

# The Estonian Straits

*Exceptions to the Strait Regime of Innocent  
or Transit Passage*

By

Alexander Lott



BRILL  
NIJHOFF

LEIDEN | BOSTON

## Library of Congress Cataloging-in-Publication Data

Names: Lott, Alexander, author.

Title: The Estonian Straits: Exceptions to the Strait Regime of Innocent or Transit Passage / by Alexander Lott.

Description: Leiden; Boston : Koninklijke Brill NV, 2018. | Series: International Straits of the World; Volume 17 | Based on author's thesis (doctoral - Tartu Ülikool, 2017) issued under title: The Estonian Straits: Exceptions to the Strait Regime of Innocent or Transit Passage. | Includes bibliographical references and index.

Identifiers: LCCN 2018001850 (print) | LCCN 2018002078 (ebook) | ISBN 9789004365049 (e-book) | ISBN 9789004363861 (hardback : alk. paper)

Subjects: LCSH: Straits--Baltic Sea . | Straits--Finland, Gulf of. | Straits--Riga, Gulf of (Latvia and Estonia). | Straits--Estonia. | Straits. | Innocent passage (Law of the sea) | Finland, Gulf of--International status. | Riga, Gulf of (Latvia and Estonia)--International status.

Classification: LCC KZ3810 (ebook) | LCC KZ3810 .L68 2018 (print) | DDC 341.4/48--dc23

LC record available at <https://lcn.loc.gov/2018001850>

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: [brill.com/brill-typeface](http://brill.com/brill-typeface).

ISSN 0924-4867

ISBN 978-90-04-36386-1 (hardback)

ISBN 978-90-04-36504-9 (e-book)

Copyright 2018 by Koninklijke Brill NV, Leiden, The Netherlands.

Koninklijke Brill NV incorporates the imprints Brill, Brill Hes & De Graaf, Brill Nijhoff, Brill Rodopi, Brill Sense and Hotei Publishing.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher.

Authorization to photocopy items for internal or personal use is granted by Koninklijke Brill NV provided that the appropriate fees are paid directly to The Copyright Clearance Center, 222 Rosewood Drive, Suite 910, Danvers, MA 01923, USA. Fees are subject to change.

This book is printed on acid-free paper and produced in a sustainable manner.

sea), whereas Estonia rejected this proposition in the Estonian-Latvian Border Commission in 1922.<sup>534</sup>

Since the restoration of independence of Estonia and Latvia in 1991, the coasts of the Gulf of Riga belong to two States. Thus, the Gulf no longer meets the terms of Article 10 of the LOSC on bays. Yet in the first half of the 1990s Latvia regarded the Gulf of Riga as a historic bay.<sup>535</sup> Latvia's interpretation of the Gulf of Riga as a historic bay was apparently founded on the ICJ's judgment in the Gulf of Fonseca case, in which a Chamber of the Court found in the context of the concepts of joint sovereignty and historic bay that:

A State succession is one of the ways in which territorial sovereignty passes from one State to another; and there seems no reason in principle why a succession should not create a joint sovereignty where a single and undivided maritime area passes to two or more new States.<sup>536</sup>

On the basis of the *uti possidetis juris* principle,<sup>537</sup> as recognised by the Court in 1986,<sup>538</sup> the ICJ decided that the waters of the Gulf of Fonseca are held in a joint sovereignty of its three coastal States ("threefold joint sovereignty"), excluding the 3-nm-wide belt of internal waters of the coastal States, over which each coastal State exercised its exclusive sovereignty.<sup>539</sup>

Analogously, it follows that the principle of State succession as applied in the *Gulf of Fonseca* case could have entitled Estonia and Latvia to declare the Gulf of Riga a historic bay upon their restoration of independence. On the other hand, the classification of the Gulf of Riga as a historic bay on the basis of the Soviet Union's prior practice and legal framework would have been in contravention with the doctrine of State continuity as adopted by Estonia and

534 Eesti-Läti piirikomisjoni tegewuse tagajärjed. Postimees, 01.04.1922.

535 Stenographic record of the First Reading of the 1996 Maritime Boundary Treaty in the Estonian Parliament, *op. cit.* See also Franckx 2002. Report No. 10–15, *op. cit.*, p. 3000.

536 *El Salvador v. Honduras*, *op. cit.*, para 399. See also Lapidoth-Eschelbacher, *op. cit.*, p. 113. A similar conclusion had been reached in the study on historic bays as published by the United Nations Secretariat in 1962. See the United Nations Secretariat 1962, *op. cit.*, p. 21.

537 See generally Opinion no. 2, The Arbitration Commission of the Conference on Yugoslavia, 11.01.1992 (referred: A. Pellet. The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples. – *European Journal of International Law* 1992(3), p. 184). See also J. Mayall. Nationalism, Self-determination, and the Doctrine of Territorial Unity. – M. Weller, B. Metzger (eds). *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice*. Leiden, Boston: Martinus Nijhoff 2008, pp. 9–10.

538 *Burkina Faso v. Republic of Mali*, *op. cit.*, para 20.

539 *El Salvador v. Honduras*, *op. cit.*, para 418.

Latvia. Estonia had declared on 8 October 1991 that it did not consider itself as a successor State to the Soviet Union.<sup>540</sup> By recognising the Gulf of Riga as a historic bay, Estonia and Latvia could have indirectly declared themselves as successor States to the Soviet Union – not as continuators of the pre-1940 Estonian and Latvian republics.<sup>541</sup> While Estonia, in principle, had not been against the legal concept of historic bay (and had even recognised it during the 1930 Hague Codification Conference)<sup>542</sup> it rejected Latvia's proposal to declare the Gulf of Riga a historic bay primarily on the grounds of State continuity with pre-1940 independent Estonia.<sup>543</sup>

At the same time, Estonia also acknowledged the negative effect that joint sovereignty over the Gulf of Riga would have on its fishing industry.<sup>544</sup> Prior to the interruption of Estonia's and Latvia's independence in 1940, the Gulf of Riga fell primarily under the regime of the high seas and, during Soviet rule, under the regime of the internal waters of the Soviet Union. Estonian and Latvian fishermen were able thus to catch fish in the entire maritime area of the Gulf of Riga. This favoured Latvian fishermen who carried out approximately two-thirds of the combined fishing effort in the Gulf of Riga prior to the restoration of Estonia's and Latvia's independence.<sup>545</sup>

The Estonian foreign minister explained in Parliament that upon the establishment of a regime of joint sovereignty over the Gulf of Riga, Latvian fishing vessels would catch fish under their domestic legal framework that provides lesser protection for the fish stocks in maritime areas that reach even close to the Abruksa archipelago.<sup>546</sup> This, he remarked, could have caused irreversible damage to *inter alia* the spawning grounds around Ruhnu Island.<sup>547</sup>

It is also unclear whether the Gulf of Riga is situated wholly in the immediate vicinity of Estonian and Latvian coasts, which is a prerequisite for the application of the joint sovereignty of its coastal States. Distinct from the Gulf of Fonseca, which was recognised by the ICJ as a historic bay, the Gulf of Riga also includes extensive maritime areas that reach further than 12 nm to the sea

---

540 Oude Elferink. Estonia: Law on the Boundaries of the Maritime Tract, *op. cit.*, p. 238.

541 See on the *uti possidetis* principle in the context of the restitution of independence of the Baltic States in Mälksoo 2003, *op. cit.*, p. 249.

542 Taska 1977, *op. cit.*, p. 97.

543 See also Lindpere 2003, *op. cit.*, p. 40.

544 Stenographic record of the First Reading of the 1996 Maritime Boundary Treaty in the Estonian Parliament, *op. cit.*

545 Franckx 2002. Report No. 10–15, *op. cit.*, p. 3002.

546 Stenographic record of the First Reading of the 1996 Maritime Boundary Treaty in the Estonian Parliament, *op. cit.*

547 Ibid.

as measured from the baselines.<sup>548</sup> On the other hand, there are also examples of historic bays which cover more extensive maritime areas than the Gulf of Riga (e.g. Hudson Bay).

In its 1994 Maritime Code,<sup>549</sup> Latvia declared the Gulf of Riga as enclosed joint internal waters of Estonia and Latvia in which their ships enjoy free navigation.<sup>550</sup> Estonia did not approve this and sought to divide the maritime area of the Gulf of Riga between the two coastal States. Estonia had established its straight baselines in the Gulf of Riga under the 1993 Maritime Boundaries Act. Estonia thus vetoed Latvia's endeavours, since the preservation of the legal status of a historic bay necessitates that in the case of the disintegration of the bay's coastal State (in this case the Soviet Union), each of the new coastal States needs to recognise the continuous historical status of the bay.<sup>551</sup>

In light of Estonia's rejection of the concept of the Gulf of Riga as a historic bay and the delimitation of the maritime boundary in the Gulf of Riga,

---

548 See *supra* Section 6 of Chapter 3 in Part 2.

549 Cabinet of Ministers Regulations no. 168 on Latvian Maritime Regulations (Maritime Code). Adopted 16.08.1994, e.i.f. 11.09.1994. Accessible in Latvian at: <https://www.vestnesis.lv/ta/id/57653> (30.11.2017). The Maritime Code was adopted under Article 81 of the Latvian Constitution, according to which between the Parliament's sessions, the Cabinet of Ministers has the right, if urgently needed, to issue regulations that have the force and effect of law. Article 83(7) of the Saeima Rules of Procedure stipulated that if the Parliament decides to task its committees with examining regulations issued by the Cabinet of Ministers in line with Article 81 of the Latvian Constitution, then these regulations should be considered as draft laws and adopted in the first reading as of the moment the Parliament decides to task its committees with examining them. See Saeima Rules of Procedure. Adopted 28.07.1994, e.i.f. 01.09.1994. Accessible: <http://www.saeima.lv/en/legislation/rules-of-procedure> (30.11.2017). The Cabinet of Ministers submitted the Maritime Code to the Parliament on 22 September 1994. On 13 October 1994, the Code was forwarded to committees and was thus adopted in the first reading. The Draft Law on the Maritime Code was adopted in the first reading on 13 October 1994. Based on these regulations, it was not necessary to adopt the Maritime Code in the final reading of the Parliament. Information kindly obtained from Ms Ieva Šķendere, the Latvian Parliament on 27.11.2017. Reportedly, the Maritime Code was Latvia's lengthiest legal act (consisted of 482 Articles) and its drafters included representatives of the International Maritime Organization's Maritime Law Institute, Latvian Shipping Company and Latvia's Ministry of Transport. See the minutes of the first reading of the draft Maritime Code in the Latvian Parliament. The stenographic record of the V Saeima, 13.10.1994. Accessible in Latvian at: [http://www.saeima.lv/steno/st\\_94/st1310.html](http://www.saeima.lv/steno/st_94/st1310.html) (30.11.2017).

550 Stenographic record of the Second Reading of the 1996 Maritime Boundary Treaty in the Estonian Parliament, *op. cit.*

551 *El Salvador v. Honduras, op. cit.*, para 394. See also United Nations Secretariat 1962, *op. cit.*, p. 21.