisation, the principle one being the International Convention for the Safety of Life at Sea 1974 (SOLAS). This convention is the latest version of a line of treaties dating back to the sinking of *The Titanic*. SOLAS lays down minimum crewing standards and deals with such things as provision of life-rafts, fire-fighting equipment, navigational and broadcasting aids. Responsibility for enforcement lies with the flag state, but port states do also have some measure of control. The port state is entitled to check that ships in port have a valid certificate as required by SOLAS. In 1978 a protocol to SOLAS was adopted dealing with tanker safety and pollution prevention – which covers such things as inert gas systems and emergency steering.

In addition to the SOLAS Conventions there have been a series of regulations for preventing collisions at sea. The current regulations are annexed to the Convention on the International Regulations for Preventing Collisions at Sea 1972. The regulations deal with matters of signalling, conduct on the seas, and use of sea lanes.

The issue of marine pollution will be discussed in Chapter 17.

11.8 International sea bed

Sovereignty over the deep sea bed, that is to say the area of the sea bed beyond the continental shelf, has become a topic of conflict as technology has developed. The discovery of important mineral resources in the deep sea bed was made 100 years ago but it has only comparatively recently become technically and commercially viable to exploit such resources. The main resources are the manganese nodules which are composed of high grade metal ores such as manganese, iron, nickel, copper and cobalt. It is only a handful of rich nations who are at present capable of exploiting the resources and such exploitation has the added advantage for the state concerned of lessening dependence on foreign land-based deposits. For the mineral exporting countries the effect could be disastrous.

Once deep-sea mining became a possibility, the few mining states sought legal justification for their actions. Three principal arguments were put forward:

1 Exploitation could be justified on the basis of a continuation of the regime of the continental shelf by defining the continental shelf in terms of the ability to exploit its resources.
2 Exploitation could be justified on the application of the principle of the freedom of the high seas.

3 Title to the deep sea bed area could be gained by occupation through use.

Many of the potential exploiters of the deep sea bed favoured the second argument. By the late 1960s many of the newly independent states were expressing concern at the possibility of the exploitation of the resources of the sea bed for the benefit of a few rich nations. In 1969 the General Assembly of the UN passed a resolution by 62 votes to 28 with 28 abstentions calling for a moratorium on sea bed activities and in 1970 the Declaration of Principles Governing the Sea Bed and Ocean Floor was passed (108:0 with 14 abstentions) which declared the area to be 'the common heritage of mankind' and therefore not susceptible to any territorial claim. The Declaration further proposed the establishment of an international regime to govern all activities in the area. The Group of 77, made up of over a hundred states, have argued that this declaration is binding and that it prohibits unilateral sea bed mining. The Western states have argued that the resolution is merely one of principle. The topic was fully discussed at UNCLOS III and proved to be the major area of disagreement.

11.8.1 The LOSC regime

Part XI and Annexes II and IV to the Convention (Part XI) and the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (Agreement) establish the legal regime governing exploration and exploitation of mineral resources of the deep sea bed beyond coastal state jurisdiction (sea bed mining regime).

Flaws in Part XI caused the United States and other industrialised states not to become parties to the Convention. The unwillingness of industrialised states to adhere to the Convention unless its sea bed mining provisions were reformed led the Secretary General of the United Nations, in 1990, to initiate informal consultations aimed at achieving such reform and thereby promoting widespread acceptance of the Convention. These consultations resulted in the Agreement, which was adopted by the United Nations General Assembly on 28 July 1994 by a vote of 121 (including the United States) in favour with 0 opposed and 7 abstentions. As of 8 September 1994, 50 countries had signed the Agreement including the United States (subject to ratification). More are expected to follow.

The objections of the United States and other industrialised States to Part XI were that:

- it established a structure for administering the sea bed mining regime that did not accord with industrialised states' influence in the regime commensurate with their interests;
- it incorporated economic principles inconsistent with free market philosophy; and
- its specific provisions created numerous problems from an economic and commercial policy perspective that would have impeded access by the United States and other industrialised countries to the resources of the deep sea bed beyond national jurisdiction.

The decline in commercial interest in deep sea bed mining, due to relatively low metals prices over the last decade, created an opening for reform of Part XI. This waning interest and resulting decline in exploration activity led most states to recognise that the large bureaucratic structure and detailed provisions on

commercial exploitation contained in Part XI were unnecessary. This made possible the negotiation of a scaled down regime to meet the limited needs of the present, but one capable of evolving to meet those of the future, coupled with general principles on economic and commercial policy that will serve as the basis for more detailed rules when interest in commercial exploitation re-emerges.[16]

CONVENTION OF THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

The States Parties to this Convention

Have agreed as follows:

PART I
TERRITORIAL SEA

SECTION I
GENERAL

Article 1

1 The sovereignty of a state extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

2 This sovereignty is exercised subject to the provisions of these Articles and to other rules of international law.

Article 2

The sovereignty of a coastal state extends to the air space over the territorial sea as well as to its bed and subsoil.

SECTION II
LIMITS OF THE TERRITORIAL SEA

Article 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast marked on large-scale charts officially recognised by the coastal state.

Article 4

1 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 straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

2 The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.

3 Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

16 *US Commentary on the Law of the Sea Convention*, US State Department, 1996.

4 Where the method of straight baselines is applicable under the provisions of para 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and importance of which are clearly evidenced by a long usage.

5 The system of straight baselines may not be applied by a state in such a manner as to cut off from the high seas the territorial sea of another state.

6 The coastal state must clearly indicate straight baselines on charts, to which due publicity must be given.

Article 5

1 Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the state.

2 Where the establishment of a straight baseline in accordance with Article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in Articles 14 to 23, shall exist in those waters.

Article 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 7

1 This article relates only to bays the coasts of which belong to a single state.

2 For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.

3 For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

4 If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

5 Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

6 The foregoing shall not apply to so-called 'historic' bays, or in any case where the straight baseline system provided for in Article 4 is applied.

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.