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THE POLISH BASELINES AND CONTIGUOUS ZONE: REMARKS FROM THE PERSPECTIVE OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

INTRODUCTION

The Act of 21 March 1991 on Maritime Zones of the Republic of Poland and on Maritime Administration (hereinafter: the 1991 Act)¹ is the main Polish legal instrument that establishes its maritime zones, as well as the basic rights and obligations within them. Thus, it also constitutes the principal piece of legislation implementing the United Nations Convention on the Law of the Sea (hereinafter: UNCLOS or the Convention)². However, until the recent amendment of the 1991 Act³, two important issues were missing. Firstly, although the 1991 Act did refer

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¹ All views presented in the paper remain the sole responsibility of the Author and shall not be attributed to any of the institutions he may be associated with. The Author wishes to express his sincere gratitude to Ms Camille Goodman for her valuable assistance relating to the previous draft of this paper. Naturally, though, all mistakes and omissions should be attributed to the author only.

Official Journal of 1991, No 32, item 131 (available in English at the UN Division of Oceans Affairs and the Law of the Sea (DOALOS) website: <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/POL.htm>). This, however, is not the most up-to-date version of the 1991 Act.

² United Nations Convention on the Law of the Sea, done at Montego Bay, 10 December 1982 (United Nations Treaty Series (UNTS), vol. 1833, p. 3). The Convention entered into force on 16 November 1994 and has currently 168 parties. It entered into force with respect to Poland on 13 December 1998.

³ The Act of 5 August 2015 on the amendment of the Act of 21 March 1991 on Maritime Zones of the Republic of Poland and on Maritime Administration; it entered into force on 19 November

to the baselines, it did not establish a proper legal machinery to actually enact them in the Polish legislation. Secondly, until the 2015 Amendment, Poland had not had a Contiguous Zone. The 2015 Amendment aims at rectifying the above mentioned 'deficiencies' in the Polish law.

In order to be fully implemented, though, the 2015 Amendment still requires that the Council of Ministers enacts a resolution that will take stock of the new law that, *inter alia*, will in fact establish the actual basepoints. Although work is in progress in this respect, it unfortunately has not come to fruition yet.

This contribution seeks to describe briefly these two innovations in the Polish law from the international law, especially UNCLOS, perspective. Hence, the structure adopted is as follows. The two parts of this paper that follow focus on the baselines and the Contiguous Zone, respectively. Each of them is divided into two main subsections. One describes a given issue from the international law perspective; the other presents the 'other side of the coin', namely: the Polish national regulations in that respect. Finally, some concluding remarks are offered in the final section.

Before entering into the substantive discussion on the baselines and the Contiguous Zone the topic under analysis into a broader framework could be put, i.e. as reflecting the idea of creeping jurisdiction. By this latter term, as it is commonly understood (at least with respect to the law of the sea⁴), the scope of jurisdiction of coastal States over adjacent maritime areas has – with the passage of time and developments in the law of the sea – increased (spatially and substantively). It is then interesting to see Poland exercising its rights, as enshrined in UNCLOS, to establish an additional maritime zone. It is equally thought-provoking to observe Poland (finally) aiming at clearly defining its baselines, thus 'anchoring' all of its maritime zones in a firm 'starting point'⁵.

2015 (Official Journal of 2015, item 1642), hereinafter referred to as the 2015 Amendment.

⁴ E.g. D.R. Rothwell, T. Stephens, *The International Law of the Sea*, Hart 2010, p. 27. Note that this is *not* to be interpreted as suggesting that the Polish practice with respect to its maritime zones unilaterally trespasses the rules established in UNCLOS in that regard. Rather, it simply utilizes the existing rules to maximize its jurisdiction and control with respect to the adjacent maritime domain.

⁵ To be precise, it shall be noted that baselines do not constitute 'starting' but rather 'end' point, when it comes to defining the extent of the internal waters. See: Article 8 UNCLOS: '[w]aters on the landward side of the baseline of the territorial sea form part of the internal waters of the State'. It does not change, though, the principal conclusion on the critical role of the baselines when it comes to defining the external limits of the coastal State's maritime zones. This is without prejudice to the specific situation of calculating the extent of the continental shelf extending beyond 200 nautical miles. See: Article 76 para. 4 and 5 UNCLOS.

1. BASELINES

1.1. BASELINES FROM THE PERSPECTIVE OF INTERNATIONAL LAW

1.1.1. Role and function of baselines

It is worthwhile to underline at the beginning that the juridical concept of 'baselines' was labelled as a 'foundational component of coastal State maritime jurisdiction'. It is precise because, as it was remarked by the International Court of Justice (ICJ) in the landmark North Sea Continental Shelf cases, '[t]he land dominates the sea' and further that '[t]he land is the legal source of the power which a State may exercise over territorial extensions to seaward'. The Court specified later that '[t]he juridical link between the State's territorial sovereignty and its rights to certain adjacent maritime expanses is established by means of its coast'. Hence, it could be concluded that the 'geographical coastline' is translated into the legal terms by employing the concept of baselines which, in turn, is crucial for legally defining the extent of the coastal State's maritime zones.

Given the importance of baselines for, in particular, the law of the sea it is not surprising that this topic has received significant attention from international scholars. It is particularly interesting from the perspective of this paper to have recourse to the proceedings of the International Law Association (ILA) on baselines⁶. It usefully identified the three main roles baselines can play. Firstly, baselines allow a division line to be drawn between the land territory (including internal waters) of a State and its territorial sea. Secondly, the external limits of the territorial sea, contiguous zone, exclusive economic zone and, generally, the continental shelf⁷ are measured from the baselines. Finally, baselines are often 'the starting point for determining title to maritime areas subject to overlapping coastal claims'⁸.

It is to be noted that the first two roles of baselines are essentially of unilateral character (as opposed to the third one that is clearly bilateral) and hinge upon the

⁶ The International Law Association formed a Committee on baselines in 2008. It prepared a Report on 'Baselines under the International Law of the Sea', Sofia 2012 (hereinafter: ILA, Sofia Report) that dealt with normal baselines. Under the extended mandate the ILA Committee prepared also a subsequent Report on 'Baselines under the Law of the Sea', Washington 2014 that was devoted to straight (Article 7 UNCLOS) and archipelagic (Article 47 UNCLOS) baselines. Finally, the most recent Report on 'Baselines under the Law of the Sea', Johannesburg 2016 focuses on Articles 8 para. 2 (internal waters), 10 (bays), 13 (low-tide elevations) and 14 (combination of methods for determining baselines) UNCLOS. Documents available at: <http://www.ila-hq.org/en/committees/index.cfm/cid/1028>.

⁷ See *supra*, footnote no 6.

⁸ ILA, Sofia Report, p. 4.

prerogatives of the coastal State⁹. It is therefore through the prism of the former roles, that the new Polish legislation should be viewed.

1.1.2. General overview of the convention's provisions relating to baselines

The current basic legal provision on baselines is undoubtedly Article 5 of UNCLOS which provides that:

‘Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.’

As it might be observed, the general rule in this respect is that the baselines follow the natural formulation of the coastline, along the low-water mark. There are two main instances where the Convention diverges from this rule.

Firstly, when it comes to ports, Article 11 specifies that: ‘the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast’. The subsequent part of this provision clarifies that this does not encompass the off-shore installations and artificial islands. However, it is nevertheless the line along the artificially constructed harbour works, not along the ‘natural’ coastline that is decisive in this particular case.

Secondly, UNCLOS allows for the specific treatment of reefs. Article 6 of the Convention refers to two cases in this context, namely: (a) ‘islands situated on atolls’; or (b) ‘islands having fringing reefs’¹⁰. Namely, in this instance:

‘the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.’¹¹

Given the geography of the Polish coastline and adjacent waters, this provision is not applicable to Poland. Indeed, as it is frequently commented on, this particular solution was introduced into UNCLOS¹² to take account of the reefs ‘created by corals in the warm tropical and sub-tropical waters of the Pacific and Indian Oceans and the Caribbean Sea’¹³.

⁹ *Ibidem*, p. 5.

¹⁰ For general comments on reefs see: T. Scovazzi, *Baselines*, online Max Planck Encyclopaedia of Public International Law (2007), para. 6.

¹¹ Article 6 UNCLOS.

¹² It did not exist in the earlier Geneva Convention on the Territorial Sea and the Contiguous Zone, done in Geneva on 29 April 1958 (UNTS, Vol. 516, p. 205). The Convention entered into force on 10 September 1964. Poland has not become a party to it.

¹³ T. Scovazzi, *op. cit.*, para. 6.

Additionally, attention should be drawn to the issue of a low-tide elevation (again, an issue that has no practical implications for the Polish coastline), which is '[a] naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide'¹⁴. In this case, Article 13 para. 1 UNCLOS makes it clear that:

'[w]here a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.'

On the other hand, where such a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it does not generate a territorial sea of its own¹⁵.

Naturally, UNCLOS – following the approach of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone (hereinafter: the TSC)¹⁶, as well as earlier jurisprudence of the ICJ¹⁷ – allows in specific circumstances for the employment of the straight (as opposed to normal) lines method for the construction of baselines. In particular, a coastal State may have recourse to this method '[i]n 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 (...)'¹⁸. In order to make the discussion on the straight baselines complete, it needs to be remarked here that

¹⁴ Article 13 UNCLOS.

¹⁵ Article 13 para. 2 UNCLOS. It shall be recalled here that low-tide elevations are to be distinguished from artificial islands (see in particular: Articles 11 and 60 para. 8 UNCLOS), as well as islands (see: Article 121 UNCLOS). The distinction between low-tide elevations and islands is one of the contentious issues in the law of the sea, as exemplified by recent arbitral award on the one hand and problems related to the sea-level rise, on the other. See, respectively: Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea, Award of 12 July 2016 *in the matter of the South China Sea* (the Republic of Philippines/the Peoples Republic of China), para 279 *et seq.* and e.g. C. Schofield, *Shifting Limits? Sea Level Rise and Options to Secure Maritime Jurisdictional Claims*, Carbon & Climate Law Review, Vol. 3 (2009), Issue 4, pp. 405–416.

¹⁶ The Geneva Convention on the Territorial Sea and the Contiguous Zone, done in Geneva on 29 April 1958, Article 4.

¹⁷ ICJ, *Fisheries case*, judgment of 18 December 1951, I.C.J. Reports 1951, p. 116. It was the International Law Commission (ILC) in its *Articles concerning the Law of the Sea with commentaries*, Yearbook of the International Law Commission, 1956, Vol. II (commentary to the then Article 5), that first proposed to codify the rule on straight baselines, previously elucidated by the ICJ in 1951. This was indeed the approach taken by the States while negotiating the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

¹⁸ Article 7 UNCLOS.

UNCLOS introduced¹⁹ yet another ‘variation’ of the straight baselines²⁰ namely: the archipelagic baselines. Article 47 sets forth a number of conditions that need to be fulfilled in order to properly construct the straight archipelagic baselines. Naturally, the primary condition is that a given State must be (and proclaim itself to be²¹) an archipelagic one, as defined in Article 46 UNCLOS. Once more, given the ‘geographical simplicity’ of the Polish coastline, these provisions have little or no application to its baselines. Hence, they will not be elaborated on in greater detail.

Additionally, however, attention should be drawn to another set of provisions of UNCLOS that set out some specific regulations when it comes to drawing baselines. These are: Article 9 referring to the mouths of rivers and Article 10 – to bays. From the methodological standpoint, it could be noted in this context that some authors seem to classify these provisions simply as a regular subset of the straight baselines rule²², whereas others as *sui generis* ones, falling into the straight baselines concept only when it is understood broadly²³. In any case, it is fair to say that these are the situations when the baseline *does not* follow the natural formulation of the coastline, along the low-water mark (as required in Article 5 UNCLOS concerning the normal baselines) but is drawn by employing artificially constructed (straight) lines connecting specified points, as defined in the above mentioned provisions of the Convention²⁴. Such a treatment of these provisions (i.e. closing lines as equivalent to the straight baselines) is also partially substantiated by the already mentioned ICJ judgement in *the Anglo-Norwegian Fisheries case*²⁵.

¹⁹ Archipelagic baselines, although discussed in 1920s, as well during the First United Nations (UN) Conference on the Law of the Sea (1958), were nevertheless not adopted until the Third UN Conference on the Law of the Sea (1973–1982).

²⁰ Although there is no explicit link between Articles 47 and 7 UNCLOS, it is generally recognized that ‘straight archipelagic baselines’ (as Article 47 para. 1 UNCLOS refers to them) are founded on the earlier concept of ‘straight baselines’ (as well as on practice of Philippines and Indonesia). D.R. Rothwell, T. Stephens, *op. cit.*, p. 183.

²¹ ICJ, *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Merits, Judgment of 16 March 2001, I.C.J. Reports 2001, p. 40, paras 213–214.

²² See. T. Scovazzi, *op. cit.*, paras 26–29.

²³ C. Lathrop, *Baselines* [in:] D. Rothwell, A.O. Elferink, K. Scott, T. Stephens (eds.), *The Oxford Handbook of the Law of the Sea*, Oxford University Press 2015, pp. 79–85. This Author treats these situations as ‘artificial straight baselines’ as opposed to the straight baselines ‘*stricto sensu*’, i.e. ones enshrined in Article 7 UNCLOS. Tanaka, on the other hand, lists four types of baselines: normal, straight, closing lines across river mouths and bays and archipelagic ones. Y. Tanaka, *The International Law of the Sea*, Cambridge University Press 2012, p. 44.

²⁴ D.R. Rothwell, T. Stephens, *op. cit.*, p. 43.

²⁵ The Court underlined that ‘[i]t has been contended, on behalf of the United Kingdom, that Norway may draw *straight lines only across bays*. The Court is unable to share this view. If the belt of territorial waters must follow the outer line of the “skjærgaard”, and if the method of straight

When it comes to the mouths of rivers, Article 9 provides that:

‘If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks.’

This relatively short article (which follows, almost verbatim, Article 13 TSC) has garnered some problems of interpretation and/or application. Firstly, it does not specify the maximum lengths of such a baseline. Secondly, it is not entirely clear to what kind of mouths of rivers it applies. In this last respect it is, however, useful to recall that the 1956 ILC Commentary contained an additional proviso according to which this legal solution did not apply to rivers flowing into an estuary the coasts of which belong to one State. In such a situation, the then Article 7 (concerning bays) was to be applied²⁶. Although this suggestion by the ILC was dropped in the subsequent negotiations²⁷ and did not make it to the 1958 TSC (and, consequently, to Article 9 UNCLOS) it does provide useful interpretative guidance. Namely, when one takes the word ‘directly’ from the current Convention’s formulation together with the original ILC’s proposition, Article 9 UNCLOS should be construed in such a way that it only applies to the rivers that flow directly into the sea, and not those that form an estuary²⁸. This would imply that in the latter case the more stringent rule of Article 10 (which provides for the maximum length of the straight baseline) concerning bays would apply. Additionally, it should be stressed in this context that UNCLOS provides for yet another treatment of certain deltas, allowing for very specific drawing of the straight baselines where ‘because of the presence of a delta and other natural conditions the coastline is highly unstable’²⁹. In any case, the last provision certainly does not apply to the Polish rivers flowing into the Baltic Sea.

baselines must be admitted in certain cases, there is no valid reason to draw them only across bays, as in Eastern Finnmark, and not also to draw them *between islands, islets and rocks, across the sea areas separating them.* (emphasis added). Hence, straight baselines across bays (current Article 10 UNCLOS) and straight baselines along the coastline (current Article 7) were considered by the Court as exemplifying the same, general rule. ICJ, *Fisheries case*, judgment, *op. cit.*, p. 130.

²⁶ ILC, *Articles concerning the Law of the Sea with commentaries, op. cit.*, commentary on Article 13.

²⁷ R.R. Churchill, A.V. Lowe, *The law of the sea*, 3rd Edition, Manchester University Press 1999, pp. 46–47. These Authors state that this happened due to the ‘the difficulty of defining an estuary’.

²⁸ This interpretation is further strengthened after having recourse to the French text of UNCLOS where it states (instead of the simple ‘directly’ in the English version): ‘*sans former d’estuaire*’. See: C. Lathrop, *op. cit.*, pp. 81–82.

²⁹ Article 7 para. 2 UNCLOS. This is the so-called ‘Bangladesh exemption’, as it corresponds to the specific situation of this country and more specifically, to the deltas of Ganges and Brahmaputra Rivers. See: T. Scovazzi, *op. cit.*, para. 26.

Juridical bays are defined in Article 10 (which follows Article 7 TSC). Three conditions need to be fulfilled collectively, in order to draw straight baselines in accordance with this provision. Firstly, the coasts of a given bay need to belong to a single State³⁰. Secondly, a bay has to be a ‘well-marked indentation’, as opposed to ‘a mere curvature of the coast’ and Article 10 paras 2 (the so called the semi-circle test) and 3 UNCLOS specify the detailed criteria which need to be fulfilled in this respect. Finally, Article 10 para. 4 UNCLOS lays down the method of drawing the straight baselines. Namely, it states that:

‘[i]f the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks (...)’.

The Convention also makes reference to a specific concept of ‘historic’ bays³¹ (which has received wide attention in the doctrine of international law³²). This is, again, one of the Convention’s provisions that is not applicable to the Polish case and, hence, will not be elaborated on.

Finally, one may draw attention to Article 50 UNCLOS which allows the archipelagic State to ‘draw closing lines for the delimitation of internal waters, in accordance with articles 9, 10 and 11’. It is of specific interest here that whilst Article 11 UNCLOS does not allow the coastal State to draw a straight baseline closing the waters of the port, the same provision is utilized for the purposes of an archipelagic State to close its harbour waters and treat them as internal waters. It seems accepted in the doctrine of international law in this context that it should be inferred from the above mentioned provisions, *mutatis mutandis*, that Article 11 should be read as allowing the coastal State (even if not an archipelagic one) to do the same with respect to its waters of the port³³.

1.1.3. Large-scale charts and interpretation of Article 5 UNCLOS

As has been already quoted above, Article 5 UNCLOS provides in the relevant part that the normal baseline for measuring the breadth of the territorial sea is ‘the *low-water line* along the coast *as marked* on large-scale charts officially recognized

³⁰ Article 10 para. 1 UNCLOS. Hence, the concept of multi-State bays was rejected in UNCLOS, as well as earlier by the ILC in its proceedings. C. Lathrop, *op. cit.*, p. 83.

³¹ Article 10 para. 6 UNCLOS.

³² See: *Juridical Regime of Historic waters including historic bays – Study prepared by the Secretariat*, doc. A/CN.4/143; R. Jennings, A. Watts (eds), *Oppenheim’s International Law*, 9th Edition, Vol. 1, pp. 630–631 (hereinafter: *Oppenheim’s International Law*); Y. Tanaka, *op. cit.*, pp. 56–59.

³³ C. Lathrop, *op. cit.*, p. 85; Y. Tanaka, *op. cit.*, p. 61.

by the coastal State' (emphasis added). Simple as it is, this provision has been subject to two divergent interpretations³⁴.

On the one hand, it may be construed to mean that it is the actual low-water line that is decisive and it should be marked appropriately on charts. Under this interpretation, the line marked on the large-scale maps is of declaratory, representational nature only. Hence, especially when baselines were subject to a dispute, it would be conceivable that the adjudicator would accept evidence relating to the 'real' coastline, notwithstanding the baselines depicted in the official maps provided by the coastal State.

On the other hand, the provision under discussion could be taken to mean that the low-water line indicated on the charts officially recognized by a coastal State is the legal baseline. Under this interpretation, vertical and/or tidal datum on official charts is of the constitutive nature and determines the position of the baselines (notwithstanding where exactly the low-water line actually is).

Full treatment of this issue is not necessary for the purposes of this contribution. Two issues, however, should be underlined. Firstly, Article 7 para. 2 UNCLOS distinguishes between the actual and charted baselines whereby it states that:

'(...) notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.'

If this provision is read as an exception to the rule, it is inferred that, as a matter of principle, the charted and actual baselines should coincide. Only the highly unstable conditions which Article 7 para. 2 UNCLOS makes reference to could allow the coastal State to waive its duty to keep its large-scale charts up-to-date.

This conclusion is substantiated by having recourse to the *travaux préparatoires*, in line with Article 32 of the Vienna Convention on the Law of Treaties (VCLT)³⁵. It is worthwhile to underline in this context that the current Article 5 UNCLOS follows closely its predecessor found in Article 3 TSC which, in turn, is modelled on the draft articles that had been prepared under the auspices of the 1930 Hague Codification Conference. With respect to Article 3 TSC, the ILC in its 1956 draft noted that:

'[t]he traditional expression "low-water mark" may have different meanings; there is *no uniform standard by which States in practice determine this line*. The Commission considers that it is permissible to adopt as the base line the low-water mark as indicated on large-scale charts officially recognized by the coastal State. The Commission

³⁴ See: ILA, Sofia Report, pp. 3, 7–12.

³⁵ Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969 (UNTS, vol. 1155, p. 331).

is of the opinion that the omission of detailed provisions such as were prepared by the 1930 Codification Conference is hardly likely to induce Governments to *shift the low-water lines on their charts unreasonably*.³⁶ (emphasis added).

This seems to point in the direction of the original controversy behind the question of baselines being marked on the large-scale charts. As part of preparation for the 1930 Hague Conference a questionnaire was circulated among States which included the question of whether ‘the line of low tide’ should follow the sinuosities of the coast or, rather, a line should be drawn between the outermost points of the coast³⁷. While the majority of answers opted for the first option³⁸, another problem became apparent. Namely, Germany brought to the forefront the issue of six different datums that were used at the time to identify the ‘line of low tide’³⁹. Theoretically, there were two main solutions to this problem. Either one specific vertical datum would be chosen or the forthcoming draft text would employ language vague enough to encompass all of them. Given that the first option would cause significant problems for the States that used different vertical datum in their official charts, it was agreed (as suggested by the German Government) to have recourse to ‘sea level *adopted in the charts* (...) of the coastal State’ (emphasis added)⁴⁰.

The foregoing analysis shows that the phrase ‘the low-water line along the coast as marked on large-scale charts’ in the current Article 5 was not supposed (at least historically speaking) to differentiate between the actual and the charted low-water line. Rather, the original intention was to circumvent the problem of various vertical datums that were used by the States when depicting those lines in the official charts. As reflected in the above quoted passage of the 1956 ILC

³⁶ ILC, *Articles concerning the Law of the Sea with commentaries, op. cit.*, commentary on Article 4. As the Authors of the UNCLOS Commentary note, ‘[t]here is nothing on the record of either UNCLOS I or UNCLOS III to indicate any change in this’. S.N. Nandan, S. Rosenne (eds.), *United Nations Convention on the Law of the Sea 1982. A Commentary*, Vol. II, Martinus Nijhoff Publishers 1993 (hereinafter: *Virginia Commentary*, Vol. II), p. 89.

³⁷ *Official Documents. Conference for the Codification of International Law, The Hague, March 13, 1930*; reproduced in: *The American Journal of International Law Supplement*, Vol. 24 (1930), p. 29.

³⁸ *Ibidem*, p. 30. ‘The majority of the States which have supplied information pronounce for the first formula, which has already been adopted in various international conventions. The second formula would necessitate detailed information as regards the choice of the salient points and the distance determining the base line between these points. The replies received do not furnish such details. In these circumstances, the first formula is the only one which can be adopted.’

³⁹ D.P. O’Connell (ed. by I.A. Shearer), *The International Law of the Sea*, Clarendon Press, Oxford 1982, p. 173 lists as much as 8 possible tidal levels used for hydrographical purposes.

⁴⁰ League of Nations doc. C.74.M39.1929.V (1929) ‘Bases of Discussion Drawn up for the Conference by the Preparatory Committee, Vol. II. Territorial Waters’. Quoted on the basis of: ILA, *Sofia Report*, pp. 9–11.

Commentary, it was believed that the States would generally not unreasonably depart from the actual low-water line⁴¹.

It is then to be concluded that the normal legal baseline is the *actual* low-water mark. The line depicted in the large-scale official charts illustrates it. However, as noted in the ILA study, the charted line enjoys a ‘strong presumption of accuracy’⁴². It needs to be underlined in this context that the actual low-water line may change over time. This may be due to human intervention (harbour works, land reclamation, coastal protection) or natural phenomena (the principal being climate change and associated sea-level rise)⁴³. The Convention does not provide for a clear answer to these issues, however, it shall be stressed that the charted line should generally correspond to (not deviate appreciably from) the actual one (hence, the term often employed in this respect is that the normal baseline is ‘ambulatory’⁴⁴). Hence, as a matter of principle, the large-scale charts officially recognized by the coastal State should be periodically reviewed and verified⁴⁵.

In this context it is appropriate to draw attention to Article 16 para. 1 UNCLOS⁴⁶ that, firstly, provides that:

‘[t]he baselines for measuring the breadth of the territorial sea determined in accordance with articles 7 [straight baselines], 9 [mouths of rivers] and 10 [bays], or the limits derived therefrom, and the lines of delimitation drawn in accordance with articles 12

⁴¹ See ILA, Sofia Report, footnotes no. 63–67 and accompanying text for relevant discussion within the ILC.

⁴² *Ibidem*, p. 31.

⁴³ See: C. Schofield, *op. cit.*, pp. 405–416. This Author enumerates at least three risks associated with sea-level rise: (a) normal baseline receding landwards; (b) negative impact on insular status of a given feature; (c) existential threat to some island States, whereby they would face a prospect of total inundation of their territory. See also: D. Caron, *When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level*, *Ecology Law Quarterly*, Vol. 17 (1990), Issue 4, pp. 621–653.

⁴⁴ As was noted by M. Reed: ‘The coast line, or baseline, is the mean low-water line. As that line moves landward and seaward with accretion and erosion, so does the baseline. As the baseline ambulates, so does each of the maritime zones measured from it.’ M.W. Reed, *Shore and Sea Boundaries*, Vol. 3: *The Development of International Maritime Boundary Principles Through United States Practice*, U.S. Government Printing Office Washington 2000, p. 185 (available at: <http://www.nauticalcharts.noaa.gov/hsd/shalowitz.html>).

⁴⁵ This is also the case with respect to the situation referred to in Article 7 para. 2 UNCLOS. Even though in ‘highly unstable conditions’ the straight baselines shall remain effective notwithstanding subsequent regression of the low-water line, this is only the case ‘until changed by the coastal State in accordance with this Convention’.

The review does not necessarily have to cover the whole of the coastline; sometimes ‘local check surveys’ would suffice. DOALOS, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, New York 1989, p. 2 (para. 5).

⁴⁶ Cf. Articles 47 para. 9, 75 para. 2 and 84 para. 2 UNCLOS.

[roadsteads] and 15 [delimitation of the territorial sea] shall be shown on *charts of a scale or scales adequate for ascertaining their position*. Alternatively, a list of *geographical coordinates of points, specifying the geodetic datum*, may be substituted.' (emphasis added).

Hence, although the Convention does not define what the 'large-scale charts' are, it does nevertheless explain that the scale should be adequate for ascertaining the position of straight baselines, other features referred to in Article 16, as well as the external limit of the territorial sea, as delimited between the States with opposite or adjacent coasts in line with Article 15 UNCLOS. Additionally, the expert report prepared under the auspices of the UN Division of Oceans Affairs and the Law of the Sea (DOALOS) advises in this context that, depending on the scale of the land maps and complexity of the coastline, charts should be within a range of 1:50 000–1:200 000⁴⁷.

Although Article 16 para. 1 UNCLOS does not refer explicitly to normal baselines established in line with Article 5 UNCLOS⁴⁸, the practice of States and of DOALOS reveals that it could nevertheless be applied, *mutatis mutandis*, to normal baselines⁴⁹. It could be also indirectly inferred from Article 5 UNCLOS insofar as it makes reference to the 'low-water line along the coast as marked on large-scale charts officially recognized'.

The second obligation that stems from Article 16 UNCLOS is that a coastal State:

[s]hall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.⁵⁰

This obligation is twofold. Firstly, a coastal State has the so called 'due publicity' duty⁵¹. In order to discharge it, a coastal State has several options at its disposal. It may either (a) prepare appropriate charts with baselines (straight or normal), and closing lines across the mouths of rivers and bays; or (b) prepare such charts depicting the limits derived therefrom which should include roadsteads and

⁴⁷ DOALOS, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, New York 1989, p. 2 (para. 8) and p. 4 (paras 14–15).

⁴⁸ This was even more explicit in Article 4 para. 6 TSC: 'The coastal State must clearly indicate straight baselines on charts, to which due publicity must be given.' Hence, the 'due publicity' duty was linked only to the straight baselines, as well as roadsteads (Article 9 TSC).

⁴⁹ This is also the position expressed in DOALOS, *Baselines, op. cit.*, p. 2 (para 8).

⁵⁰ Article 16 para. 2 UNCLOS.

⁵¹ This is, however, not the only 'due publicity' duty stemming from the Convention. See e.g.: Articles 22 para. 4, 41 para. 6 and 53 para. 6 UNCLOS regarding sea lanes and traffic separation schemes.

delimited international boundaries⁵²; or, alternatively (c) it could prepare a list of geographical co-ordinates of points, specifying the geodetic datum by reference to which they were prepared. Such a chart and/or list of geographical co-ordinates should be made public. Again, this duty is not directly linked with normal baselines, established in line with Article 5 UNCLOS, although it would make sense that all of the coastal State's charts depicting its baselines and other relevant features would be made public. Arguably, however, this is a less stringent obligation than the one enshrined in Article 16 para. 1 UNCLOS⁵³. Most notably, there is no duty to deposit a copy of normal baselines with the UN Secretary General⁵⁴.

Secondly, indeed, a coastal State shall deposit a copy of such a chart or a list (i.e. one prepared for the purpose of Article 16 para. 1 UNCLOS) with the UN Secretary General. As underlined by DOALOS this is to be considered as 'an international act by a State Party to the Convention in order to comply with the deposit obligations' and, hence, '[t]he mere existence or adoption of legislation or the conclusion of a maritime boundary delimitation treaty registered with the Secretariat, even if they contain charts or lists of coordinates, cannot be interpreted as an act of deposit with the Secretary-General under the Convention.'⁵⁵ Further, with respect to the list of geographical co-ordinates it shall be noted that DOALOS encourages the States to submit all the necessary information for conversion of the submitted geographic coordinates from the original datum into the World Geodetic System 84 (WGS 84)⁵⁶. Lastly, it might be observed that despite

⁵² Technically (with regard to options (a) and (b)), a State may not have the capacity (or the will) to prepare its own charts and, hence, it could recognize charts prepared by another charting authority (with its consent). See: DOALOS, *Baselines*, *op. cit.*, pp. 40–41 (para. 100).

⁵³ Similarly: C.R. Symmons, M. Reed, *Baseline Publicity and Charting Requirements: An Overlooked Issue in the UN Convention on the Law of the Sea*, *Ocean Development & International Law*, Vol. 41 (2010), pp. 78–79.

⁵⁴ This was made clear by Ukraine in its dispute with Romania over, *inter alia*, so called Serpents Island. Ukraine stated that: '[c]ontrary to what Romania claims, "normal" baselines, defined as the low-water mark around the coast, do not have to be notified to the United Nations, as straight baselines have to be.' ICJ, *Maritime Delimitation in the Black Sea* (Romania v. Ukraine), judgment of 3 February 2009, I.C.J. Reports 2009, p. 61, at para. 126. The Court did not challenge this contention.

⁵⁵ DOALOS, *Deposit and Due Publicity – Background Information*, para. 2; available at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/background_deposit.htm.

⁵⁶ DOALOS, *Deposit and Due Publicity – Background Information*, *op. cit.*, para. 4. The UN Secretary General was called upon to '[i]mprove the existing Geographic Information System for the deposit by States of charts and geographical coordinates concerning maritime zones, including lines of delimitation, submitted in compliance with the Convention, and to give due publicity thereto, in particular by implementing, in cooperation with relevant international organizations, such as the International Hydrographic Organization (...)' UN General Assembly Resolution, A/RES/59/24 of 17 November 2004, *Oceans and the Law of the Sea*, para. 6.

the repeated requests made in this respect by the UN General Assembly⁵⁷, so far only 72 States have fulfilled this obligation⁵⁸.

1.2. BASELINES IN THE POLISH LAW

1.2.1. Polish baselines from the historical perspective

From the geographical perspective, it shall be pointed out that Poland borders the Baltic Sea and its (current) coastline is 788 kilometres long⁵⁹.

Historically speaking, it is necessary to start with the 1927 Regulation of the President of the Republic of Poland on the State border⁶⁰. This act was of a very general nature and stated only that the Polish border was a line separating the Polish coastal waters from the high seas (Article 1). The breadth of the Polish territorial sea was to be established in line with the separate pieces of legislation.

The first Polish legal act that established (to use the modern terminology) baselines was the Regulation of the President of the Republic of Poland of 1932⁶¹. According to Article 1, the external boundary of the Polish territorial sea was a line that ran 'parallel to coastline' (which at the same time constituted the seaward limit of the Polish internal waters) at the distance of 3 nautical miles from it. Additionally, the Regulation provided for the closing line across the Bay of Puck (part of today's Bay of Gdańsk)⁶². As an appendix, the Regulation included a map (scale: 1:400 000) that illustrated the outer limit of the territorial sea, as well as the closing line. Both Article 1 of the Regulation, as well as the map, specified geographical coordinates of the eastern, lateral turning points of the maritime boundary. It might be inferred from the general term 'coastline' that what was meant was the low-water mark, as understood (and measured) those days, although the Regulation does not spell this out explicitly. Also, the 'artificial' line across the Puck Bay

⁵⁷ Recently: UN General Assembly Resolution, A/RES/70/235 of 23 December 2015, *Oceans and the Law of the Sea*, para. 6.

⁵⁸ List of these States available here: <http://www.un.org/Depts/los/LEGISLATION-ANDTREATIES/depositpublicity.htm>. It does not include Poland.

⁵⁹ Interministerial Group on the Maritime Policy of the Republic of Poland, *Maritime Policy of the Republic of Poland until 2020 (with perspective towards 2030)*, 2015, p. 6, available at: https://mgm.gov.pl/images/gospodarka-morska/polityka_morska_rzeczypospolitej_polskiej_do_roku_2020-z_perspektywa_do_2030_roku.pdf (hereinafter: *Polish Maritime Policy*).

⁶⁰ Regulation of the President of the Republic of Poland of 23 December 1927 on the State border (Official Journal of 1927, No 117, item 996).

⁶¹ Regulation of the President of the Republic of Poland of 21 October 1932 on the State's maritime boundary (Official Journal of 1932, No 92, item 789).

⁶² *Ibidem*, Article 2.

shows that Poland differentiated between the regular 'coastline' baseline and the closing line.

In 1956 a Decree on the protection of the State's border⁶³ was enacted. It stated that the outer limit of the Polish territorial sea (and 'adjacent belt') ran parallel to the line of the 'sea-shore' (not to the 'coastline', as was stated in the 1932 Regulation). The latter was defined as 'the line of contact between the sea and the land territory, at low-sea level'⁶⁴. Hence, although the object of the 1956 Decree was to enact rules on the protection of the border, rather than to define the maritime zones, it nevertheless did provide for a definition of the 'sea-shore' line (that served as a baseline). Contrary to the 1932 Regulation the definition of the 'coastline', this time the 'low-water mark' rule was clearly spelled out.

It had almost been 15 years till the next piece of legislation even mentioned baselines, and, given the fact that this legislation was the 1970 Act on the establishment of the Polish Fisheries Zone⁶⁵, it did not elaborate on the topic. However, in line with the general methodology of establishing the maritime zones, the 1970 Act specified that the Polish Fisheries Zone was an area outside and adjacent to the Polish territorial sea and extended 12 nautical miles from the baselines from which the breadth of the latter was measured⁶⁶. Curiously, this Act employed the then internationally recognized term of 'baselines'⁶⁷. Nevertheless, the only pieces of legislation then in force that could have been meant by this reference were the 1932 Regulation and the 1956 Decree which however, did not use the term 'baselines', only 'coastline' or 'sea-shore' (that served as a baseline).

However, the 1932 Regulation was repealed soon thereafter by the 1977 Act on the Polish Territorial Sea⁶⁸. This time yet another terminology was used to reflect the concept of baselines. Namely, Article 1 para. 1 of the 1977 Act outlined that the Polish Territorial Sea was 'the area of water 12 nautical miles breadth, adjacent to the sea-shore'⁶⁹ or to the baselines closing the Polish internal waters in the Bay

⁶³ Decree of 23 March 1956 on the protection of the State's border (Official Journal of 1956, No. 9, item 51).

⁶⁴ 1956 Decree, Articles 2 and 3.

⁶⁵ Act of 12 February 1970 on the establishment of the Polish Fisheries Zone (Official Journal of 1970, No. 3, item 13 and 14). This Act was repealed and partially replaced by the Act of 17 December 1977 on the Polish Fisheries Zone (Official Journal of 1977, No. 37, item 163). It might be added that on the same day Poland issued the Act of 17 December 1977 on the Continental Shelf of the People's Republic of Poland (Official Journal of 1977, No. 37, item 164). Altogether then, on this day all three maritime zones (the territorial sea, fisheries zone and the continental shelf) were (re)established.

⁶⁶ *Ibidem*, Article 2 para. 1.

⁶⁷ It might be recalled here, though, that Poland has not become a party to the 1958 TSC.

⁶⁸ Act of 17 December 1977 on the Polish Territorial Sea of the People's Republic of Poland, Article 8 (Official Journal of 1977, No. 37, item 162).

⁶⁹ The term 'sea-shore' is deliberately not used here to mark the difference in the Polish

of Gdańsk'. Despite certain terminological confusion, the 1977 Act built upon the earlier definition (contained in the 1956 Decree) and defined the sea-shore as 'the line of contact between the sea and the land territory, at mean, multiannual sea-level'⁷⁰. As might be observed, this time the definition was more detailed, as it added the concept of 'mean' and 'multiannual' sea-level. On the other hand, the concept of 'low-water mark' was dropped, probably substituted by the term 'mean'. It could be highlighted that the 1977 Act also provided for the artificial closing line across the Bay of Gdańsk, established by reference to the fixed geographical coordinates and drawing a line between them⁷¹.

1.2.2. Baselines in the current Polish law

Finally, the 1991 Act was passed⁷². Its Article 5 specified that:

'[t]he territorial sea of the Republic of Poland is a marine area of 12 nautical miles (22,224 m) wide, measured from the *baseline of that sea*.' (emphasis added).

The baseline of the territorial sea, on the other hand, was defined as either 'the low-water line along the coast' or 'the outer limit of the internal waters'⁷³. The 1991 Act did not contain any further definition or, as already remarked in the introductory part of this paper, the legal basis to actually establish the geographical coordinates of the baselines. One could conclude in this respect that neither did the 1991 Act refer to any charts or charted baselines, nor did it provide geographical coordinates of the baselines (or legal basis and/or methodology to enact them in the future)⁷⁴.

terminology employed in the 1932 Regulation and the 1977 Act. These two pieces of legislation used similar yet different phrases in the Polish language ('*linia wybrzeża*' and '*brzeg morski*', respectively) to reflect the current concept of a normal baseline. On the other hand, the phrase '*linia podstawowa*' (which is currently used in Polish to denote 'baseline') refers in the 1977 Act only to closing, artificial line across the Bay of Gdańsk.

⁷⁰ Article 1 para. 2 of the 1977 Act.

⁷¹ *Ibidem*, Article 1 para. 3. Thus established, this line was drawn across the Bay of Gdańsk.

⁷² The 1991 act annulled the 1977 Act on the Continental Shelf as well as the 1977 Act on the Territorial Sea. It could be also highlighted that at the time when the 1991 Act was established Poland was not (yet) a Party to the UNCLOS.

⁷³ Article 5 para. 2 of the 1991 Act. Internal waters are enumerated and described in Article 4 of the 1991 Act.

⁷⁴ Although it may be pointed out that Article 1 para 2 of the 1991 Act provided for (and still does) that its provisions do not apply when the international agreement to which Poland is a party states otherwise. Hence, one could argue that the baseline, understood as the low-water line, should not be construed in a manner that would significantly depart from the UNCLOS (at least from 1998 onwards, i.e. the moment when Poland became a party to it).

The 2015 Amendment introduced two changes. Firstly, it substituted Article 5 para. 2 with the new wording clarifying that the baseline of the Polish territorial sea is:

‘[a] line connecting appropriate low-water points along the coast or other points established in accordance with the principles enshrined in the United Nations Convention on the Law of the Sea (...)’.

Undoubtedly, this has brought the Polish legislation more in line with UNCLOS, whilst at the same time – by adopting a rather open-ended reference to the Convention – leaving some discretion as to how exactly the baselines would be drawn. It is equally clear that for Poland it is the *actual* (as opposed to the *charted*) low-water mark that matters.

However, as one of the advantages of having the Polish baselines precisely established, the Government’s Explanatory Memorandum to the 2015 Amendment⁷⁵ clarifies that it will allow for the graphical illustration of Polish maritime boundaries in the official nautical charts⁷⁶.

Interestingly, another reason for introducing the amendments under discussion to the 1991 Act (and at the same time characterized as the main reason), as stipulated in the Memorandum, is the need to be able to properly implement the 2014 European Union Directive on Maritime Spatial Planning⁷⁷. The Directive does not refer explicitly to the baselines, although it does state the need to have the plans, covering marine waters of the EU Member States, ready by 31 March 2021⁷⁸ at the latest. The phrase ‘marine waters’, in turn, means:

‘waters, the seabed and subsoil on the seaward side of the baseline from which the extent of territorial waters is measured extending to the outmost reach of the area where a Member State has and/or exercises jurisdictional rights, in accordance with the UNCLOS (...)’.⁷⁹ (emphasis added).

⁷⁵ Explanatory Memorandum of 10 July 2015, No 3661, *The Government’s draft Act to amend the Act on Maritime Zones of the Republic of Poland and on Maritime Administration* (available at: <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=3661>).

⁷⁶ *Ibidem*, p. 3.

⁷⁷ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (EU Official Journal of 28 August 2014, L 257, p. 135).

⁷⁸ Article 15 para. 3 of the 2014 Directive.

⁷⁹ Article 3 para. 4 of the 2014 Directive (that defines the ‘marine waters’) is linked to the definition of this phrase as contained in Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive; EU Official Journal of 25 June 2008, L 164, p. 19).

Naturally, what seems to be important for Poland (and other EU Member States) is not so much the fact that the definition of ‘marine waters’ refers to the concept of baselines. This was simply needed to reflect the appropriate UNCLOS definitions⁸⁰ (which, as already underlined, utilize the concept of baselines in this respect) of the various maritime zones the Member States may establish and/or have in order to incorporate them in this all-encompassing provision. What, on the other hand, seems crucial is the geographical scope of the maritime spatial plans which, *nomen omen*, should only cover maritime areas. Consequently, the coastal waters or parts thereof falling under a Member State’s town and country planning, do not fall into the scope of the 2014 Directive⁸¹.

It is then understandable, that the Government’s Explanatory Memorandum goes on to explain that the baseline to be established shall also constitute the most stable boundary between communes⁸². Currently, this boundary is drawn by reference to the sea-shore, as understood in the Polish 2001 Act on Water Law⁸³. The line established in accordance with this methodology is ‘in many instances not up-to-date and variable’, as well as deviating from the baselines established by having recourse to the principles of UNCLOS for as much as 100 meters⁸⁴.

To sum up, one could note that what, among other issues, prompted Poland to amend its legislation in order to enable it to draw particular baselines (by having recourse to geographical coordinates), was the EU legislation obliging Poland (and other EU Member States) to adopt maritime spatial plans. This development – technical in nature, but nevertheless important – necessitated the establishment of a clear division line between the land territory (or, to be more specific, boundaries of communes that border the Polish coastline) and maritime waters.

As a logical consequence of the above discussed new provision introduced by the 2015 Amendment, it became necessary to enable the Council of Ministers to adopt a regulation that would actually enact the specific geographic coordinates of the Polish baseline in line with (the new version of) Article 5 para. 2 of the 1991 Act⁸⁵. This indeed materialized by means of a new Article 5 para. 2a of the 1991

⁸⁰ It should be recalled that all the EU Member States, as well as the EU itself, are Parties to UNCLOS.

⁸¹ Article 2 paras 1 and 3 of the 2014 Directive.

⁸² Communes (2478 of them; accurate as of 1 January 2016; ‘*gmina*’ in Polish) form the most basic part of the administrative division of Poland. At the higher levels of this division are, respectively, districts (380; ‘*powiat*’) and, finally, voivodships (16; ‘*województwo*’).

⁸³ The Act on the Water Law of 18 July 2001 (Official Journal of 2015, item 469; consolidated version). Sea-shore means, in line with Article 15 of the 2001 Act, *inter alia*, either the ‘edge of the shore’ or ‘line established by having reference to the mean water, taking into account the period of at least past 10 years’.

⁸⁴ Explanatory Memorandum of 10 July 2015, No 3661, *op. cit.*, pp. 2–3.

⁸⁵ In the Polish legal system a regulation by the Council of Ministers shall have specific legal

Act. It states that: (a) indeed, the Council of Ministers shall issue an appropriate regulation; (b) the baselines will be established in a textual (i.e. list of geographical coordinates) and graphic form (i.e. there would also be a chart prepared); (c) the geographical coordinates are to be established by reference to the official datum system⁸⁶; and (d) in line with the principles enshrined in UNCLOS⁸⁷.

Unfortunately, at the time of writing, this regulation has not yet been issued (although work is in progress⁸⁸). Hence, it is not possible to decisively assess how exactly the principles enshrined in UNCLOS were taken into account. Nevertheless, it is to be hoped it will materialize soon. In any case, it may be remarked at this stage that already, given the overall configuration of the Polish coastline, it will be in particular the normal baselines (as opposed to the straight ones) that will be employed⁸⁹. Though, naturally, some artificial closing lines (in particular

basis in the ('higher') Act (issued by the Parliament).

⁸⁶ This datum is established by the Council of Ministers' Regulation of 15 October 2012 on the State's official datum system (Official Journal of 2012, item 1247). When it comes to nautical charting it will be essentially the role of the Hydrographic Office of the Polish Navy to prepare them. This is the institution in Poland that plays the role of the National Hydrographic, Aids to Navigation and Nautical Cartography Service. See: <http://www.hopn.mw.mil.pl/>. It will collaborate to this aim with the Ministry of Economy and Inland Navigation as well as the Maritime Offices (that form part of the Polish maritime administration) in Gdańsk, Słupsk and Szczecin. Since 1999, the horizontal datum used by Hydrographic Office, in line with the International Hydrographic Organization's recommendations, has been the WGS-84 system. See: <http://www.hopn.mw.mil.pl/mapy2.php#>.

⁸⁷ One may point out in this context that the Council of Ministers was also empowered, by virtue of Article 5, para. 3a of the 1991 Act, to establish geographical coordinates of the outer limit of the Polish territorial sea. This limit is constituted by a line every point of which is at a distance of 12 nautical miles from the nearest point of the baseline. See Article 5, para. 3 of the 1991 Act and Article 4 UNCLOS.

⁸⁸ The 2016 draft Regulation of the Council of Ministers on the baselines, external boundary of the Polish territorial sea and the contiguous zone of the Republic of Poland (hereinafter: the 2016 draft Regulation) was submitted for the consideration of the Council of Ministers on 30 August 2016. The 2016 draft Regulation and the Explanatory Memorandum of the Minister of Maritime Economy and Inland Navigation (hereinafter: Minister of Maritime Economy's Explanatory Memorandum) that accompanies it are available online at: <https://legislacja.rcl.gov.pl/projekt/12289300/katalog/12376114#12376114>.

It must be noted that these documents have not been adopted as of yet and are referred to here for information purposes only.

⁸⁹ The Minister of Maritime Economy's Explanatory Memorandum, p. 3 underscores that, indeed, Article 5 UNCLOS formed the basis for construing the Polish baselines. Additionally, the 2016 draft Regulation took into account the study prepared by the Polish Institute of Meteorology and Water Management that concluded that the low-water mark for the Polish coastline shall be '-1,6 meter'. *Infra*.

across bays⁹⁰ and ports) will need to be envisaged as well⁹¹. Lastly, the list of geographical coordinates and the chart will also need to take account of the lines of delimitation drawn in accordance with Articles 12 (roadsteads)⁹² and 15 (delimitation of the territorial sea) UNCLOS⁹³.

Lastly, the issues under discussion deserve three additional comments. Firstly, it is premature at this point to conclude decisively on whether and how Poland will comply with its 'due publicity' and 'deposit' obligations resulting from Article 16 UNCLOS. As was elaborated in the preceding part of this paper, strictly speaking, this provision of the Convention does not relate to the normal baselines established in line with Article 5 UNCLOS (which, as it is expected, will be predominant in the case of Poland). However, it does not preclude Poland from still acting in line with this provision. Nevertheless, some issues enumerated in Article 16 UNCLOS (like, precisely, Articles 9, 10 12 and 15 UNCLOS) may be applicable with respect to the Polish coastline and, hence, require obligatory 'due publicity' and 'deposit' measures to be undertaken⁹⁴.

Secondly, the outer limit of the Polish territorial sea will also be precisely delimited with reference to the baselines as the starting point⁹⁵.

Thirdly, and in connection with the latter point, it may be noted in passing that an interesting issue may arise with regard to construing the geographical

⁹⁰ The Minister of Maritime Economy's Explanatory Memorandum, p. 4 highlights Articles 7 and 10 UNCLOS with respect to drawing the straight baselines across the Bay of Gdańsk.

⁹¹ It is also to be expected that the baselines will reflect current Article 4 of the 1991 Act that enumerates waters considered Polish internal waters. They include, inter alia, Bay of Gdańsk and Vistula Lagoon.

⁹² Indeed, Poland did establish its roadsteads by means of the Council of Minister's Regulation of 22 February 1995 on the establishment of roadsteads for the harbours of Szczecin and Świnoujście; Official Journal of 1995, No 20, item 101. The Minister of Maritime Economy's Explanatory Memorandum, pp. 2–4 takes account of that.

⁹³ It shall be noted in this context that Poland has boundary delimitation agreements (that are relevant for its territorial sea) with Germany and Russia. These are: *'Umowa między Polską Rzeczpospolitą Ludową a Niemiecką Republiką Demokratyczną w sprawie rozgraniczenia obszarów morskich w Zatoce Pomorskiej'*, done in Berlin on 22 May 1989 (Official Journal of 1989, No 43, item 233; registered as: the Treaty on the delimitation of the sea areas in the Oder Bay, Poland and German Democratic Republic; UNTS, Vol. 1547; registration No 26909), as well as *'Umowa między Polską Rzeczpospolitą Ludową a Związkiem Socjalistycznych Republik Radzieckich o rozgraniczeniu morza terytorialnego (wód terytorialnych), strefy ekonomicznej, strefy rybołówstwa morskiego i szelfu kontynentalnego na Morzu Bałtyckim'*, done in Moscow on 17 July 1985 (Official Journal of 1986, No 16, item 85; the Agreement between the Republic of Poland and Union of Soviet Socialist Republics on the delimitation of the territorial sea (territorial waters), the economic zone, the fishing zone and the continental shelf in the Baltic Sea).

⁹⁴ The 2016 draft Regulation does contain a chart (scale: 1:150 000).

⁹⁵ Article 5 para. 3 and 3b of the 1991 Act. See *supra*, footnote no 88.

coordinates of the outer limit of the Polish territorial sea (however, technically these questions may be and notwithstanding the (in)applicability of Article 16 UNCLOS). Notably, the outer limits of the territorial sea the baselines will have to correspond, where applicable, to geographical coordinates of the Polish territorial sea, as delimited in the bilateral international agreements. The technical problem that may arise⁹⁶ is the need to convert the geographical coordinates established by reference to another datum into the WGS-84 system, currently used in Poland for maritime charting⁹⁷. The problem is exacerbated by the fact that earlier delimitation agreements from the 1980s did not really specify the datum that was used to prepare geographical coordinates contained therein. Nevertheless, this, in all probability, will not lead to any substantial problems.

To sum up, the following issues could be underscored. Firstly, it is to be assessed positively that Poland decided to establish the precise baselines with reference to specific geographical coordinates, as opposed to the ‘descriptive’ baselines previously established by simply recalling that the baseline follows the coastline and/or the low-water mark, or any other phrase to that effect. It shall not be overlooked here that it is the first time in the Polish history that baselines will be established with such precision. In all probability, this will not only answer the apparent immediate need of the Polish Government to be able to conduct maritime spatial planning with a sufficient level of detail. In the long run, such baselines should also have other positive impacts, both internally and externally.

With regard to the former, the Explanatory Memorandum to the 2015 Amendment mentioned explicitly the added value of having the precise baselines established for the purposes of properly delimiting the internal administrative boundaries between communes. This, in turn, could reduce the possible conflicts as regards the administrative procedures and decision-making at this level of territorial self-government in Poland.

As far as the latter aspect is concerned, it needs to be stressed that baselines, by definition, have external implications. As elaborated on in the preceding part of this paper, UNCLOS does specify how they should be established, as well as – given their importance for other States and/or other ‘users’ of the seas – setting forth obligations of due publicity and deposit⁹⁸. Without pre-determining whether and how Article 16 UNCLOS will be implemented by Poland with respect to its baselines, it shall be noted that the ‘new’ Polish baselines will also bring about some

⁹⁶ The Minister of Maritime Economy’s Explanatory Memorandum, pp. 4–5 elaborates on that issue as well as providing calculations on how that conversion was executed.

⁹⁷ As was already mentioned, this is also the type of datum suggested by DOALOS to be used while depositing coordinates and/or charts with UN Secretary General. See also *supra* footnote no 57 and accompanying text.

⁹⁸ Article 16 UNCLOS.

modifications to the outer limit of its territorial sea⁹⁹. Looking at this issue from a different perspective, the newly drawn baseline will also affect the 'end-line' of the Polish internal sea (possibly shifting it seawards). This is equally important for the Polish users of the sea (both private and public) as well as – clearly – for the external ones¹⁰⁰.

Finally, it deserves a separate comment that the new Article 5 para 2a of the 1991 Act will not cease to be effective after one-time utilization. Hence, the Council of Ministers will retain its capacity to enact, if needed, any possible modifications of the (hopefully to be established soon) geographical coordinates of the Polish baselines. Poland is perhaps not at the forefront of the countries that would be endangered by sea-level rise, however, undoubtedly this phenomenon will affect Poland as well¹⁰¹. Notwithstanding these developments, other natural processes (e.g. erosion¹⁰²) or possible human-induced changes to the Polish coastline (related e.g. to harbour-works or land reclamation) could occur in the future, thereby necessitating (most plausibly slight) modifications to the baseline.

⁹⁹ It shall be recalled that in line with Article 5 para. 1 of the 1991 Act, the Polish territorial sea '(...) is a marine area of 12 nautical miles (22,224 m) wide, measured from the baseline of that sea'. This, however, is without prejudice with respect to those points of the outer-limit of the Polish territorial sea that were established in binding, bilateral agreements concluded by Poland.

¹⁰⁰ One can draw attention to the fact that for example the right of innocent passage does not apply within the coastal State's internal waters, See Article 17 UNCLOS. *Cf.*, however, Article 8 para. 2 UNCLOS. On the distinction between internal waters and territorial sea: *Oppenheim's International Law*, p. 573.

¹⁰¹ According to the *Polish Maritime Policy*, p. 36 within the next 100 years the sea-level in the southern part of the Baltic Sea will rise, plausibly, by 60–80 centimetres causing retreat of the coastline landwards by 150–400 meters. In line with these estimations, Poland could lose land territory equalling 120 square kilometres (not to mention the loss of flora and fauna habitats).

¹⁰² According to the data published by the S. Hueckel Coastal Research Station at Lubiatowo, Institute of Hydro-Engineering of the Polish Academy of Sciences, Department of Coastal Engineering and Dynamics: 'About 60–70% of the Polish coast is eroded, with a shoreline retreat of 0.5–0.9 m/year. Recently observed climatic changes cause increase in intensity and frequency of severe storms, as well as accelerated sea level rise. These effects are reasons for high coastal erosion rate'. Available at: <http://mlb.ibwpan.gda.pl/index.php/en/>. Lastly in this context, it might be pointed out that Poland adopted the Act of 28 March 2003 on the establishment of the multiannual 'Program concerning the protection of the sea-shore' (Official Journal of 2003, No 67, item 621). One of its principal aims is to counteract the erosion of the sea-shore (Article 2 point 1).

2. CONTIGUOUS ZONE

2.1. CONTIGUOUS ZONE FROM THE PERSPECTIVE OF INTERNATIONAL LAW

2.1.1. Development of the concept of the contiguous zone

The concept of a contiguous zone may be traced back to the 19th century when it was believed that a coastal State might have jurisdiction over its territorial sea for the purposes of protecting its revenue against smuggling, as well protecting public health against diseases¹⁰³. Most notably, the UK had passed a number of enactments in the period of 1736–1765, which were subsequently reviewed again in 1805, to combat smuggling¹⁰⁴. The US Supreme Court, on the other hand, found in 1804 that a coastal State's control 'over vessels hovering off the coast to be consistent with international law'¹⁰⁵. Both the US and British legislation extended beyond their respective territorial seas. Interestingly, though, there was no uniform practice as to the breath of these special zones¹⁰⁶. Neither was the practice homogenous with respect to the legal status and role coastal States attached to this 'hovering zones' *vis-à-vis* the territorial sea. Some States established different zones for different purposes instead of the territorial sea. Others, established both the territorial sea and the zone contiguous to it (usually for customs purposes). Yet another group of States insisted on a narrow belt of the territorial sea and strict application of high seas freedoms beyond it¹⁰⁷.

Lastly in this context, it shall be highlighted that the notions of 'additional' (i.e. extending beyond the territorial sea) rights was also recognized by the Baltic Sea States. Namely, 11 of them (including Poland) concluded the Convention for the Suppression of the Contraband Traffic in Alcoholic Liquors which specified that its Parties will:

¹⁰³ D.P. O'Connell (ed. by I.A. Shearer), *The International Law of the Sea*, Vol. II, Clarendon Press, Oxford 1984, p. 1034; *Oppenheim's International Law*, p. 625.

¹⁰⁴ *Ibidem*.

¹⁰⁵ J.E. Noyes, *The Territorial Sea and Contiguous Zone* [in:] D. Rothwell, A.O. Elferink, K. Scott, T. Stephens (eds.), *The Oxford Handbook...*, p. 107. See also: D.R. Rothwell, T. Stephens, *op. cit.*, p. 77. These Authors refer to *Church v Hubbard* case (6 US 187, 2 Cranch) of 1804 and *Manchester v Massachusetts* case (139 US 240) of 1891, respectively.

¹⁰⁶ D.P. O'Connell, *The International Law of the Sea*, Vol. II, *op. cit.*, pp. 1034–1035 notes that the British legislation applied at varied distances from 2, 3, 4, even up to 100-league limit.

¹⁰⁷ Typology on the basis of: R.R. Churchill, A.V. Lowe, *op. cit.*, p. 134, J.E. Noyes, *op. cit.*, pp. 107–108.

‘[r]aise no objection to the application by any of them of its laws, within a zone extending to twelve nautical miles from the coast or from the exterior limit of the archipelagoes, to vessels which are obviously engaged in contraband traffic.’¹⁰⁸

The 1930 Hague Codification Conference identified two basic points of controversy in this respect: (a) the very existence of special rights of the coastal States beyond territorial sea; and (b) even if those rights do exist, whether they encompass military or security interests¹⁰⁹ (in addition to customs and sanitary ones). Nevertheless, the Conference was able to conclude that ‘most States agree, to a greater or lesser extent, that exercise of particular specified rights by the coastal State outside its territorial waters, i.e. on the high seas, can be considered as legitimate’¹¹⁰.

The ILC also included in its 1956 draft *Articles on the law of the sea* the provision (Article 66) pertaining to the contiguous zone¹¹¹ which was retained in the 1958 TSC (Article 24). It provides in the relevant part:

- ‘1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; (b) punish infringement of the above regulations committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured. (...)’ (emphasis added)¹¹².

The following observations shall be made in this context. Firstly, it is clear that the contiguous zone was clearly considered to form part of the high seas. This corresponded to the view that while the coastal States may exercise some additional rights in this zone, this does not amount to exercising sovereignty (or sovereign rights, as it would interfere with the high seas regime¹¹³. Secondly, the measures

¹⁰⁸ Convention for the Suppression of the Contraband Traffic in Alcoholic Liquors, done in Helsingfors on 19 August 1925 (League of Nations Treaty Series, Vol. 42, p. 73; Official Journal of 1927, No 75, item 656).

¹⁰⁹ The Institut de droit international, in its 1928 ‘*Projet de règlement relatif à la mer territoriale en temps de paix*’ does include security interests among rights of coastal States in their contiguous zone. J. Crawford, *Brownlie’s Principles of Public International Law*, 8th Edition, Oxford University Press 2012, p. 266. The interest of the Institut with this issue dates back to 1891. H. Caminos, *Contiguous Zone*, Max Planck Encyclopaedia of Public International Law (2013), para. 11.

¹¹⁰ *Official Documents. Conference for the Codification of International Law*, op. cit., p. 29.

¹¹¹ ILC, *Articles concerning the Law of the Sea with commentaries*, op. cit., p. 294.

¹¹² Article 24 of the TSC. Article 24 para. 3 TSC is not reproduced here. See footnote no 113 below and accompanying text.

¹¹³ See also: ILC, *Articles concerning the Law of the Sea with commentaries*, op. cit., commentary to Article 66, para. 1. As summarized by G. Fitzmaurice: ‘It is therefore control, not jurisdiction, that is exercised. The power is primarily that of the policeman, rather than of the administrator or of the judge.’ G. Fitzmaurice, *Some Results of the Geneva Conference on the Law of the Sea: Part I – The*

coastal States could take related only to 'customs, fiscal, immigration or sanitary' regulations. Although the ILC was aware of a relatively scant practice with respect to sanitary issues, it nevertheless was of the opinion that they are closely linked with the customs regulations and, if for no other reason, should be included¹¹⁴. Thirdly and consequently, it was considered that coastal States do not possess any additional 'security rights' in the contiguous zone¹¹⁵. As the ILC explained, this concept, being a very vague one, could open the provision under discussion to potentially far-reaching interpretations. Additionally, it was suggested that in case of a real threat to security, other legal avenues exist, in line with the UN Charter¹¹⁶.

2.1.2. Current legal status of the contiguous zone

Article 33 UNCLOS is the current codification of the international law on the contiguous zone. It reads:

'1. In a zone *contiguous to its territorial sea*, described as the contiguous zone, the coastal State may exercise the *control* necessary to: (a) *prevent* infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) *punish* infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.' (emphasis added).

As might be observed, this formulation follows to a large extent the earlier Article 24 TSC, however, three modifications were introduced. The first one is related to the fact that UNCLOS adopted, among others, a new maritime zone, namely the exclusive economic zone (EEZ). This has become a zone adjacent to

Territorial Sea and Contiguous Zone and Related Topics, International and Comparative Law Quarterly, Vol. 8 (1959), p. 113. For a different view see: S. Oda, *The Concept of the Contiguous Zone*, International and Comparative Law Quarterly, Vol. 11 (1962), pp. 131–153.

¹¹⁴ *Ibidem*, commentary to Article 66, para. 3.

¹¹⁵ It should be recalled that it was, among others, Poland that proposed to include the concept of 'security' within the contiguous zone regime. The proposal, although it had been accepted by the First Committee of the First UN Conference of the Law of the Sea (by a vote of 33 to 27 with 5 abstentions with respect to the proposal as such; by a vote of 50-18-8 the whole draft article, containing the reference to 'security', was adopted) but was subsequently rejected by the Plenary. S. Oda, *op. cit.*, pp. 150–151; H. Caminos, *op. cit.*, para. 17.

¹¹⁶ *Ibidem*, commentary to Article 66, para. 4. Additionally, it may be noted that the ILC rejected, as having no support in the practice and *opinio iuris* of States, that coastal States should be granted additional rights in the contiguous zone relating to: (a) exclusive fishing rights; (b) the conservation of the living resources (in this context, the argument of little practical added value was also put forward). *Infra*, paras 5 and 6.

the territorial sea. Hence, it naturally followed, that the contiguous zone could not be considered, at least in principle¹¹⁷, as being part of the high seas.

Secondly, Article 33 UNCLOS did not retain paragraph 3 of its predecessor in the TSC which dealt with the delimitation of contiguous zones of States with opposing or adjacent coasts¹¹⁸. There are mixed opinions expressed in the doctrine of the subject on the particular reasons for this omission. The *travaux préparatoires* of UNCLOS does not shed additional light on this issue, as there was relatively little discussion on this provision during the Third UN Conference on the Law of the Sea¹¹⁹. On the one hand, it could be claimed that the contiguous zone will normally form part of the (broader) EEZ and, thus, the separate provisions for the delimitation of the contiguous zones are not needed, as this will naturally happen through the delimitation of EEZs¹²⁰. It might be observed in this context that although Article 60 para. 2 UNCLOS does state that a coastal State has exclusive jurisdiction with respect to 'customs, fiscal, health, safety and immigration laws and regulations', this provision is restricted to artificial islands, installations and structures. Hence, a coastal State does not exercise these rights in its EEZ as a whole.

Another point of view is that a contiguous zone 'cannot by definition, be extended into the territorial sea of another state'¹²¹. Yet another argument put forward in this respect is that in the contiguous zone there is no allocation of resources involved and, hence, no delimitation is needed, as two States can concurrently exercise their rights derived from their respective contiguous zones¹²². On the other hand, a view was also expressed that this might have been an 'oversight'¹²³.

¹¹⁷ For various reasons (see e.g. the case of the Mediterranean Sea) States may decide not to establish an EEZ.

¹¹⁸ Article 24 para. 3 TSC states that: '3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.'

¹¹⁹ *Virginia Commentary*, Vol. II, p. 269. However, it should be pointed out that at the early stage of the negotiations it was questioned whether the concept of the contiguous zone would be necessary in the future treaty, given two important developments: (a) extension of the territorial sea limit to 12 nautical miles; and (b) possible establishment of the EEZ which could render the contiguous zone 'superfluous and unnecessary'. Later on, however, it was felt that the rights of the coastal State in its contiguous zone are different from these in the EEZ and, hence, the retention of the contiguous zone was substantiated. *Infra*, pp. 269–270.

¹²⁰ R.R. Churchill, A.V. Lowe, *op. cit.*, p. 136.

¹²¹ *Virginia Commentary*, Vol. II, p. 273 quoting the Commonwealth Group of experts report chaired by S.N. Nandan.

¹²² *Virginia Commentary*, Vol. II, p. 269 and pp. 273–274.

¹²³ H. Caminos, *op. cit.*, para. 16.

The third difference between Article 24 TSC and Article 33 UNCLOS stems from the fact that the breadth of the territorial sea was established at a distance of 12 nautical miles from the baselines. Hence, it was logical, in order to maintain the usefulness of the contiguous zone, to extend its breadth (from 12-mile limit in TSC) to 24 nautical miles.

2.1.3. Function and role of the contiguous zone

It is acknowledged that contiguous zone is a maritime zone where a coastal State exercises only enforcement (as opposed to prescriptive or legislative) jurisdiction¹²⁴. However, even in this latter respect opinions are nuanced.

For some (in particular Sir *G. Fitzmaurice* who became a member of the ILC in 1955), a coastal State exercises only 'control' and not (any type of) 'jurisdiction' in the contiguous zone¹²⁵; the power of the coastal State is 'essentially supervisory and preventive'¹²⁶. Indeed, this very narrow reading of Article 33 UNCLOS or Article 24 TSC is possible¹²⁷. Under Article 33 para. 1 UNCLOS a coastal State is entitled only to *prevent* infringement of its regulations *before* the ship enters the territory of that State (hence, this provision applies to incoming ships). Under this reading, neither the custom and other regulations actually apply in the contiguous zone, nor is the ship in breach of them while in the contiguous zone. On the other hand, a coastal State is, indeed, empowered to *punish* infringement of some laws and regulations. However, this only applies when the breach of law took place *in the territory of this State*. Article 33 para. 1(b), in line with this argumentation, applies to outgoing ships only¹²⁸.

Other authors (in particular *S. Oda*) question this interpretation. This strand of argumentation rests partially on the *travaux préparatoires* of Article 24 TSC. Again, the Polish proposal seems to be the one most commented on. Namely, Poland proposed to delete the phrase relating to the infringements of regulations committed within the territory or territorial waters of a coastal State. This in essence would imply that the anticipated (current Article 33 para. 1(a) UNCLOS) or actual (current Article 33 para 1(b) UNCLOS) infringement would not be confined to the territorial sea or territory of a coastal State. Hence, laws and regulations the States are entitled to adopt in the framework of the contiguous zone would apply in this zone¹²⁹. As mentioned before, this proposal was finally

¹²⁴ R.R. Churchill, A.V. Lowe, *op. cit.*, p. 137; J.E. Noyes, *op. cit.*, p. 108; H. Caminos, *op. cit.*, para. 17.

¹²⁵ See *supra*, footnote no 114 and accompanying text.

¹²⁶ G. Fitzmaurice, *op. cit.*, p. 113.

¹²⁷ *Oppenheim's International Law*, p. 625 also accepts this view.

¹²⁸ *Ibidem*, pp. 113-115.

¹²⁹ S. Oda, *op. cit.*, p. 150. Oda quotes the statement of the Polish representative who explained

dropped (together with the other proposed modification by Poland to add security interests)¹³⁰. Nevertheless, some authors claim that the rejection of the Polish proposal did not amount to the rejection of the idea that the coastal State's regulations apply, as a matter of law, in the contiguous zone. Notably, the negotiating history does not reveal any information as to the wish of the States to differentiate between 'control' to prevent and punish (as Articles 24 TSC and 33 UNCLOS stipulate), as opposed to 'jurisdiction' within the contiguous zone¹³¹. Moreover, it was also argued that this dichotomy is 'more apparent than real'¹³². Additionally, one may draw attention to the fact that if the first line of argumentation was to be accepted, it would be difficult to reconcile it with Article 111 para. 1 UNCLOS that deals with the hot pursuit. As defined in UNCLOS, this right applies also to ships located in the contiguous zone with the only condition that 'the pursuit may only be undertaken if there has been *a violation of the rights for the protection of which the zone was established*'¹³³.

Lastly in this context, it is noteworthy to remind that under the 1958 rules of the TSC the contiguous zone was established in the framework of the high seas. This is not the case under UNCLOS (when it could be argued it is rather part of the EEZ). Hence, the presumption against the jurisdiction of a coastal State in its contiguous zone is currently more easily rebuttable¹³⁴.

In any case, it goes without saying that the powers a coastal State has in its contiguous zone are restricted to the areas enumerated in Article 33, i.e. to customs, fiscal, immigration or sanitary laws and regulations.

Another interesting feature of the current regime of the contiguous zone (which partially 'feeds into' the discussion above) is the question of protection of objects of an archaeological and historical nature. In line with Article 303 para. 2 UNCLOS, a coastal State may:

[i]n applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.'

that '[t]he Polish text does not limit the coastal State's rights to the prevention and punishment of infringement of law and regulations committed within its territory or territorial seas. The purpose is to cover such infringements committed within the contiguous zone itself. *Infra*.

¹³⁰ *Supra*, footnote no 111 above and accompanying text.

¹³¹ See: S. Oda, *op. cit.*, p. 153.

¹³² D.P. O'Connell, *The International Law of the Sea*, Vol. II, *op. cit.*, p. 1060; see also: J. Crawford, *op. cit.*, pp. 268–269.

¹³³ This seems to be a decisive argument for D.P. O'Connell, *The International Law of the Sea*, Vol. II, *op. cit.*, p. 1060.

¹³⁴ R.R. Churchill, A.V. Lowe, *op. cit.*, p. 139.

It follows that a coastal State could exercise control necessary to prevent the removal of such objects from its contiguous zone, as well as to punish those responsible for an unlawful removal. This provision, although arguable grants additional competences to the coastal State, has been criticized for its vagueness and lack of logic. In particular, the word ‘removal’ in Article 303 para. 2 UNCLOS, if taken literally, would mean that a simple destruction of such objects is not punishable¹³⁵.

It may be remarked as well that Article 16 UNCLOS (containing the charts and due publicity duties), previously commented on, does not refer to Article 33 or the boundaries of the contiguous zone and, hence, this provision does not apply in this context.

Overall, as of 2011, 85 States have established contiguous zone¹³⁶, i.e. majority of those possessing the territorial sea (ca. 150 States). Most of the former States established a 24-mile contiguous zone, whereas a few States decided to claim a narrower one, while the North Korea, on the other hand, claimed a 50-mile zone¹³⁷. It shall also be noted that, perhaps due to certain ambiguity of the terms of the current Article 22 UNCLOS coupled with the creeping jurisdiction phenomenon, the coastal States have a tendency to assert more rights in their contiguous zones. This was usefully summarized by Evans, who stated that:

‘[t]he entire concept [of the contiguous zone] represents a not insignificant extension of coastal State authority and there is a tendency for States to assert jurisdiction for a more ambitious range of matters than those mentioned in the convention text.’¹³⁸

2.2. THE POLISH CONTIGUOUS ZONE

2.2.1. Historical perspective

When, by means of the 1932 Presidential Regulation, Poland established its 3-mile territorial sea it also claimed another zone of 6-miles in breadth. It was an ‘adjacent belt’ where Poland was to exercise its dominion with respect to ‘securing

¹³⁵ See in particular: T. Scovazzi, *The Protection of Underwater Cultural Heritage: Article 303 and the UNESCO Convention* [in:] D. Freestone, R. Barnes, D. Ong, *The Law of the Sea: Progress and Prospects*, Oxford University Press 2006, p. 123. This Author argues (which would be particularly important for Italy) that a State could, on the basis of Article 303 UNCLOS, establish a ‘24-mile so-called archaeological zone where it can apply its legislation for the aim of protecting the relevant objects’. *Infra*. Similarly: S. Dromgoole, *Underwater Cultural Heritage and International Law*, Cambridge University Press 2015, pp. 33–34.

¹³⁶ <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/claims.htm>.

¹³⁷ See also overview of State practice in: D.R. Rothwell, T. Stephens, *op. cit.* pp. 79–80.

¹³⁸ M.D. Evans, *The Law of the Sea* [in:] M.D. Evans (ed.), *International Law*, 3rd Edition, Oxford University Press, p. 660.

the coastline¹³⁹. Additionally, Poland established 'coastal waters of the Polish customs area', also at a distance of 6 miles from the coastline¹⁴⁰. This corresponds then to the above described practice of States of the late 18th and early 19th century to establish various zones (beyond the territorial sea) for different purposes. It can be equally clearly observed that the conception of the coastal States' special rights beyond its territorial sea to protect its security was firmly embedded in the Polish practice. Hence, its proposals to this aim before and during the proceedings of the First UN Conference for the Law of the Sea are understandable.

Subsequently, in 1956 the Decree on the protection of the State's border¹⁴¹ was enacted. As might be inferred from its title, its purpose was different from legislation on maritime zones, it nevertheless referred to both the territorial sea, as well as to 'adjacent belt'¹⁴². It did not elaborate on the 'coastal waters of the Polish customs area' but, perhaps understandably, it was not the object and purpose of the Decree to deal with customs matters. The 1956 Decree did not really differentiate with respect to the scope of enforcement jurisdiction of Poland, depending on the type of the maritime zone (be it the internal waters, the territorial sea or 'adjacent belt'¹⁴³). In all zones, Poland claimed rather broad powers to seize any ship (military vessels excluding¹⁴⁴) when it was necessary for security or other reasons enumerated therein¹⁴⁵.

As already mentioned before, the 1932 Regulation was repealed by the 1977 Act on the Polish Territorial Sea. While the new law took account of new developments in the law of the sea and introduced a 12-miles territorial sea, it did not retain the concept of the contiguous zones. In addition, the 1977 Act modified the 1956 Decree by eliminating all references it contained to the 'adjacent belt'¹⁴⁶. Clearly, it was the intention of the legislator not to have any type of contiguous zone. Hence, they were both the 'coastal waters of the Polish customs area' (that more directly correspond to the current concept of the contiguous zone), as well as an 'adjacent belt', established for the security reasons, that were abolished. It is not clear to the present author what the precise rationale behind this decision was.

¹³⁹ Article 3 of the 1932 Regulation.

¹⁴⁰ Article 4 of the 1932 Regulation. Interestingly, the rights claimed by Poland in each of the three zones (the territorial sea, 6-miles security belt, as well as 6-miles customs area) extended to the air space over these zones, as well as to their sea bed and subsoil.

¹⁴¹ See *supra*, footnote no 64 and accompanying text.

¹⁴² Article 2 of the 1956 Decree.

¹⁴³ See in particular: Articles 22, 23 and 28 of the 1956 Decree.

¹⁴⁴ Article 25 of the 1956 Decree.

¹⁴⁵ Article 23 of the 1956 Decree contained a list that referred both to sanitary and customs matters but also other reasons, such as loading and unloading of cargo not in the designated areas or 'communicating with the land territory with criminal intent'.

¹⁴⁶ Article 7 of the 1977 Act.

Possibly, it was considered that these (6-miles in breadth) maritime zones were not necessary as Poland established 12 nautical miles territorial sea. Hence, either additional, extending beyond 12 nautical miles, zone was not thought to be required¹⁴⁷ or it was not clear whether it was legally possible to establish such zones beyond 12 nautical miles¹⁴⁸. This latter explanation is somewhat complicated by the approach of Poland with regard to its continental shelf. Namely, 1977 Act on the Continental Shelf¹⁴⁹ (issued on the same day as the Act on the Territorial Sea) stated that the Polish authorities might, on the 'waters of the Polish continental shelf control any ship or other object, when there is a reasonable ground to believe that the provisions of this Act, or laws enacted in accordance with it, are violated'¹⁵⁰. Hence, Poland did believe it does have additional powers in waters over its continental shelf¹⁵¹, although restricted to the protection of sovereign rights it had in relation to its continental shelf. They did not, consequently, extend to sanitary, customs and other matters, the contiguous zone refers to.

2.2.2. Contiguous zone in the current Polish law

In line with the previous section of this paper, since 1977 Poland had not had a contiguous zone. The situation did not change when the 1991 Act was passed. It was only the 2015 Amendment that introduced a new Article 13a which provides that:

'Hereby a zone contiguous to the territorial sea of the Republic of Poland is established; the outer limit of this zone extends not more than 24 nautical miles from the baselines'¹⁵².

Hence, Poland finally exercised its right to establish a contiguous zone¹⁵³. The precise delineation of its outer limit has not been established in the 2015 Amend-

¹⁴⁷ Such an interpretation is provided for by M.H. Koziński, *Polskie przepisy o obszarach morskich a wymagania Konwencji o prawie morza* [Polish Regulations Concerning Marine Areas and the Requirements of the United Nations Convention on the Law of the Sea] [in:] C. Mik, K. Marciniak (eds), *Konwencja NZ o prawie morza z 1982 r. W piętnastą rocznicę wejścia w życie* [UN Convention on the Law of the Sea: In the Fifteenth Anniversary of the Entry into Force], Toruń 2009, p. 145.

¹⁴⁸ As might be recalled, the 1958 TSC did provide for a contiguous zone of 12 nautical miles. As already remarked (*supra*, footnote no 13), though, Poland was not bound by this treaty.

¹⁴⁹ See *supra*, footnote no 65.

¹⁵⁰ Article 7 of the 1977 Act on the Continental Shelf.

¹⁵¹ It might be remarked that Poland did become a Party to the Convention on the Continental Shelf, done in Geneva, 29 April 1958 (UNTS, Vol. 449, p. 311), as of 29 June 1962. Cf. Article 3 of this Geneva Convention.

¹⁵² The Explanatory Memorandum to the 2015 Amendment, p. 4 explains that the establishment of the contiguous zone was in particular prompted by the need to increase the security of the Republic of Poland.

¹⁵³ It might be added that the Polish doctrine of international law has repeatedly formulated the

ment. Similarly, as with respect to the baselines, it is the Council of Ministers that is tasked to issue a regulation setting out precise geographical coordinates of this zone¹⁵⁴. This should take both a textual (i.e. list of geographical coordinates) and graphic form (i.e. there would also be a chart prepared). As already remarked, the Council of Ministers has not yet acted upon this, however, the 2016 draft Regulation is already prepared¹⁵⁵.

The next provision of the 2015 Amendment describes the powers Poland has in its newly created contiguous zone. The text of this provision¹⁵⁶ is almost the same as Article 33 UNCLOS, however some modifications were introduced.

Firstly, with respect to the prevention rights (Article 33 para. 1(a) UNCLOS) it states that Poland may prevent infringement of its regulations relating to customs, fiscal, *illegal* immigration or sanitary matters, within its territory¹⁵⁷. The change from ‘immigration’ in Article 33 UNCLOS to ‘illegal immigration’ in the Polish law, shall be treated rather as spelling out an obvious and inherent in the Convention rule. Not every immigration is illegal and hence Poland will only act in its contiguous zone when illegal immigration is to take place. It could be added, that the textual interpretation of the formulation ‘prevent infringement ... within its territory’, as in the case of UNCLOS, suggests that it refers to ingoing traffic and that the actual infringement was not yet committed but there is a risk it will happen. Hence the need to prevent occurs.

Secondly, Article 13b para. 2 of the 2015 Amendment (implementing Article 33 para. 1(b) UNCLOS) spells out that Poland may ‘pursue, seize and punish’ perpetrators, if they infringe the above mentioned regulations (concerning customs, fiscal, *illegal* immigration or sanitary matters) in two situations. Either when the infringement took place in the territory of Poland, its internal waters or its territorial sea¹⁵⁸ or when the duty to ‘pursue, seize and punish’ perpetrators stems from the EU law or from international agreements Poland is a Party to.

call to do this. See e.g.: J. Symonides, *Konwencja Narodów Zjednoczonych o prawie morza z perspektywy ćwierćwiecza* [The United Nations Convention on the Law of the Sea from a Quarter of Century Perspective] [in:] C. Mik, K. Marciniak (eds), *op. cit.*, pp. 38–39 and literature quoted therein, as well as: M.H. Koziński, *op. cit.*, pp. 145–148.

¹⁵⁴ Article 13a para 2 of the 2015 Amendment.

¹⁵⁵ See *supra*, footnote no 89 and accompanying text. The 2016 draft Regulation and the Minister of Maritime Economy’s Explanatory Memorandum contain regulations and coordinates of both the baselines as well as outer limit of the territorial sea and contiguous zone.

¹⁵⁶ Article 13b of the 2015 Amendment.

¹⁵⁷ Polish law refers to ‘territory’ only, instead of ‘territory or territorial sea’ as in Article 33 UNCLOS. However, it is clear that territory encompasses both land territory, as well as territorial waters.

¹⁵⁸ Hence, in this case it was deemed necessary to clearly spell out all components of the Polish territory, as opposed to the previous provision where reference to ‘Polish territory’ was considered enough.

The first modification, as compared with Article 33 UNCLOS, is rather unproblematic. If, in line with the Convention, a coastal State is entitled to 'punish' the infringements, it is *a fortiori* also entitled to pursue and seize the perpetrators (in order to be able to punish them). Moreover, as formulated in the Polish law, it makes it very clear that the actual crime had to be committed in the territory of Poland (not in the contiguous zone). Thus, the Polish law adopted a 'classical' interpretation of Article 33 para. 1(b) UNCLOS to apply it to outgoing ships and not extending the application of the Polish law (with regard to customs and other regulations) to the contiguous itself¹⁵⁹.

The second modification, relating to the EU law or international agreements, is to some extent more complex. Firstly, it is not entirely clear¹⁶⁰ what parts of the EU law or international agreements could be applicable in this context, especially that two criteria would need to be fulfilled: (a) the duty in question would have to deal with customs, fiscal, illegal immigration or sanitary matters; *and* (b) it would have to contain an obligation for Poland to 'pursue, seize and punish' those who infringe these regulations. These are not normally the types of crimes that are enshrined in the treaties containing *aut dedere aut iudicare* obligations¹⁶¹. In any case, this duty is not restricted to the Polish territory. Hence, it could be construed to mean that when an infringement concerning customs, fiscal, illegal immigration or sanitary matters was committed abroad but Poland, on the basis of the EU law or the binding treaty, had the duty to 'pursue, seize and punish' perpetrators of such crimes, it could do so in its contiguous zone. Notwithstanding the fact that it is a highly theoretical scenario, it seems it is not in conformity with the Convention. Hence, another provision of the 1991 Act could be applicable here. Namely, Article 1 para 2 of the 1991 Act which provides that its provisions do not apply when the international agreement to which Poland is a party states otherwise¹⁶².

In order to make the establishment of the contiguous zone a meaningful change, it was necessary to introduce another set of regulations into the Polish law, in particular to enable the Polish authorities to exercise their new rights in the said zone. With respect to immigration, fiscal and sanitary matters, it is the Polish Border Guard¹⁶³ that is responsible¹⁶⁴. In particular, Article 14 para. 4 of the

¹⁵⁹ This is also clearly articulated in the Explanatory Memorandum to the 2015 Amendment (see *supra*, footnote no 76), p. 4.

¹⁶⁰ The Explanatory Memorandum to the 2015 Amendment does not elaborate on this point.

¹⁶¹ See the work of the ILC on the obligation to extradite or prosecute: http://legal.un.org/ilc/guide/7_6.shtml.

¹⁶² See also *supra*, footnote no 75.

¹⁶³ Established on the basis of Act of 12 October 1990 on the Border Guard (Official Journal of 2014, item 1402 as amended).

¹⁶⁴ See in particular: Article 1 para. 2 (1), (2a), (4, points a–d) and Article 14 of the 1990 Act

1990 Act on the Border Guard specifies that its vessels may (a) order other ship in the Polish contiguous zone to change its course, slow down or stop; (b) they may also seize such a ship, inspect its documents, as well as those of the crew and passengers, as well as inspect the cargo; (c) lastly, they may also order such a ship to call a Polish harbour when its master does not obey the above mentioned orders¹⁶⁵. The Polish Border Guard may undertake such an action in the Polish contiguous zone only when enumerated provisions are breached. They correspond to the scope of application of Article 33 UNCLOS with perhaps two exceptions. Firstly, the rights of the Border Guard also apply to infringements of regulations concerning the transport through the Polish border of ammunition, explosives, drugs and cultural property and national archives¹⁶⁶. Secondly, the rights of the Border Guard do not seem to cover regulations concerning sanitary matters in the contiguous zone. Generally speaking, the Border Guard is entitled to enforce these regulations in the Polish internal waters and the territorial sea, as stipulated in Article 14 para. 2(9) of the 1990 Act on the Border Guard. However, the provision specifying the rights of the Border Guard in the contiguous zone does not cover this situation¹⁶⁷.

It is also important to draw attention to Article 16 of the 1990 Act on the Border Guard that describes the right of hot pursuit. After the entry into force of the 2015 Amendment, it is made clear that this right applies in the Polish contiguous zone. Hence, when there is a reasonable ground to believe that an offence was committed in the Polish internal waters or territorial sea, the pursuit of a foreign ship may be undertaken when the ship is in the Polish internal waters, territorial sea or contiguous zone¹⁶⁸.

Finally, with respect to customs, the powers of the Polish Customs Service¹⁶⁹ were amended. It is now clearly articulated that the vessels of the Customs Service in the contiguous zone may (a) order other ship in the Polish contiguous zone to change its course, slow down or stop; (b) they may also seize such a ship, inspect its documents, as well as those of the crew and passengers, as well as inspect the cargo; (c) lastly, they may also order such a ship to call a Polish harbour when its

on the Border Guard.

¹⁶⁵ Article 14 para. 4 in conjunction with para. 1 of the 1990 Act on the Border Guard.

¹⁶⁶ Article 14 para. 4 in conjunction with Article 1 para. 2(4)(d) of the 1990 Act on the Border Guard.

¹⁶⁷ See: Article 14 para 4 which cross-references only to Article 1 para. 2(4)(a)-(d) of the 1990 Act on the Border Guard.

¹⁶⁸ Article 16 para 1 and 1a of the 1990 Act on the Border Guard. However, this regulation does not seem to restrict the right of hot pursuit in the contiguous zone only to infringements of regulations that are enumerated in Article 33 UNCLOS. *Cf.* Article 111 para 1 *in fine* UNCLOS.

¹⁶⁹ Established on the basis of the Act of 27 August 2009 on the Customs Service (Official Journal of 2009, item 990; consolidated version).

master does not obey the above mentioned orders¹⁷⁰. This right, with respect to the contiguous zone, is restricted only to preventing the infringement¹⁷¹ of customs regulation within the territory of Poland. When the commencement of hot pursuit was needed, the Customs Service would cooperate with the Border Guard¹⁷².

One last issue that needs to be mentioned with respect to the Polish regulation concerning its contiguous zone is the question of objects of an archaeological and historical nature. Undisputedly, this is an important issue for Poland. Although it is very difficult to assess, the number of archaeological objects of prospective interest in the Polish coastal waters was estimated to total even 4.000¹⁷³. Also, the National Maritime Museum in Gdańsk keeps a working register of the Polish underwater cultural heritage which, as of 2006, contained a list of 65 sites¹⁷⁴.

In line with Article 303 para. 2 UNCLOS¹⁷⁵, Poland could envisage some special protection measures in this respect that would also apply in the Polish contiguous zone. Viewed from this perspective, one should have recourse to the following two pieces of the Polish legislation¹⁷⁶. Firstly, Article 35a para. 1 of the 1991 Act states that the exploration of ship-wrecks requires the consent of the Director

¹⁷⁰ Article 47 para. 2 of the 2009 Act on the Customs Service. See also *infra*, Article 36 para. 2(1) when the right to 'control' is described.

¹⁷¹ It needs to be recalled that Article 33 UNCLOS speaks in this context of both preventing the infringements, as well as of punishing them, when committed within the territory of a coastal State. It is assumed here that the discussed provision of the 2009 Act on the Customs Service does not explicitly mention the punishment, as it would fall beyond the scope of competence of the Customs Service to do so. In particular, if the Customs Service is entitled to order the ship to call a Polish harbour, then it logically follows that, depending on circumstances and evidence, it could lead to the subsequent punishment of infringements committed by the ship or its crew.

¹⁷² Article 47 paras 6, 7 and 11 of the 2009 Act on the Customs Service. The details of such a cooperation are to be laid down in a separate Council of Minister's regulation. On such regulation (although formally enacted on the basis of another provision of the 2009 Act on the Border Guard) is in force: Council of Minister's Regulation of 28 October 2010 concerning the means of undertaking selected duties by customs authorities, as well as the methods and scope of cooperation of the Customs Service with the Police and Border Guard (Official Journal of 2010, No 212, item 1386).

¹⁷³ See generally: W. Kowalski, *Chapter 11: Poland* [in:] S. Dromgoole (ed.), *The Protection of the Underwater Cultural Heritage: National Perspectives in Light of the UNESCO Convention 2001*, 2nd Edition, Brill 2006, p. 234.

¹⁷⁴ I. Pomian, *Podwodne dziedzictwo kulturowe Bałtyku: niezagospodarowany potencjał?* [Baltic Underwater Cultural Heritage: Undiscovered Potential?], presentation on file with the author of the present paper. See also a list of wrecks researched by the Museum: <http://www.en.nmm.pl/underwater-archaeology/wrecks-researched-by-nmm>.

¹⁷⁵ See *supra*, footnote no 136 and accompanying text.

¹⁷⁶ More thorough overview, prepared however prior to the 2015 Amendment: W. Kowalski, *op. cit.*, pp. 243 *et seq.*

of the relevant Maritime Office¹⁷⁷. However, the territorial scope of competences of Maritime Offices covers only ‘the territory of the Republic of Poland and the exclusive economic zone unless other provisions specify otherwise.’¹⁷⁸ Hence, on the one hand, it would seem natural to conclude that they do have competence to act in the contiguous zone as well. On the other, however, this newly created zone is not explicitly mentioned. Given the fact that the very reason of the establishment of the contiguous zone is the fact, that the rights of the coastal State in this zone are different from those in the exclusive economic zone (EEZ), it would not be entirely correct to infer from the fact that the territorial scope of competence of Maritime Offices covers EEZ, in order to claim that henceforth it does apply in the contiguous zone as well. It would seem reasonable to rectify this situation.

Secondly, one should draw attention to the 2003 Act on the protection of historical objects¹⁷⁹. This is the first piece of Polish legislation that explicitly lists underwater objects as part of archaeological heritage¹⁸⁰. It states, among others, that an archaeological object is ‘an underwater remnant of human existence or activity’¹⁸¹. One form of the protection and care of such object is the need to take them into account while preparing spatial plans, including the maritime spatial plans ‘in the internal waters, territorial sea and the exclusive economic zone’¹⁸². Again, underwater archaeological objects found in the contiguous zone will have to be included in the planning activities, as they necessarily are located at the same time in the Polish EEZ. Hence, in this case the fact that contiguous zone is not directly mentioned in the 2003 Act should not pose any problems. Finally, it shall

¹⁷⁷ See *supra*, footnote no 87.

¹⁷⁸ Article 44 para. 1 of the 1991 Act. Article 44 para. 2 stipulates that they may also exercise duties in the high seas, if they are enshrined in international agreements or Polish law. The division of territorial competence between the three Maritime Offices was enacted through the Minister of Transport and Maritime Economy’s Regulation of 7 October 1991 on the establishment of Maritime Offices, their seats, as well as scope of activities of Maritime Offices’ directors (Official Journal of 1991, No 98, item 438). It clarifies that the Offices act with respect to the internal waters, territorial sea, as well as the exclusive economic zone of Poland.

¹⁷⁹ Act of 23 July 2003 on the protection and care of historical objects (Official Journal of 2003, No 162, item 1568 as amended).

¹⁸⁰ In particular, the Act of 15 February 1962 on the protection of cultural property (Official Journal of 1962, No 10, item 48 as amended) did not refer to underwater objects. The Act of 2003 repealed the Act of 1962. It shall be recalled that the Article 1 para. 2(4)(d) of the 1990 Act on the Border Guard (by reference to which the competences of the Border Guard in the contiguous zone are defined) refers to, *inter alia*, law concerning the protection of cultural objects. This should be read to mean, in particular, the Act of 2003.

¹⁸¹ Article 3 para. 4 of the 2003 Act on the protection and care of historical objects. It might be noted in passing that such objects, when discovered in an accidental manner or as a result of archaeological explorations, will constitute the property of the Polish State. *Infra*, Article 35.

¹⁸² Article 18 para. 1 of the 2003 Act on the protection and care of historical objects.

be emphasised that, in line with the 2003 Act, the Directors of Maritime Offices are responsible for keeping the registry of historical objects that are located in 'the Polish maritime areas'¹⁸³. This phrase has to be interpreted by reference to the 1991 Act which, after the entry into force of the 2015 Amendment, defines 'the Polish maritime areas' as including the internal waters, territorial sea, contiguous zone, EEZ and the continental shelf of Poland. Hence, curiously enough, the 1991 Act, while describing the competences of the Maritime Offices, does not use the phrase 'the Polish maritime areas' but enumerates these areas (and fails to mention the contiguous zone). However, the 2003 Act, does use this broader phrase and, thus, undoubtedly the duties enshrined therein relate to the contiguous zone as well. Lastly, it could be recalled that these provisions accrue even more importance when recalling that Poland, as of yet, has not become a Party to the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage¹⁸⁴.

CONCLUSIONS

First and foremost it is to be assessed positively that Poland established precise baselines, as well as its contiguous zone. Geographical coordinates of baselines will allow for a very detailed delineation of various maritime zones. This, in turn, especially in view of the increased environmental and economic pressure on maritime spaces, will allow for better planning and coordination of the activities by various actors. Indirectly, it may also be of benefit for seafarers and the safety of navigation. Hopefully, the sea-level rise and other phenomena will not require the modification of the Polish baselines in the near future, however, it is advantageous that the Council of Ministers will have a standing power act in this respect. Overall, it is anticipated that the 2016 draft 'Regulation of the Council of Ministers on the baselines, external boundary of the Polish territorial sea and the contiguous zone of the Republic of Poland' will soon cease to be a 'draft' only, thus, completing this important step for defining the Polish maritime zones. The last issue that will remain to be done, from the standpoint of UNCLOS at least, is taking a decision on the Polish 'deposit' and 'due publicity' obligations, in line with Article 16 UNCLOS.

With regard to the establishment of the contiguous zone, it should be noted that this development not only marks the return of Poland to actually having such a maritime zone, but also answers the call from many Polish academics

¹⁸³ Article 22 para. 6 of the 2003 Act on the protection and care of historical objects.

¹⁸⁴ Convention on the Protection of Underwater Cultural Heritage, done in Paris on 2 November 2001 (UNTS, Vol. 2562).

and practitioners dealing with the law of the sea and maritime affairs. Altogether, the regulations concerning the contiguous zone are in line with UNCLOS. Some further attention is needed, though, with respect to defining precisely the competences of the Polish Border Guard (in particular: sanitary matters, types of laws and regulations that trigger the competences of the Border Guard in the contiguous zone, and the question of when and under what conditions the hot pursuit may be commenced), as well as the protection of archaeological objects, in line with Article 303 para. 2 UNCLOS.

Lastly, both developments in the Polish law could be viewed from the overall increasing tendency of the coastal States in the world to apply the competences under UNCLOS in full.