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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**BEATING THE DEADLINE:
Archipelagic State Compliance under UNCLOS Article 47**

by

FEDELYN AGUA SANTOS
Republic of the Philippines

A dissertation submitted to the World Maritime University in partial
fulfillment of the requirements for the award of the degree of

MASTER OF SCIENCE
in
MARITIME AFFAIRS
(MARITIME LAW AND POLICY)

2008

DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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To God alone be the glory and honor!

ABSTRACT

Title of Dissertation: **BEATING THE DEADLINE: Archipelagic State Compliance under UNCLOS Article 47**

Degree: **MSc**

This dissertation studies the archipelagic States' efforts to comply with the submissions required in the United Nations Convention on the Law of Sea particularly the two foremost proponents for the archipelagic principle on or before the 13 May 2009 deadline set by the Commission on the Limits of the Continental Shelf as well as analysing the significance of boundary delimitation for archipelagic States.

The examination made in this dissertation deals with the earliest struggles of both the Philippines and Indonesia that revolved around their labours to convince the international community to recognize the principle on archipelagos subsisting as a single unit whether politically or geographically; and that an archipelagic State as a unit includes both the land and the waters surrounding, between and connecting the different islands. This covers acts performed by both States internationally in order to get other countries to recognize the unique make up of archipelagos as well as the endeavours they undertook during UNCLOS I and UNCLOS II. Since UNCLOS I, either States attempted to get the matter tabled for discussion and even submitted proposal for articles to be incorporated in the ongoing codification of the Law of the Sea. However, this ended without the issue concerning archipelagos being tabled for discussion because the submitted proposals were withdrawn for being too complicated. This situation was repeated in UNCLOS II. However, the proponents did not limit their moves only in the international arena but have already started acting locally in their respective States some of which even predates the law of the sea conferences. These matters are discussed in the first chapters of this study.

Chapter Four deals specifically with the significance of boundary delimitation vis-à-vis the archipelagic States including its implications to present issues of economy, security and global warming. This Chapter tries to examine the implications of compliance and that of non-compliance to a State with the prevailing issues mentioned in the preceding sentence.

The last two chapters deal with the present status relating to compliance of the two leading proponent States on the archipelagic principle and their individual efforts and contribution to the adoption of the principle until the present with the deadline just around the corner.

KEYWORDS : Archipelago, Archipelagic States, Archipelagic Baselines, Baselines, Boundary Delimitation, UNCLOS

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LIST OF ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
BCN	Biological, chemical and nuclear weapons
CLCS	Commission on the Limits of the Continental Shelf (UN)
DOALOS	Division for Ocean Affairs and the Law of the Sea
EEZ	Exclusive economic zone
HB	House bill
ICJ	International Court of Justice
ILC	International Law Commission
KIG	Kalayaan Island Group
SPLOS/73	State Parties to the United Nations Convention on the Law of the Sea – Report of the 11 th meeting of States Parties
SPLOS/73/Corr.1	State Parties to the United Nations Convention on the Law of the Sea – Report of the 11 th meeting of States Parties: Corrigendum
SPLOS/183	State Parties to the United Nations Convention on the Law of the Sea – Report of the 18 th meeting of States Parties
UN	United Nations
UNCLOS I	The First United Nations Conference on the Law of the Sea, 1958, Geneva
UNCLOS II	The Second United Nations Conference on the Law of the Sea, 1960, Geneva
UNCLOS III	The Third United Nations Conference on the Law of the Sea, 1973-1982
UNCLOS	United Nations Convention on the Law of the Sea, 1982
US	United States of America

CHAPTER 1

INTRODUCTION

“The oceans had long been subject to the freedom-of-the-seas doctrine - a principle put forth in the seventeenth century essentially limiting national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline. The remainder of the seas was proclaimed to be free to all and belonging to none.”¹ “Prior to the mid-20th century coastal states rarely claimed more than three nautical miles from the coast”², this was then aptly called the “cannon shot rule” because the three nautical miles was said to be the range of a cannon during those times³. Hence, baselines then were looked upon as a means of affording security and defence to the coastal State, more militaristic and political than economical. Since then, there has been a tremendous increase in the maritime space coming under the jurisdiction of coastal states.⁴ Different maritime zones were being introduced one by one and eventually included in conventions. These changes occurred more so after the Second World War because everyone was traumatized by their own propensity to destroy their fellow that States started looking for peaceful ways to mark territories especially because there was a steady increase in the number of newer States who have just gained independence from their colonizers. The State practice was changing concerning the breadth of the territorial sea that by 1958, “21 nations claimed a 3-mile territorial sea, 17 claimed 4 to 6 miles, 13 claimed 7 to 12 miles,

¹ The United Nations Convention on the Law of the Sea: A historical perspective, http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm (retrieved 19 July 2008).

² Victor Prescott and Clive Schofield, *The Maritime Political Boundaries of the World*, 2nd Edition, Leiden: Koninklijke Brill NV, 2005 at p.9.

³ Douglas M. Johnston, *The theory and history of ocean boundary-making*. Canada: McGill-Queen's University Press, 1988 at pp. 79-80.

⁴Supra footnote 2.

and 9 nations claimed the sea above the continental shelf for varying distances”.⁵ These claims clearly poses a problem with the potential of leading to yet another world war that most believe it imperative to bring all these claims into one harmonized process. Thus the United Nations directed the newly created International Law Commission to take into consideration the codification of the law of the sea.

“The United Nations Conference on the Law of the Sea first met at Geneva from 24 February to 27 April 1958. Of the eighty-six States represented there, seventy-nine were Members of the United Nations and seven were members of specialized agencies though not of the United Nations.”⁶ It was in this first Conference for the codification of the law of the sea that the subject on archipelagos together with its definition and other circumstances was proposed by two Southeast Asian States. “Although it was after the 1951 Judgement of the International Court of Justice (Anglo-Norwegian Fisheries Case) that Indonesia and the Philippines began to pursue actively their causes for the legal sanction of their archipelagic claims.”⁷ This was evident by the *note verbale* that the Philippine Government sent to the Secretary General of the United Nations in 1955⁸ and Indonesia’s petition in 1957. Even so, at the end of UNCLOS I no resolution was reached nor was the archipelago issue discussed thoroughly because the Conference had difficulty with the discussion on the breadth of territorial sea.⁹ Due to the many unresolved issues left at the wake of the 1958 Conference, it was therefore natural that another conference was necessary. Hence the Second Conference of the Law of the Sea was convened in 1960 in Geneva. Unfortunately, the subject on mid-ocean archipelagos

⁵ S. P. Jagota, *Maritime Boundaries*, Vol. 9, 1985 at p.20 and see also its footnote 51.

⁶ Law of the Sea: Regime of the Territorial Sea, International Law Commission, http://untreaty.un.org/ilc/summaries/8_2.htm (retrieved 19 July 2008).

⁷ Kriangsak Kittichaisaree, *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia*, New York: Oxford University Press, 1987 at p. 152.

⁸ Ibid p.153.

⁹ Ram Prakash Anand, *International Law and the Developing Countries: Confrontation or Cooperation*, Boston: Martinus Nijhoff Publishers, 1987 at p. 206.

only incidentally arose thereto in relation to historic waters.¹⁰ The primary concerns of UNCLOS II were “(a) the breadth of the territorial sea bordering each coastal state, and (b) the establishment of fishing zones by coastal states in the high seas contiguous to, but beyond the outer limit of the territorial seas of the coastal states.”¹¹ All the same, the issue on the status of archipelagic States was still broached during the Conference.

Nevertheless, UNCLOS I and UNCLOS II left open this question, being preoccupied with solving what seemed insurmountable technical issues of the juridical nature of historic waters and the maximum breadth of the territorial sea.¹² In the meantime, the Philippines and Indonesia arduously continued to press their case before the international community right up to and during UNCLOS III.¹³

On 1 November 1967, Malta's Ambassador to the United Nations, Arvid Pardo, asked the nations of the world to look around them and open their eyes to a looming conflict that could devastate the oceans, the lifeline of man's very survival.¹⁴ He spoke of the Super-Power rivalry that was spreading to the oceans, of the pollution that was poisoning the seas, *of the conflicting legal claims* and their implications for a stable order and of the rich potential that lay on the seabed.¹⁵ For this reason, perceiving that a law of the sea is really imperative, the Third United Nations Conference on the Law of the Sea convened in 1973. The issue on the archipelagic States and their proposal of an altogether different regime was still actively pursued by the proponents even until UNCLOS III. During the plenary session of the Conference in Caracas in 1974, many developing nations lent their support to the archipelagic cause.¹⁶ This growing support that was not

¹⁰ Muhammad Munawwar, *Ocean States: Archipelagic Regimes in the Law of the Sea*, London: Martinus Nijhoff Publishers, 1995 at p.93.

¹¹ A.H. Dean, *The Second Geneva Conference on the Law of the Sea: The Fight for the Freedom of the Seas*, 54 *American Journal of International Law*, 1960 at p.752.

¹² Kittichaisaree, *supra* footnote 7 at p. 146.

¹³ *Ibid.*, p.153.

¹⁴ The United Nations Convention on the Law of the Sea, *supra* footnote 1.

¹⁵ *Ibid.*

¹⁶ Munawwar, *supra* footnote 10.

yet evident during UNCLOS I and II rose in number not only because of the support from Southeast Asian States but also due to more new States that had just gained independence and were trying to define their status in the international community. Some of the notable additional support came from the Pacific Island States. This propelled the archipelagic principle into the forefront until it was eventually made part of the now existing United Nations Convention on the Law of the Sea of 1982 (UNCLOS).

The United Nations Convention on the Law of the Sea of 1982 established a number of maritime zones, each of which varies in degree of exclusivity of rights and control afforded to a coastal State: internal waters, archipelagic waters, territorial sea, contiguous zone, exclusive economic zone (EEZ) and continental shelf.¹⁷ The generation of different maritime zones is dependent on the establishment by State parties of baselines from which such zones are to be drawn. Upon the entry into force of UNCLOS on 16 November 1994, State Parties had until 2004 to comply with the delineation of their territories as well as the different zone regimes that they choose to apply. The basic process for the Party States was the delineation of their baselines. It is from the baselines that States can proceed to designate a maximum of 12 nautical miles as territorial sea, 24 nautical miles of contiguous zone and 200 nautical miles for its exclusive economic zone. All such measurements are measured from the baselines and not the preceding zones. Normally, the choice includes among others, normal and straight baselines from which States can choose on the kind of baselines that it deems fit and best represents its interests and its geographical formation that will help it to establish the other zone regimes which have profound implications on varied aspects. As for States claiming archipelagic status, UNCLOS III has provisions on archipelagic baselines which for some States most especially developing island-group States are viewed as a victory over the more developed traditional maritime countries.

As succinctly stated by Prescott,

¹⁷Prescott et al., supra see footnote 2.

The rights coastal states have in certain maritime zones, notably internal waters, the territorial sea and contiguous zone, afford them security in the face of threats such as smuggling, illegal immigration, other forms of cross-border crime and, lately and ultimately, from the threat of terrorism and the use of military force.¹⁸

This is why archipelagic States were anxious that they be treated accordingly in the provisions of the UNCLOS. Coupled with the use of the different maritime zones as security buffers externally, these same zones or more specifically the baselines serve as a unifying element to States that are divided by seas. The national maritime zones outlined in the UN Convention also offer profound benefits to coastal states in respect of resources, both living resources such as fisheries and non-living resources such as oil and gas.¹⁹

Since on land resources have almost reached zenith through the continued increase of the human population, attention now has been given to the only other existing source that is in fact wider than the total land mass, the seas. The creation of the different maritime zones actually seeks among others to also introduce equitability in the exploitation and control of the seas among all States regardless of size or wealth. Furthermore, the rights and responsibilities relating to national maritime zones as laid down in the 1982 Convention provide coastal states with opportunities and obligations in the sphere of ocean management made much more relevant with the present issue on pollution and climate change.²⁰ This includes, but is not limited to, navigation, fisheries protection, conservation of living resources, pollution control, search and rescue and marine scientific research.²¹

¹⁸ Ibid.

¹⁹ Ibid

²⁰ Ibid., p.10.

²¹ Ibid.

1.1 Objectives and Significance of the Study

UNCLOS was finally adopted in 1982 after the longest international legislative drafting exercise in the whole of history. With its entry into force on 16 November 1994, a year after Guyana, the sixtieth State signed the Convention, State Parties were given a period of ten years to comply with the delineation process. Under Article 4 of Annex II of UNCLOS the deadline for the compliance of State Parties to the Convention is within 10 years of the entry into force for that State.²² However, several States have found it difficult to comply within the period provided that several requested the Commission on the Limits of the Continental Shelf about the matter. There were the *notes verbales* from the Government of Seychelles addressed to the Secretary-General requesting for an extension of the deadline.²³ In addition, a position paper was submitted by the Pacific Islands Forum composed of Australia, Fiji, Marshall Islands, Federated States of Micronesia, Nauru, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu. The position paper was requesting extension of time, an agreement between State Parties that the 10 year period will not begin to run until date of adoption of the Commission's Guidelines and, time should extend beyond 10 years if a State Party is unable to comply in good faith with the time limitation for technical reasons including lack of technical capacity.²⁴ These motions made by different State Parties prompted the Commission to review Article 4 of Annex II and its provision for a 10 year period of compliance. In such review and considering the proposals put forth by those seeking extension, the Commission found reasonable grounds for the State Parties contentions. The

²² SPLOS/73, *Report of the Eleventh Meeting of State Parties*, New York 14-18 May 2001, http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm (retrieved 17 July 2008).

²³ SPLOS/66, *Notes verbales from the Government of Seychelles regarding the extension of the time period for submission to the Commission on the Limits of the Continental Shelf, Eleventh Meeting*, New York, 14-18 May 2001, http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm (retrieved 17 July 2008).

²⁴ SPLOS/67, *Position paper on the time frame for submissions to the Commission on the Limits of the Continental Shelf*, New York, 14-18 May 2001, http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm (retrieved 17 July 2008).

main issue recognized by the Commission is the appropriate starting date for the reckoning of the 10 year compliance period. In this respect one of the factors taken into consideration was the fact that the election of the Commission took place in May 1997, which is in fact three years after the entry into force of the Convention. Subsequently, the Commission adopted the Technical and Scientific Guidelines only on 13 May 1999, two years after the election of the Commission, almost five years after the entry into force of the Convention. It was only after the adoption of the Technical and Scientific Guidelines that State Parties were given a clear idea on how to prepare their submissions.²⁵ After a thorough analysis of the situation and the import of the dates that members were elected and guidelines adopted, an agreement was reached as to the date of reckoning of the 10 year period. As has been decided through a general agreement, for a State for which the Convention entered into force before 13 May 1999, the date of commencement of the 10-year time period for making submissions to the Commission was May 13, 1999, which is the date of publication of the Scientific and Technical Guidelines of the CLCS. This therefore gives a deadline of May 13, 2009 for States Parties that have ratified the Convention before May 13, 1999.²⁶ With the deadline just around the corner, most States have already complied and submitted their boundaries to the United Nations. However, there are still some that are still in the process of complying with the requirements. Hence, this study seeks to analyse and examine this aspect.

Specifically, the following objects are expected to be achieved:

1. To assess the efforts of archipelagic states that have complied with the provisions of UNCLOS on the delimitation of baselines;
2. To examine the processes undertaken by the compliant archipelagic states in their compliance with the UNCLOS provisions;

²⁵ SPLOS/73, *Report of the Eleventh Meeting of State Parties*, New York 14-18 May 2001, http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm (retrieved 17 July 2008).

²⁶Table of Claims to Maritime Jurisdiction http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf (retrieved 18 February 2008).

3. To evaluate the economic as well as the sovereignty implications of the compliance to the UNCLOS provisions;
4. To analyze the economic and political repercussions of failure to comply with UNCLOS; and
5. To propose measures and procedures for non-compliant states in complying with the UNCLOS.

1.2 Scope and Limitation of the Study

The deadline for compliance to the delineation of baselines as well as that of the different maritime zone by State Parties to the UNCLOS is on May 2009. There are still several State Parties that have yet to submit these requirements to the Secretary General of the United Nations.²⁷ More so, it is interesting to see the progress specifically of the archipelagic States considering that theirs is a unique and different kind of regime that took a long fight to be recognized. In this regard, this dissertation seeks to assess the ongoing efforts, if any, by a non-compliant State party.

The forerunners of the archipelagic principle as well as for the archipelagic baselines are Indonesia and the Philippines both of which are States in the Southeast Asian region. These two States were the very first to come up with their own local legislation setting up their archipelagic baselines even before the adoption of UNCLOS in 1982. While Indonesia is the largest archipelagic State with 17,508²⁸ islands and the Philippines is the second largest with an aggregate group of 7,107²⁹ islands. These two are not only the forerunners in the proposal of the inclusion of archipelago and its unique configuration into the UNCLOS but both States were

²⁷ Oceans and the Law of the Sea: Division for Ocean Affairs and the Law of the Sea http://www.un.org/Depts/los/doalos_activities/about_doalos.htm (retrieved 02 July 2008).

²⁸ Consulate General of the Republic of Indonesia, Los Angeles <http://kjri-la.net/content/blogsection/7/29/> (retrieved 29 June 2008).

²⁹ The Official Website of the Republic of the Philippines. <http://www.gov.ph/aboutphil/> (retrieved 28 July 2008).

among the first to adopt and ratify the Convention. However, what has happened to these two States and have they complied with the provisions in UNCLOS, are the questions that ultimately this dissertation is driving at. Having been the forerunners to the archipelagic principle, the question may be asked whether these States have been able to comply or whether they have, for some reason, lagged behind.

Studying the efforts taken by all States claiming archipelagic status is an enormous task that will take more time than is allotted. For simplicity purposes, it is easier to take just two States representative of a compliant and a non-compliant State. These categories are best filled by Indonesia and the Philippines, the two forerunners and fervent proponents of the archipelagic principle.

1.3 Methods and Areas Covered

To achieve the objectives of this study, the methodology applied in this research is the qualitative approach. Literature reviewed was academic books, journal articles, dissertations, theses, research papers or reports.

Other sources such as newspaper articles, articles and texts from internet websites, and online libraries were also utilized. Organizational documents particularly of the Philippines and Indonesia were sourced to describe the methods and procedures of making submission with the CLCS.

Regular electronic communication and consultation was also made with the Division of Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs of the United Nations.

CHAPTER 2

CONCEPT OF BASELINE DELIMITATION AND THE ARCHIPELAGIC STATES

2.1 Evolution of the Archipelagic Regime in International Law

Prior to the United Nations Convention on the Law of the Sea, there was no recognition of the special characteristics and consequently the particular legal rights and obligations of archipelagic States.³⁰ As can be gleaned from historical writings about the growth of the Law of the Sea in to a single codified instrument, the whole process actually spanned the length of twenty four (24) years. This period includes the First and Second Conferences or UNCLOS I and II. There have been so many contentious issues as well as States conflicting claims and interest for which it took time for everyone to at least find some middle ground or compromise that more or less satisfies all parties involved. The special issue of archipelagos has much more suffered not only rejection from the traditional maritime States but also the lack of interest given by most delegates to the matter except perhaps only its two major proponents during UNCLOS I and UNLOS II.³¹ The principal opposition at UNCLOS I to a special regime for archipelagos came from the major maritime states.³² They feared that such a regime would result in areas which had previously been high seas or territorial seas becoming internal waters, with the consequent loss of navigational rights for both their naval and commercial vessels, especially in the case of archipelagos such as the Bahamas, Fiji, Indonesia and the Philippines, which straddle important shipping routes.³³ State practice with regard to the establishment

³⁰ Natasha Turnquest, *Delimitation of the Maritime Boundary Between the Commonwealth of the Bahamas and the United States of America: A Case Study*, pp.8-10.

³¹ Academie De Droit International de la Haye, *Rescueil Des Cours: Collected Courses of the Hague Academy of International Law*, France: Martinus Nijhoff Publishers, 2002 at p.309.

³² R. R. Churchill and A. V. Lowe, *The Law of the Sea*, 3rd Edition, Manchester: Manchester University Press, 1999 at p. 119.

³³ *Ibid.*

of straight baselines around archipelagic nations was not considered to be part of customary international law prior to UNCLOS.³⁴ Until UNCLOS III these maritime States consistently took the view that the normal regime of islands should apply to mid-ocean archipelagos, thus leaving territorial sea or high-seas routes between most islands.³⁵ Such protests reflected a conflict between competing interests; archipelagic States, on the one hand trying to maximize their jurisdiction of maritime space that traditionally had been seen as part of the high seas, and the interests of developed countries, on the other hand, who wanted to ensure freedom of navigation for military and commercial purposes.³⁶ As evinced by records of the first two Conferences, the traditional maritime States have been successful in their bid to oppose the consideration of the archipelagic principle. In UNCLOS I and UNCLOS II, the principle of archipelago was not even a topic on the table for discussion³⁷ but was only mentioned incidentally in the discussion on traditional waters.³⁸ The main issue is that there were only two States actively campaigning in favor of it while those in opposition were the traditional maritime States who were not only developed States but also powerful ones. These situations though have changed in the UNCLOS III where there was an increase of support from other developing States so that it was finally tabled for discussion. Since 1958 many archipelagic States in the Caribbean and Indian and Pacific Oceans have become independent, and this increased the pressure for the adoption of a special regime for mid-ocean archipelagos to meet the interests of archipelagic States.³⁹ One other major development that happened after the first two Conferences was the creation on 8 August 1967 of the Association of the South-East Asian Nations better known as the ASEAN.⁴⁰ The members of the ASEAN have their own differing claims and even

³⁴ Turnquest, *supra* footnote 30 at p.9.

³⁵ Churchill et al., *supra* footnote 32 at p.119.

³⁶ *Supra* footnote 30 at p.10.

³⁷ Kittichaisaree, *supra* footnote 7 at pp. 152-153.

³⁸ Dean, *supra* footnote 11 at p. 752.

³⁹ *Supra* footnote 32.

⁴⁰ Association of South-East Asian Nations, History, <http://www.aseansec.org/12712.htm> (retrieved 21 July 2008).

have overlapping territorial claims. However, through the mechanism of the ASEAN, the members were able to amicably settle and agreement about their conflicting claims regionally and decided to support the claim put forth by the Philippines and Indonesia.⁴¹ The Philippines in the 1950's campaigned for the international recognition of its special geographical circumstances that in its note of 12, December, 1955 to the Secretariat of the United Nations indicated that "The Position of the Philippine Government in the matter is that all waters around, between and connecting the different islands belonging to the Philippine Archipelago... are necessary appurtenances of its land territory, forming an integral part of the national or inland waters subject to the exclusive sovereignty of the Philippines"⁴²

In the same way, Indonesia issued what is known as the Djuanda Declaration in December 1957, calling for the use of straight baselines joining together the outermost seaward points of the islands in the archipelago to outline the territorial limits of Indonesia including both islands and water.⁴³ In said Declaration it stated that "*if each of Indonesia's component islands were to have its own territorial sea, the exercise of more effective control would be made extremely difficult*" emphasizing on the importance of the archipelagic baselines to the definition of its nationhood. While this declaration had no legal effect, even for Indonesia domestically, it generated protests from France, the United States, the United Kingdom, Australia, the Netherlands, New Zealand and Japan.⁴⁴ These States were concerned with the effect that an archipelagic baselines that encloses all the seas between and around the islands of an archipelago would have on trade routes and maritime commerce.

⁴¹ Ibid.

⁴² Charlotte Ku, "*The Archipelagic State Concept and Regional Stability in Southeast Asia*", Case Western Reserve Journal of International Law, (1991) p. 463.

⁴³ Phiphat Tangsubkul, *ASEAN and the Law of the Sea*, Singapore: Institute of Southeast Asian Studies, 1982 at p. 6.

⁴⁴ Ku, supra footnote 42 at p.12.

Such protests reflected a conflict between competing interests; archipelagic States, on the one hand trying to maximize their jurisdiction of maritime space that traditionally had been seen as part of the high seas, and the interests of developed countries, on the other hand, who wanted to ensure freedom of navigation for military and commercial purposes.⁴⁵ These protests and oppositions have been influential enough that it took time for the principle itself to even be discussed officially or placed on the table for discussion. However, the proponents gained support from States who found themselves similarly situated that the clamor for it to be given the attention it needed grew. The need for compromise and concessions in order to incorporate the interests of archipelagic States and other States was a major point in the negotiations at the United Nations Conferences on the Law of the Sea.⁴⁶ Several proposals and counter-proposals were submitted by different States. The United Kingdom for its part submitted a mathematical formula that archipelagic States will follow if they are to use archipelagic baselines. Aside from the maximum permissible length of baselines that differ so much from one another, there emerged from the British draft articles for archipelagos the mathematical formula of land to water ratio or the ratio of the enclosed land to the water.⁴⁷ Subsequently, a balance was reflected in the substantive provisions of UNCLOS dealing with the definition of the archipelagic concept and the condition under which straight baselines can be constructed around an archipelagic State.⁴⁸

2.2. Definition of the Archipelagic State and Archipelago under International Law

Without a precise definition of the term archipelago, it would be difficult to ascertain the number of States which would be able to take advantage of the legal

⁴⁵ Supra footnote 30 at p.8.

⁴⁶ Ibid. p.9.

⁴⁷ Clive Ralph Symmons, *The Maritime Zones of Islands in International Law*, London: Martinus Nijhoff Publishers, 1979 at p.80.

⁴⁸ Supra footnote 30 at p.9.

regime specifically related to archipelagic States.⁴⁹ In the case of archipelagos, the constituent islands are considered as forming a whole and the width of territorial sea shall be measured from the islands most distant from the center of the archipelago.⁵⁰ In general terms, the concept of archipelagos merely refers to a grouping of islands.⁵¹

One of the early definitions given on archipelagos was by the International Court of Justice in the Anglo-Norwegian Fisheries Case. In relation to the unity of the island fringe with the mainland the Court stated “the coast of the mainland does not constitute, as it does in practically all countries, a clear dividing line between land and sea”.⁵² What really constitutes the Norwegian coastline is the outer line of the *skjaergaard*.⁵³ This *skaergaard* was said to constitute “a whole with the mainland”, and the Court noted that it is the land which confers upon the coastal State a right to the waters off its coasts.⁵⁴ While this case specifically dealt with the particular circumstances of a coastal archipelago, it has been argued that the need for geographic cohesiveness extends to mid-ocean archipelagos as well.⁵⁵ This need for geographic specificity plays a critical role and is arguably the basis and starting point for the archipelagic concept.⁵⁶

Nevertheless, there is quite a marked divergence within this notion. There are coastal archipelagos as noted above, mid-ocean archipelagos and archipelagos with one or more dominating main islands⁵⁷. Mid-ocean archipelagos usually involve the

⁴⁹ Ibid.

⁵⁰ Derek W. Bowett, *The Legal Regime of Islands in International Law*, New York: Oceana Publications, 1979 at p. 74.

⁵¹ D. P. O’Connell, “*Mid-Ocean Archipelagos in International Law*”, *British Yearbook of International Law*, 45(1971) at p. 24.

⁵² Judgment of 18 December 1951, I.C.J. Reports, 1951, p.116.

⁵³ Ibid., pp.128, 132.

⁵⁴ Bowett, supra footnote 50.

⁵⁵ Supra footnote 10 p. 114.

⁵⁶ Supra footnote 30 at p.9.

⁵⁷ Patricia Elaine Joan Rodger, *MidOcean Archipelagos and International Law*, New York: Vantage Press, 1981, page 4.

consolidation of the island grouping into a single unit by a system of straight baselines.⁵⁸

As far as the UNCLOS is concerned, definition for archipelago is now incorporated and can be found in Article 46 which provides that it is “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely inter-related that such islands, waters and other natural features form an intrinsic geographical economic and political entity or which historically have been regarded as such”.⁵⁹ After several views and definitions as well as criteria proposed during the three Conferences, this single definition has been adopted by State Parties. This definition though silent and does not use either term of “coastal” or “mid-ocean” archipelagos definitely shows that it more or less describes the later. According to Clive R. Symmons, the definition given in UNCLOS gave rise to several points:

(i) An archipelago is deemed to include not just insular *terra firma*, but also non-insular natural formations (e.g., reefs) and the areas of the sea around them; as such they constructively form a single *physical* and economic entity.

(ii) There must be a close interrelationship of all these features...it is clear that the geographical condition must be satisfied namely that the two or more islands must be so situated so as to be capable to being geographically considered as a whole unit.

(iii) The factor of historic claim is alternative to, rather than additional to, geographical, economic and political factors.⁶⁰

The essence of the archipelagic claim is that the waters between and around the islands that are inside the straight baselines, connecting the outermost islands of the archipelago, are considered national or internal waters, as is the case with waters landward of baselines in other circumstances.⁶¹ Where islands are grouped so as to

⁵⁸ Supra footnote 30 at p.10.

⁵⁹ Article 46, United Nations Convention on the Law of The Sea of 1982.

⁶⁰ Symmons, supra footnote 47 at p.61.

⁶¹ Supra footnote 10 at p.8.

form an archipelago, the Law of the Sea Convention provides that, in addition to any baselines drawn along individual islands to delimit internal waters, straight lines may be drawn around the outermost points of the archipelago itself (archipelagic baselines).⁶²

2.3 Definition of Baseline

Within the context of international law, it is now established, as a general proposition, that a “baseline” is a boundary that separates the territorial sea from either the internal or archipelagic waters on the landward side⁶³. It is the line that delimits where absolute sovereignty can be exercised by a State and the reckoning point for the seaward delimitation of the other zones. Yet, an archipelagic baseline does not just make waters landwards from it as internal waters, but it generates the different regime of archipelagic waters.

The baseline is the line from which the outer limits of the territorial sea and other maritime zones (the contiguous zone, the exclusive fishing zone and the economic zone, EEZ) are measured.⁶⁴ In theory, the drawing of a baseline is very important for the purpose of allocating coastal state jurisdiction. As Johnston describes, a baseline is typically the exterior limit of internal and archipelagic waters as well as the interior limit of the territorial sea⁶⁵. The baseline of the territorial sea is also used for measuring the seaward limits of the contiguous zone, the exclusive economic zone, the continental shelf, and (for some coastal states) the exclusive fishing zone.⁶⁶ The outer limits of the territorial sea, contiguous zone and the economic zone are all a fixed distance from baselines established by the coastal State

⁶² Supra footnote 32 at p.50.

⁶³ Johnston, supra footnote 3 at p.95.

⁶⁴ Supra footnote 32 at p.31.

⁶⁵ Supra footnote 3 at p.95.

⁶⁶ Ibid.

that serves as the delineation between a state's internal and territorial waters.⁶⁷ The waters on the landward side of the baseline are known as internal waters, thus the baseline also forms the boundary between internal water and the territorial sea⁶⁸.

The archipelagic concept envisages the method of drawing straight baselines – a series of imaginary lines, between the outermost islands of an archipelago.⁶⁹ The underlying basis of the archipelagic concept is the unity of land, water, the resources and the people into a single entity, a concept that finds its justification in the relationship between land, water and the people inhabiting the islands of the archipelago.⁷⁰ The outer limits of an archipelagic State are determined by drawing a series of straight archipelagic baselines connecting the islands in accordance with criteria set out in Article 47.⁷¹

2.4 Establishing the Baseline

Generally, geography greatly influences the drawing of a baseline and is the main consideration to be taken into account. However, due to the diversity in coastal geography in different regions and the extreme divergence of many coastlines, ocean-boundary making, in practice, cannot be carried out using simple rules. Some coastlines are of irregular natural features in the form of bays, estuaries, islands, islets, inlets, and rocks or of low tide elevations. On the other hand, the existence of offshore installations, buoys or artificial islands further obscures the features of the coastline.

Moreover historical, political, economic, security or other factors also influence the maritime delimitation process. The interplay of human attitudes and

⁶⁷ Douglas M. Johnston and Phillip M. Saunders (ed.), *Ocean Boundary Making: Regional Issues and Developments*, New York: Croom Helm, 1988, p. 19.

⁶⁸ Supra footnote 32 at p.31.

⁶⁹ Supra footnote 10 at p.6.

⁷⁰ Ibid.

⁷¹ James Crawford and Donald Rothwell, *Law of the Sea in the Asian Pacific Region*, Boston: Martinus Nijhoff Publishers, 1995 at p. 271.

interest should also be considered. Johnston further describes that “the attitude of coastal communities had tended to exclusivity, favouring claims to baseline delimitation criteria and methods that will have the effect of excluding inshore areas from foreign activities.”⁷² There were practices in the past where coastal states took maximum advantage of geographical features by “closing off” coastal waters like estuaries, bays, inlets and other semi-enclosed inshore waters that usually bear the closest physical, economic, or strategic connection with the shore.

The new Law of the Sea affords vast extension of coastal states jurisdiction. This so-called “exclusivist” attitude prevalent historically has become a concern of the UNCLOS 1982. Rules then were devised within UNCLOS to check on the abuse of discretion by the coastal state in the delimitation of such boundaries.

The Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs enumerates some elements which could further be taken into consideration in the maritime boundary delimitation process:

- Regional geography, including general characteristics and particular features of the region (ocean, semi-enclosed sea, etc.);
- Configurations of the coast, including adjacency of oppositeness, direction, comparative lengths; concave or convex shape;
- Basepoints, including presence of ports, roadsteads, bays, river mouths, island, low-tide elevations, reefs and their situation in relation to the coast; and
- Presence of islands and rocks.

⁷² Supra footnote 32 at p.104.

2.5 Features of the Modern Approach to Baseline Delimitation

The rules contained in the 1982 UN Convention on the Law of the Sea are not much different from those proposed by the ILC in the 1950s and formally adopted at UNCLOS 1. At least four features of the modern approach to baseline delineation are clearly post-classical in origin, such as:⁷³

Firstly, most of these boundary-making issues have been resolved to the advantage of the coastal state. Either the rules have been developed in such a way as to permit the coastal state to exclude larger areas of inshore water, in accordance with the general expansion of coastal state jurisdiction, or the interpretation of these rules has been left to the discretion of the coastal authorities. The treatment of archipelagic states is the most spectacular example of generosity accorded to the geographically favoured, but in a more modest degree most other coastal states have gained spatially from the modern international law of baseline delineation.

Second, the new law of the sea has given further recognition to the complexities of coastal geography... The modern regime of baseline delineation rejoices in the diversity of nature. By the same token, these rules invite coastal states to plead uniqueness by the virtue of unusual coastal configurations.

Third, these delineation rules emanating from conference diplomacy reflect an awareness of the actual and prospective impact of new technology in the coastal zone. The provisions for artificial installations seem likely to encourage functionalist thinking in this particular sector of ocean boundary-making.

Finally, some of the seemingly traditional rules, such as that of the low-water mark, have been retained, but with a new awareness of the need for a higher order or precision in their application, through a clarification of the technical choices available in tidal datum.

2.6 The Archipelagic Baseline

The concept of a special regime for archipelagic states is considered one of the most remarkable features of the 1982 UNCLOS. Article 46 defines archipelagic

⁷³ Ibid., p.104.

state as “a State constituted wholly by one or more archipelagos and may include other islands.”⁷⁴

As of 24 October 2007, the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs of the United Nations published a bulletin indicating, among others, that there are some twenty States (Antigua and Barbuda, Bahamas, Cape Verde, Comoros, Dominican Republic, Fiji, Indonesia, Jamaica, Kiribati, Maldives, Marshal Islands, Papua New Guinea, Philippines, St. Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Solomon Islands, Trinidad and Tobago, Tuvalu, and Vanuatu) that have formally claimed archipelagic status by enacting appropriate legislation.⁷⁵ They are thereby entitled to draw archipelagic baselines in accordance with a formula designed especially for their benefit.

It could be noted that paragraphs 1, 2 and 3 set out several requirements which the archipelagic baselines must satisfy – it must include the main islands; it must enclose an area of sea at least as large as the area of enclosed land but no more than nine times that of the land area; no archipelagic baseline may exceed 100 nautical miles in length, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles; and it must not depart to any appreciable extent from the general configuration of the archipelago.⁷⁶

⁷⁴ United Nations Convention on the Law of the Sea of 1982.

⁷⁵ http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf.

⁷⁶ Department of Ocean Affairs for the Law of the Sea, http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm (retrieved 08 August 2008)

CHAPTER 3

MEASURES AND PROCEDURES FOR ARCHIPELAGIC STATES' COMPLIANCE TO UNCLOS

3.1 Drawing of Archipelagic Straight Baselines

Article 47 of UNCLOS enumerates several precise and objective tests that a State must satisfy before it can draw archipelagic straight baselines.⁷⁷ Article 47 states:

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.
2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.
3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.
4. Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.
5. The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

⁷⁷ Supra footnote 30 at p.13.

6. If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.

7. For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

8. The baselines drawn in accordance with this article shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted.

9. The archipelagic State shall 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.⁷⁸

Careful reading of the text of Article 47 will show that the requirements provided for in these provisions are strict and can be difficult to satisfy for a State planning to use archipelagic baselines. Paragraph 1, provides among others that “an archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago ...”⁷⁹ A “drying reef” is that part of a reef which is above water at low tide but is submerged at high tide.⁸⁰ Article 47, paragraph 1, also stipulates that archipelagic baselines should be drawn in such a way as to include all the main islands of the archipelago within the archipelagic baselines, though the concept of “main” is rather vague and needs an objective test which will clearly determine what this term truly means.⁸¹ UNCLOS left out what it meant or wanted the term “main islands” to mean because such term can be taken to mean as “geographically” large islands or politically considered

⁷⁸ Article 47, UNCLOS 1982.

⁷⁹ UNCLOS 1982.

⁸⁰ Myron H. Nordquist, Shabtai Rossene and Satya N. Nandan (ed.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Boston: Martinus Nijhoff Publishers, 1985 p. 430.

⁸¹ *Supra* footnote 30.

“main” islands. The concept of what constitute a main island has been described in the following terms: “main islands might mean the largest islands, the most populous islands, the most economically productive islands or the islands which are pre-eminent in an historical or cultural sense”.⁸² The majority of the mid-ocean archipelagic States, including Indonesia, the Philippines, Trinidad and Tobago, the Maldives and Antigua and Barbuda have all been able to incorporate the “main” island when drawing their respective baseline.⁸³

3.2 Water to Land Ratio

The requirement in paragraph 1 of Article 47 has already caused States to be disqualified because they exceed the land to water ratio as specified in the provision. As stated above, “*an archipelagic State may draw straight archipelagic baselines joining the outermost islands and drying reefs of the archipelago provided that within such baselines ... an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1:1 and 9:1.*”⁸⁴ Only a State meeting those conditions qualifies for recognition as an archipelagic State and that excludes an archipelago belonging to a continental State and forming an integral part of its territory, a fringe of islands and similar geographical features.⁸⁵ Hence the question of such far flung or seemingly isolated islands would, in practice be determined, by the criteria of the water land ratio and the permitted maximum length for baselines.⁸⁶ This same criteria disqualifies coastal archipelagos from claiming archipelagic State status.

The Bahamas was a unique case which had long been regarded as a geological enigma. The islands comprised a realm of predominantly shallow waters which were

⁸² United Nations Publication, Sales no. E. 88. V.5 Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea, paragraph 82.

⁸³ Supra footnote 30.

⁸⁴ UNCLOS.

⁸⁵ Nordquist et al., supra footnote 80 at pp. 401-402.

⁸⁶ Supra footnote 10 at p. 111.

largely non-navigable except by vessels of shallow draught.⁸⁷ The Bahamas banks present a special problem of delimitation since both the ratio of very shallow water to dry land area and the steepness of the slopes appeared to be unparalleled. If those unique physio-geographic conditions were disregarded and conventional baselines at low-water level were used, bizarre effects would result.”⁸⁸

The Bahamas further contended that it was constituted of more than islands and cays. Bahamas intimated that the perception of the average Bahamian was that the Great and Little Bahama banks, which are areas of shallow water, had historically been regarded as part of the territory of the Bahamas.⁸⁹ This connects directly to the sentiment held by many archipelagic nations that the land and the sea are intimately linked and should not be distinguished one from the other, just like Indonesia that, as a leading proponent of the archipelagic concept incorporated this notion in the term “Wawasan Nusantara” (Archipelagic Outlook).⁹⁰ This political notion basically refers to the concept that the land and the sea are intrinsically intertwined and is seen as a bridging and unifying force that connects the peoples of Indonesia.⁹¹ The perception of the interconnectedness of the land and the sea may be at the heart of the archipelagic concept from a nationalist standpoint of island States. However, in international law, there is a clear distinction between what constitutes land and what constitutes ocean space.⁹² Nevertheless, States such as Indonesia and the Philippines are able to satisfy the land to water ratio with little difficulty given the fact that they are constituted by a number by large islands and several thousand smaller islands in close proximity with the water to ratio of Indonesia and the Philippines is 1:1.2 and 1:1.8, respectively.⁹³

⁸⁷ Supra footnote 30 at p. 18.

⁸⁸ Office for Ocean Affairs and Law of The Sea, *Archipelagic States, Legislative History of Part IV of United Nations Convention on the Law of The Sea*, United Nations Publication, 1990 page 46.

⁸⁹ Ibid.

⁹⁰ Supra footnote 30.

⁹¹ Supra footnote 42 p. 465.

⁹² Supra footnote 30.

⁹³ Supra footnote 32 at p. 123.

Conversely, Mauritius one of the original members of the archipelagic States group, can not draw a composite baseline around itself.⁹⁴ Additionally, the Seychelles, in the West Indian Ocean, and Tonga, in the South Pacific, are also too widely scattered and would not be able to enclose their archipelagos within a single baseline system in conformity with the maximum water to land ratio set forth in UNCLOS.⁹⁵

The next criterion for delimitation of archipelagic baselines is found in Paragraph 3, which is similar to the first part of Article 47(3) that deals with straight baselines and it provides that it is a requirement that the archipelagic baselines shall not depart to any appreciable extent from the general configuration of the archipelago.⁹⁶ Paragraph 4 deals with low-tide elevations and specifies the two circumstances that these may serve as base points for the archipelagic baselines. First, as in Article 7 (4), archipelagic baselines may be drawn to and from low-tide elevations if they are surmounted permanently by a lighthouse or similar installation. The connection of the installation could be because of the shape of the lighthouse or its function. Lights are normally displayed from the tops of towers and accordingly if a tower has been built on a low-tide elevation, it will enable the feature to be used as the base point of the archipelagic baselines. Even though the tower might have been built on a prison or a defensive stronghold, its eminence would alert navigators to avoid the shoals. Since lighthouses warn of dangers, similar installations include foghorns and radar reflectors.

Second, unlike Article 7(4), dealing with straight baselines, archipelagic baselines can be anchored on low-tide elevations if they lie wholly or partly within territorial waters measured from the nearest island. As can be observed, when low-tide elevations were considered, some consider that low-tide elevations lying within the territorial waters generated from closing lines drawn in accordance with Articles

⁹⁴ Supra footnote 30 at p.20.

⁹⁵ Supra footnote 10 p. 131.

⁹⁶ Supra footnote 2 at p.172.

9, 10 and 11 may not be used for a further extension of the territorial waters.⁹⁷ The words of Article 13 are explicit; low-tide elevations within 12nm of straight baselines (not normal baselines) may not be used to generate a territorial sea claim. It seems likely that this explicit rule will not be strictly observed.⁹⁸ One reason is that the United States Supreme Court over-ruled the strict interpretation because one of the early drafts of Article 11 [1958 Convention] provided that all low-tide elevations within the territorial waters created additional territorial seas.⁹⁹ It is not clear why the term “nearest island” is used rather than “an island.” The latter phrase is used in Article 13 relating to low tide elevations.¹⁰⁰

In reading Article 47(2) it appears to be restrictive by only allowing three per cent of baselines to measure between 100nm and 125nm.¹⁰¹ The appearance is an illusion because there is no restriction on the number of baseline segments that can be used. Simple arithmetic demonstrates that if the number of segments does not exceed 33, no lines longer than 100nm can be drawn.¹⁰² Consequently, if there are 100 segments, three baselines longer than 100nm can be drawn and if there are 234 segments, seven lines measuring more than 100nm can be drawn, and so on and so forth. With the number of lines needed to enclose an archipelago, the allowance of not more than three percent is sufficient enough for a State to still be considered as an archipelago.

Papua New Guinea and the Solomon Islands proclaimed archipelagic baselines around more than one archipelago in 1978 and 1979 respectively. The United States, always vigilant in protesting against breaches of baseline rules has not lodged a

⁹⁷ Ibid.,p.173.

⁹⁸ Ibid.

⁹⁹ M.W. Reed, *Shore and Sea Boundaries: The Development of International Maritime Boundary Principles Through the United States Practice*, Vol. 3, US Department of Commerce: Washington DC, 2000, at pp.62.

¹⁰⁰ Supra footnote 2 at p.174.

¹⁰¹ Ibid.

¹⁰² Ibid.

protest against the multiple delimitations.¹⁰³ This is very strong support for the interpretation that archipelagic states can draw archipelagic baselines around all archipelagos that can satisfy the rules set out in Article 47. It is interesting that Fiji has drawn archipelagic baselines around the main group of islands and straight baselines around the Island of Rotuma and its dependencies.¹⁰⁴ This proclamation could be interpreted to mean that archipelagic baselines were drawn around Rotuma, however a later clarification noted that this was not claimed. The view that states composed of two or more archipelagos may draw archipelagic baselines around them all if the relevant tests can be met may be used by some mainland states to justify their enclosure of archipelagos. This view can be extended to suggest that if archipelagic states can enclose subsidiary parts of their territory by archipelagic baselines, then the same entitlement should be accorded to mainland states that possess oceanic archipelagos. Coastal archipelagos can already be enclosed by straight baselines in accordance with Article 7.

Article 47(1) is the decisive test in determining whether archipelagic states can draw archipelagic baselines. Jayewardene describes the discussions that produced the two ratios of land to water that define archipelagic states.¹⁰⁵ The United Kingdom proposed a ratio of sea to land of 5:1 and it was decided eventually to select a range about that value of 1:1 to 9:1.¹⁰⁶ The setting of the lower limit of the water to land ratio, the maximum length of segments and the proportion of segments that can be longer than 100 nautical miles appears to have been set with the Indonesian baseline system in mind, which was proclaimed in 1960, consisting of 191 segments of which five segments measured more than 100 nautical miles and two that measures 124 nautical miles.¹⁰⁷ However, Indonesia made changes later that lowered the number to 22 segments though the provision setting the required

¹⁰³ United States Department of State, "United States Response to Excessive National Maritime Claims", No.112, Washington DC.

¹⁰⁴ Fiji Royal Gazette Supplement, Marine Spaces Act, No. 41, 27 1981.

¹⁰⁵ Hiran W. Jayewardene, *Regime of Islands in International Law*, London: Martinus Nijhoff Publishers, 1990 p.108.

¹⁰⁶ Supra footnote 2 p.174.

¹⁰⁷ Ibid.

length up to 100 nautical miles but not more than 125 nautical miles was already incorporated in the UNCLOS.

The standard that is set in Article 47(1) has two requirements. First, it requires that in drawing the straight baselines joining the outermost points of the outermost islands, the baselines must include the main islands. This is seen to be, by some, as reminiscent of the requirement for coastal archipelagos which are not the subject of the regime of archipelagos. Mid-ocean archipelagos do not necessarily always have main islands from which the other minor islands are connected to. One contention for the term “main” is that it is not clearly stated what the term really meant. The second requirement is the water to land ratio that is pegged at 1 to 1 and 9 to 1. This second requirement has caused many States from claiming archipelagic status.

3.3 Legal Principle and Practical Method in the Maritime Delimitation Process

How should a nation determine what is the most equitable means of achieving a maritime delimitation with a neighboring state? The history of maritime boundary law is marked by two conflicting trends. The first seeks a synthesis of legal principle and practical method that would provide a clear, conclusive, and equitable rule for the delimitation of overlapping or converging maritime claims. The second denies the possibility of any such synthesis and insists that the only equitable rule is one that allows virtually absolute freedom of method.¹⁰⁸ The move to freedom of method in the judicial decisions in the treaty law has produced a legal situation that was aptly described in the following terms in the Joint Separate Opinion of Judges Ruda, Bedjaoui and Jimenez de Arechaga in the Libya/Malta case;

... it has to be faced that the law governing maritime delimitations is still affected with a degree of indeterminacy, in the sense that the reasons put forward do not invariably and automatically produce a delimitation line. Often, even a regrettable but doubtless inevitable gap can be observed between the arguments expounded in a judicial

¹⁰⁸ E. D. Brown, *Sea-bed Energy and Minerals: The International legal Regime*, Volume 1. The Continental Shelf, 1992, Kluwer Academic Publishers page 345.

decision and the concrete findings as regards the choice of delimitation adopted. However well founded, the reasoning does not necessarily, mathematically issue in the conclusion adopted¹⁰⁹.

The challenge for any country attempting to establish any type of delimitation boundary is two fold, identifying legal principles that are relevant to the country's specific geographical context without presuming that one particular method of delimitation will achieve the necessary equitable result. What needs to be stressed at this juncture is the fact that unilateral action cannot be taken on the part of any one country to delimit a maritime boundary. International Law and judicial decisions highlight the importance of agreement between the two parties. This concept is a well known fundamental norm of the law of maritime delimitation¹¹⁰ and the Chamber in the Gulf of Maine case attempted to provide a more complete and more precise reformulation of this "fundamental norm". The chamber stated:

What general international law prescribed in every maritime delimitation between neighboring States could therefore be defined as follows:

- (1) No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result. Where however, such agreement cannot be achieved, delimitation should be effected by recourse to a third party possessing the necessary competence.
- (2) In either case, delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result.

The call for agreement between the parties emphasizes the need for the Bahamas to identify practical methods of delineation and the application of legal principles which can find consensus with the U.S. delegation. The state of the law

¹⁰⁹ Johnathan I. Charney and Lewis M. Alexander, *International Maritime Boundaries*, Volume I, Martinus Nijhoff Publishers, 1996, page 206.

¹¹⁰ *Ibid.* at p.231.

and state practice as it appertains to maritime delimitation reflects the fact that for decision-makers, the choice of means or methods for translating the relevant geographical and other circumstances into a precise line is as ever, the most difficult issue in the law of maritime boundaries.¹¹¹

¹¹¹ Ibid., p. 206.

CHAPTER 4

IMPLICATIONS OF DELIMITATION TO ARCHIPELAGIC STATES AND ISSUES OF ECONOMY, SECURITY AND GLOBAL WARMING

4.1 The Significance of Archipelagic Baselines

The foremost consequence of the delimitation of archipelagic baselines first to the State itself is the generation of archipelagic waters. This has served to be an entire regime that was one of the creations of UNCLOS III. It is may be one of the best examples of compromise in the Convention that emerged in the thrust to strike a balance between States claiming recognition of the archipelagic status and the traditional maritime States so opposed to the idea because it was viewed as a curtailment of their interest in more or less, maritime trade. Hence, delimitation using archipelagic baselines will give rise to archipelagic waters which is defined in Article 49 as follows:

Article 49

Legal status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil

1. The sovereignty of an archipelagic state extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.
2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.
3. This sovereignty is exercised subject to this Part.
4. The regime of archipelagic sea lane passages established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic state of its

sovereignty over such waters and their air space, beds and subsoil, and the resources contained therein.¹¹²

However, this has not always been the case. The status of the waters being enclosed by archipelagic baselines has been a bone of contention upon which opposing States have been chewing on by blocking the subject of archipelagos from even being tabled for discussion in the first two Conferences. Under international law, prior to the conceptualization of what is now known as *archipelagic waters*, waters landward of baselines from which territorial sea is measured were internal waters, areas of complete state jurisdiction, where foreigners would require prior permission for passage or any other activity.¹¹³ With this principle of internal waters married to the archipelagic principle and coupled with the fact that the main proponents of the archipelagic theory are the two biggest archipelagos that straddles important trade routes, has not bode well with the opposition. In fact, as two authors aptly observed:

The history of the law of the sea has been dominated by a central and persistent theme, the competition between the exercise of governmental authority over the sea and the idea of the freedom of the seas. The tension between these has waxed and waned throughout the centuries, and has reflected the political, strategic and economic circumstances of each particular age. When one or two great commercial powers have been dominant or have achieved parity of power, the emphasis in practice has lain upon the liberty of navigation and the immunity of shipping from local control, in such ages the seas have been viewed more as strategic than economic areas of competition. When, on the other hand, great powers have been in decline or have been unable to impose their wills upon smaller states, the emphasis has lain upon the protection and reservation of maritime resources, and consequently upon the assertion of local authority over the sea.¹¹⁴

¹¹² Article 49, UNLCOS.

¹¹³ Supra footnote 10 at p.112.

¹¹⁴ Gary Knight and Chiu Hungdah, *The International Law of the Sea. Cases, Documents and Readings*, New York: Elsevier Applied Science and Unifo Publishers, 1991.

What is now reduced into Article 49 is the result of a middle ground between to opposing interest that does not seem to sound much of a victory by the minority developing States over the dominant traditional maritime States. While formation of the archipelagic state in international law addresses the concern of ocean states with the preservation of territorial integrity and maximum control of maritime space falling within its baseline system, there is also an appreciation of the interests of maritime powers in particular the need to preserve the widest possible freedoms as it relates to freedom of navigation.¹¹⁵ Looking profoundly into the requirements provided for by the provisions of UNCLOS specifically those enumerated in Article 49 shows that only the interest of one party prevails. This interest does not seem to be much of the claimants' than that of the opposing group.

4.2 The Archipelagic Sea Lanes

The principles enshrined in the archipelagic straight baseline regime can be seen as a boon for small island states in so far as they may extend their maritime space far beyond what could have been envisioned by customary international law prior to UNCLOS.¹¹⁶ With rights come responsibility, and article 46 artfully balances the rights of archipelagic states with the responsibility to ensure that its establishment of archipelagic straight baselines do not adversely affect the rights of neighboring states.¹¹⁷

The balance therefore that the UNCLOS provided was the provision for archipelagic sea-lanes, which allows archipelagic States to exercise sovereignty over the archipelagic waters at the same time not denying the user States their right of passage through the archipelagic waters that they have been using since as maritime trade routes. Article 53 of UNCLOS speaks specifically to the right of archipelagic

¹¹⁵ Supra footnote 30.

¹¹⁶ Supra footnote 2 at p. 175.

¹¹⁷ Supra footnote 30.

sea lanes passage.¹¹⁸ Hence the principle of archipelagic sea-lanes is in fact a collaborative effort between the archipelagic State and the user States. This can be seen in the efforts of Indonesia in identifying three of its north-south sea-lanes by working together with Australia and the United States to come up with one that was mutually acceptable to the parties involved. Additionally there was consultation on the creation of regulations by which the International Maritime Organization would agree with the submission by archipelagic states on the establishment of archipelagic sea lanes.¹¹⁹

4.3 Neighboring States and Natural Resources in the Area

The direct impact of archipelagic status will naturally be on the states surrounding the claimant with the brunt of it in Southeast Asian region because it is the location of two of the biggest archipelagic States. Indeed the archipelagic principle was espoused by these same two States from the inception of the Law of the Sea codification. It is therefore not surprising that other Southeast Asian states have displayed initial opposition to the principle. However, after the creation of the ASEAN¹²⁰ on 08 August 1967, the rest of the Southeast Asian States rallied behind Indonesia and the Philippines in a show of regional cooperation and mutual assistance as provided for in the Bangkok Declaration. The regional support was not to be construed as a waiver to whatever overlapping or conflicting claims by the other States. What the ASEAN provided for was a regional forum where agreements and peaceful resolution to conflicting interest were discussed internally and amicably.¹²¹ So for adjacent States of archipelagic claimants, UNCLOS requires that an archipelagic State must recognize and respect traditional fishing rights, other

¹¹⁸ Constance Johnson, *A Rite of Passage: The IMO consideration of the Indonesian Archipelagic Sea-Lanes Submission*, International Journal of Marine and Coastal Law Vol 15, No. 3, Kluwer Law International, 2000.

¹¹⁹ *Ibid.*, p. 3.

¹²⁰ Association of Southeast Asian Nations Official Site <http://www.aseansec.org/1212.htm> (retrieved 26 July 2008).

¹²¹ *Ibid.*, <http://www.aseansec.org/1212.htm> (retrieved 26 July 2008).

legitimate activities as well as existing agreements.¹²² For that reason the Jakarta Treaty underscores the specific character of the provisions of the Law of the Sea Convention which relate to the interests of immediately adjacent neighboring states in areas of archipelagic waters.¹²³

Just like in one popular movie of a comic character, it is also true with respect to archipelagic States that with great power comes great responsibility. Aside from the responsibilities that an archipelagic State has for the other neighboring States, with the wider area where it is allowed to exercise sovereignty comes also the responsibility of managing and conserving the same including its natural resource. Though a blessing in the sense that it can translate to economic gain, the burden of making said area sustainable in view of present factors can also be taxing on the archipelagic State. The responsibility of conservation and management though is one of the issues that was raised by States opposed to the archipelagic principle claiming that archipelagic States might exploit the areas under the sovereignty with impunity without any regard to damage it might cause to the marine environment as well as sustainability of the natural marine resource. One of those who made this argument is the United States of America in the Gulf of Maine when it propounded “the principle that the delimitation should facilitate conservation and management of the natural resources of the area.”¹²⁴ This makes the responsibility to conserve and manage the resources a necessity if not a requirement for delimitation. Nevertheless this argument was rejected by the chamber that declared:

It should be emphasized that these fishing aspects, and others relating to activities in the fields of oil exploration, scientific research, or common defense arrangements, may require an examination of valid considerations of a political and economic character. The Chamber is however bound by its Statute, and

¹²² Article 51, Part IV, UNCLOS 1982.

¹²³ Supra footnote 10 at p.161.

¹²⁴ Robert Kolb, *Case Law on Equitable Maritime Delimitation*, Boston: Martinus Nijhoff Publishers, 2003, at p. 236.

required by the Parties, not to take a decision *ex aequo et bono* but to achieve a result on the basis of law. The Chamber is, furthermore, convinced that for the purposes of such a delimitation operation as is here required, international law, as will be shown below, does no more than lay down in general that equitable criteria are to be applied, criteria which are not spelled out but which are essentially to be determined in relation to what may be properly called the geographical features of the area. It will only be when the Chamber has, on the basis of these criteria, envisaged the drawing of a delimitation line that it may and should – still in conformity with a rule of law – bring in other criteria which may also be taken into account in order to be sure of reaching an equitable result.¹²⁵

Two authors put the argument differently as shown in the following:

...fisheries have played an important role in a number of delimitation negotiations as a factor accompanying and closely intertwined with the settlement. In six of 134 maritime agreements examined in this work, there were six instances of state practice that suggest that fishery considerations had a direct influence on the actual location of the boundary line. One example is the 1980 Iceland-Norway fisheries agreement. Due to Iceland's dependence upon fisheries and Norway's desire to avoid a dispute with Iceland over capeline fishing in the area in question, the agreement establishes a boundary following the 200 nautical mile limit measured from Iceland's base points.¹²⁶

This argument admits the influence that natural resource have on delimitation or the establishment of boundaries but it does not make it a requisite for the setting up of one which still differs from the argument put forth by the United States in the Gulf of Maine case. In relation to this, the UNCLOS is clear in its provision¹²⁷ that archipelagic States should respect traditional fishing rights of other States although it is limited only to immediately adjacent States. The archipelagic State may either

¹²⁵ *Ibid.*, p. 246.

¹²⁶ Charney et al., *supra* footnote 109 at p. 81.

¹²⁷ Article 51, Part IV, UNCLOS.

respect existing agreements or enter into bilateral agreements for the regulation of said activities upon the request of any of the States concerned. These agreements though are not transferrable nor can these be shared with a third State.¹²⁸

4.4 Other Issues

A tangle of claims, spreading pollution, competing demands for lucrative fish stocks in coastal waters and adjacent seas, growing tension between coastal nations' rights to these resources and those of distant-water fishermen, the prospects of a rich harvest of resources on the sea floor, the increased presence of maritime powers and the pressures of long-distance navigation and a seemingly outdated, if not inherently conflicting, freedom-of-the-seas doctrine - all these were threatening to transform the oceans into another arena for conflict and instability.¹²⁹ However, in recent times the oceans and the seas have been seen constantly as a source for cheap transport or a kind of a natural security buffer as well as for economic gain through the exploitation of its resources. The amount of traffic and usage experienced on the seas and oceans have led to several contentions among neighboring or interested States. Delimitation was thought to be a tool to resolve any conflicts and determine as equitably as possible the extent of a certain State's boundaries. For a long time delimitation has been developing as a separate subject that was thought of solely relating to boundary delineation. Changes in security matters, recessions and the very recent hot topic of global warming have also been brewing, developing as well as studied as stand alone issues. On 1 November 1967, Malta's Ambassador to the United Nations, Arvid Pardo, asked the nations of the world to look around them and open their eyes to a looming conflict that could devastate the oceans, the lifeline of man's very survival.¹³⁰

¹²⁸ Ibid.

¹²⁹ Supra footnote 1.

¹³⁰ Ibid., http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm (retrieved 28 July 2008).

4.4.1 Maritime Security and Safety

As all States share in the benefits of safer and more secure oceans, they also share in the responsibility for addressing major threats and challenges to maritime security and safety.¹³¹ Crimes, its incidence and reach have not only become more violent but have also gone beyond borders especially in the maritime sector. Policing of borders has become of great importance. Two of the foremost crimes at present are piracy and terrorism. Efforts to enhance either maritime security or safety thus have cascading effects on the conduct and regulation of other activities in the oceans.¹³² These regimes also share the need for cooperative efforts at all levels to enhance their effectiveness and address new challenges.¹³³ These threats go well beyond use of force, and extend to poverty, infectious disease and environmental degradation, internal conflicts, the spread and possible use of biological, chemical and nuclear (BCN) weapons, terrorism, and transnational organized crime.¹³⁴ In the Report of the Secretary-General on Oceans and the Law of the Sea, these issues were discussed. The UNCLOS has not only provided different regimes in the delimitation but it also set out the responsibilities of State Parties that were attached to the rights and powers that they were allowed to exercise within their jurisdiction. Considering that the UN itself espouses peaceful settlement of disputes or conflicts of interests hence the UNCLOS also espouses the peaceful use of the seas and oceans. Flag States play a particularly important role in maritime security, as they are required to effectively exercise jurisdiction and control in administrative, technical and social matters over ships flying their flag.¹³⁵ The Convention requires the coastal states to adopt laws and regulations which comply with the international rules in the purpose

¹³¹ Report of the Secretary-General on Oceans and the Law of the Sea

http://www.un.org/Depts/los/general_assembly/documents/oceans_los_advance_unedited.pdf.

¹³² http://www.un.org/Depts/los/general_assembly/documents/oceans_los_advance_unedited.pdf.

¹³³ Ibid.

¹³⁴ Report of the High-level Panel on Threats, Challenges and Change (A/59/565).

http://www.un.org/Depts/los/general_assembly/documents/oceans_los_advance_unedited.pdf (retrieved 31 July 2008).

¹³⁵ http://www.un.org/Depts/los/general_assembly/documents/oceans_los_advance_unedited.pdf.

of ensuring the innocent passage of foreign vessels¹³⁶, with respect to the following¹³⁷:

- Safety of navigation;
- The protection of navigation and facilities;
- The regulation the maritime traffic;
- The protection of cable and pipeline;
- The conservation of living resource;
- The prevention of infringement of fisheries law and regulation of coastal state;
- The maritime scientific research and hydrographic survey; and
- The prevention of infringement of the customs, fiscal, immigration, or sanitary law.

Maritime safety on the other hand is principally concerned with ensuring safety of life at sea, safety of navigation, and the protection and preservation of the marine environment.¹³⁸ This responsibility is entrenched in the delimitation because States can only exercise control over their territories and administrative supervision over the other zones. The shipping industry has a predominant role in this regard and many conditions must be fulfilled before a vessel can be considered safe for navigation: vessels must be safely constructed, regularly surveyed, appropriately equipped (e.g. with nautical charts and publications) and adequately manned; crew must be well-trained; cargo must be properly stowed; and an efficient communication system must be on board.¹³⁹ Trade as well as economies relies in the

¹³⁶ Mom Ravin, *Law and the Sea: Maritime Boundaries and Dispute Settlement Mechanisms*, http://www.un.org/Depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/mom_05_06_cambodia.pdf (retrieved 08 July 2008).

¹³⁷ UNCLOS 1982.

¹³⁸ Report of the Secretary-General on Oceans and the Law of the Sea. http://www.un.org/Depts/los/general_assembly/documents/oceans_los_advance_unedited.pdf (retrieved 10 July 2008).

¹³⁹ Report of the Secretary-General on Oceans and the Law of the Sea

efficiency of this system so that the private and government sectors' collaboration is necessary. Efforts to improve maritime safety in this industry are particularly important given its significance to world trade, economic development and poverty alleviation.¹⁴⁰ Safe and efficient navigation also depends on safe, secure and crime-free navigational routes.¹⁴¹ In connection therewith, Article 27 and 28 of 1982 United Nations Convention also provides the coastal states with criminal and civil jurisdiction on board a foreign ship in cases:

- the sequences of the crime extend to the coastal states;
- there are request for assistance from Master of the ship or from a diplomatic agent of the flag state or consular officer of the flag state;
- suppression of illicit traffic in narcotic drugs or psychotropic substances;
- foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal water.

4.4.2 Climate Change and Delimitation

Equally relevant to maritime boundary issues is the increased focus of the world community on the global environment.¹⁴² The oceans play a fundamental role in the climate system, as ocean-climate coupling regulates and mitigates the exchange of heat, carbon and water within the Earth's systems.¹⁴³ Aside from this, climate change or global warming not only has an effect on the marine resources but

http://www.un.org/Depts/los/general_assembly//documents/oceans_los_advance_uneditedfile.pdf (retrieved 30 July 2008).

¹⁴⁰ Oceans and the Law of the Sea: Report of the Secretary General http://www.un.org/Depts/los/general_assembly/documents/oceans_los_advance_unedited.pdf (retrieved 25 July 2008).

¹⁴¹ Ibid.

¹⁴² Supra footnote 109 at p. xxv.

¹⁴³ Report of the Secretary-General, Overview of the United Nations activities in relation to climate change, A/62/644. http://www.un.org/Depts/los/general_assembly//documents/oceans_los_advance_unedited.pdf (retrieved 17 July 2008).

its threat also lies on its ability to change the configuration of the face of the earth as it is known in the present world. This effect is clearly double edge in that it has economic and political implications. One of the major manifestations of climate change that experts give is the eventual melting of the ice in the arctic causing a drastic rise in the water level. Rise in water level will cause low lying land formation like islands or reefs to be submerged or even the probability of the coast moving landwards with higher water level with the possibility of changing the base points. The baseline points that would be most threatened by rising sea levels includes the low-tide elevations (drying rocks), fringing reefs, riverbanks, and islands.¹⁴⁴ The behavior of the international community in response to this development cannot easily be predicted, but it is likely that many states will seek to perfect their control over nearby ocean areas.¹⁴⁵ In such a case what the UNCLOS sought to avoid in its implementation might just again resurge due to the changes that the change in climate will bring about. Unsettled maritime boundaries can lead to discord, conflict, and poor resource and environmental management.¹⁴⁶ What then would be the chance of a State that has not delimited its boundaries? The answer to such question becomes more alarming if the State in question is an archipelagic State.

4.4.3 Global Economic Portents

The world market today is at its low with the continued unprecedented rise of oil prices. Predictions as to how high the price of oil will reach are heard daily on the news causing world wide unease. Economics is a major factor in delimitation because it is one of the main considerations in the choice of base points. This idea was best described in a book of Charney et al. that states, “*in six of 134 maritime agreements examined in this work, there were six instances of state practice that*

¹⁴⁴ Charles Di Leva and Sachiko Morita, *Maritime Rights of Coastal States and Climate Change: Should States Adopt to Submerged Boundaries?*, http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/L&D_number5.pdf (retrieved: 05 August 2008).

¹⁴⁵ Supra footnote 109 at p. xxv.

¹⁴⁶ Ibid.

*suggest that fishery considerations had a direct influence on the actual location of the boundary line*¹⁴⁷”. States choose the boundary lines that will logically be economically helpful to its citizens and even the whole country itself. This problem can best be shown in the problems being experienced in the Northern Waters. Until recently the economic resources of the region consisted of the minerals extracted from land areas – coals from Svalbard, cryolite from Greenland, for example – and the seemingly ample fisheries stocks in the high seas that made up most of the Northern Waters.¹⁴⁸ The changing global economic status has naturally affected every aspect of society and continues to not only influence boundary issues but even motivate States to try to claim boundary lines as far off the seas as possible. To the extent that resource scarcity and competition for valuable resources continue to drive State behavior, established maritime boundaries will serve to allocate ocean resources of the continental shelf and exclusive economic zone.¹⁴⁹

Conversely, with the desire to have as much of the oceans and seas as possible the other problem that springs up is the economic capability of the State to exploit or even just explore the parts of the seas that they have claimed to be within their boundaries. During the past ten years, the increase of the price of oil and natural gas and the advances in technology needed to extract these products from deep waters has prompted the extension of the search of offshore energy into the Northern Waters.¹⁵⁰ In this aspect the economic capability of the State is important and would define whether the delimited boundary seas will work for the State or just lie as just a body of water over which other States do not exercise sovereignty. In contrast, sometimes boundaries are chosen only for delimiting the extent of territory of a State, the choice was made with no economic consideration nor exploitative probabilities and turns out that the area is economically viable. Such a situation does not pose any problem or any tension because by then the area already is within the

¹⁴⁷ Ibid., at p.81.

¹⁴⁸ Clive Archer and David Schrivener, *Northern Waters: Security and Resource Issues*, London: Routledge, 1986 at p. 2.

¹⁴⁹ Supra footnote 15 at p. xxv.

¹⁵⁰ Archer et al., supra footnote 148.

territorial boundaries of a State who clearly has the exploration and exploitation rights over it. The problem arises if an area is in dispute or maritime boundaries have not yet been delimited. The lack of any detailed international agreement on the division of the seabed between neighboring countries only begun to present problems with the realization that underground resources could be economically accessible.¹⁵¹

The relation of maritime boundary delimitation to the concepts of security, safety, economics and climate change has always been in existence but not given much attention. These are the elements that contributed to the need for boundary delimitation as well as the considerations used by States in their decisions concerning the extent and the base points for their boundaries. What delimitation ultimately brings in light of these issues as far as the UNCLOS is concerned is the authority and right of the State in combating, controlling and mitigating the effects of said issues. Without delimited boundary lines a State might either find itself unable or without mandate to deal with these things or even to protect itself from its effects. In effect, delimitation narrows a States responsibility within its delineated area at the same time it broadens the State's rights and authority that it can exercise within the given area. To some extent, delimitation has indeed equalized the opportunities and responsibilities of all States regardless of its size or economic and political power by designating to each an equitable part of the seas as part of its territory.

¹⁵¹ Ibid.

CHAPTER 5

STATE 1: THE INDONESIAN EXPERIENCE AS A COMPLIANT ARCHIPELAGIC STATE

5.1 History¹⁵² and Reasons for Archipelagic Claim

The concept that the nation is a single entity comprised of the entirety of the archipelagoes, their individual islands and surrounding waters, is a core Indonesian belief, known as *Wawasan Nusantara* (archipelagic outlook).¹⁵³ Indonesia is an archipelago of 17,508 islands (6,000 inhabited) with a coastline of 54,716 km that straddles the equator which is a strategic location astride or along major sea lanes from the Indian Ocean to the Pacific Ocean.¹⁵⁴ It has been made of several nations though with a loose relationship with each other. Two major empires have reigned over the general area, namely the Buddhist Kingdom of Srivijaya that flourished in Sumatra from the 7th to the 14th Century followed by the Hindu Kingdom of Majapahit that flourished in the Java region. Soon the Dutch came and replaced the existing small kingdoms that followed after the Majapahit Empire and held almost all of Indonesia under one colonial rule for 300 hundred years. The colonialization by the Dutch actually greatly contributed to making Indonesia into one cohesive political entity, except for East Timor that was under Portugal. The physical boundaries of Indonesia were established by the Netherlands when they took over the many islands and made them into a single colony: the Netherlands East Indies.¹⁵⁵

Indonesia as the fourth biggest country in the world with islands strung across the equator that are joined by waters covers an area as wide as Europe or the United

¹⁵² All facts and figures were taken form the United States Department of State site on Indonesia, <http://www.state.gov/r/pa/ei/bgn/2748.htm#history> (retrieved 03 August 2008).

¹⁵³ Indonesian Archipelagic Sealane, Papers in Australian Maritime Affairs No. 16, Sea Power Centre Australia, <http://www.navy.gov.au/spc/maritimepapers/piama16/lanes.html> (retrieved 08 Aug 2008).

¹⁵⁴ Central Intelligence Agency, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html> (retrieved 08 August 2008).

¹⁵⁵ Adrian Vickers, *History of Modern Indonesia*, New York, Cambridge University Press, 2005 at p.2.

States.¹⁵⁶ This makes Indonesia the world's largest archipelago to form a single State and one of the two ardent proponents for the archipelagic principle in the Law of the Sea Conferences. The journey for proper recognition of the unique geographical configuration of Indonesia as an archipelagic State started before UNCLOS I convened in 1958. It was the first to make legal unilateral claim by issuing Ministerial Decree of 13 December 1957, also known as the "Djuanda Declaration", which regarded an archipelago as a single unit, and considered the water between and around the island as an integral whole area with the land territory.¹⁵⁷ The Djuanda Declaration used words bearing a striking similarity to the 1955 and 1956 *Notes Verbale* of the Philippines.¹⁵⁸ Indonesia also joined the Philippines in the bid to have the archipelagic principle tabled for discussion in the two preceding Conferences until it finally got acknowledged during UNCLOS III, where a separate archipelagic regime was created.

The evolution into a sovereign statehood of Indonesia has clearly been made difficult by its physical configuration. A single state with vast stretches of seas in between its numerous islands that are populated by heterogeneous groups of people, it has to make use of any means to maintain unity within itself. As a new nation it has struggled to balance the interest of different groups and maintain coherence against both the pressures of its own diversity and tensions created by international politics.¹⁵⁹ This is why it has been fervently pushing for the inclusion in the UNCLOS provisions on archipelagos because it has seen that archipelagic principle meets its need of maintaining the territorial integrity of its State. Basically, the claim for special treatment and unitization for archipelagic States stems from the greater difficulties they face when compared to continental States, with regard to

¹⁵⁶ Ibid., p.1.

¹⁵⁷ Supra footnote 43 at p. 6.

¹⁵⁸ Supra footnote 10 at p. 64.

¹⁵⁹ Vickers, supra footnote 155 at p.3.

communications, national cohesiveness, security, and the financial burden of administration.¹⁶⁰

5.2 Process of Delimitation

The Republic of Indonesia first saw light on August 17, 1945, when its independence was proclaimed just days after the Japanese surrender to the Allies.¹⁶¹ The infant republic was soon faced with military threats to its very existence.¹⁶² This political instability was due to the presence of the Dutch who have not relinquished their hold over the State despite the declaration of independence, the adoption of a constitution and the establishment of a cabinet. Perhaps due to the political instability that the war was causing and its desire to solidify and unify all islands into one State, the archipelagic principle looked like one of the solution for the beleaguered State. Right after the end of the Second World War, new States were just finding their identities as well as exerting their existence in the international community. On September 28, 1950, Indonesia became a member of the United Nations.¹⁶³

In the first legal unilateral claim made, Indonesia issued Ministerial Decree of 13 December 1957, also known as the Djuanda Declaration that regarded an archipelago as a single unit, and considered the water between and around the islands as an integral whole area with the land territory.¹⁶⁴ This Declaration clearly formulated its espousal of the archipelagic concept by declaring that:

...all waters surrounding, between and connecting the islands constituting the Indonesian State, regardless of their extension and breadth are integral parts of the territory of the Indonesian State and

¹⁶⁰ Jayewardene, supra footnote 105 at p. 106.

¹⁶¹ History: The Birth of a Republic, Embassy of Indonesia, Ottawa, http://www.indonesia-ottawa.org/page.php?s=1000birth_republic (retrieved 02 August 2008).

¹⁶² Indonesia's History and Background, Asianinfo.org.

<http://www.asianinfo.org/asianinfo/indonesia/pro-history.htm> (retrieved 01 August 2008).

¹⁶³ Supra footnote 161.

¹⁶⁴ Supra footnote 43 at p. 6.

therefore parts of the internal or national waters which are under the exclusive sovereignty of the Indonesian State.

Innocent passage for foreign ships in these internal waters is granted so long as it is not prejudicial to or violates the sovereignty and security of Indonesia.

The delimitation of the territorial sea (the breadth of which is 12 miles) is measured from the baselines connecting the outermost points of the islands of Indonesia...¹⁶⁵

The basis for the claims especially on the status of the seas between and around islands situated together as an archipelago was from the decision of the International Court of Justice in the *Anglo-Norwegian Fisheries Case* that considered the waters between islands in an archipelago as internal waters. During the First Geneva Conference on the Law of the Sea, the Indonesian delegate, Subarjo, explained his country's unilateral legal action with regard to the archipelagic concept as follows:¹⁶⁶

Indonesia consists of some 13,000 islands scattered over a vast area. To treat them as separate entities each with its own territorial waters, would create many serious problems. Apart from the fact that the exercise of state jurisdiction in such an area was a matter of great difficulty, there was the question of the maintenance of communication between the islands.

If each of Indonesia's component islands were to have its own territorial sea, the exercise of more effective control would be made extremely difficult.

Furthermore, in the event of an outbreak of hostilities, the use of the modern means of destruction in the interjacent waters would have disastrous effect on the population of the islands and on the living resources of the maritime areas concerned. That is why the Indonesian government believes that the seas between and around the islands should be considered as forming a whole with the land territory, and the country's territorial seas should be measured from baselines drawn between the outermost points of the outermost islands.¹⁶⁷

¹⁶⁵ M. Whiteman, *Digest of International Law*, Vol. 4 Washington: U.S. Government Printing Office, 1965 at p.281.

¹⁶⁶ Supra footnote 43 at p. 6.

¹⁶⁷ The Indonesian delegate's statement at the 15th meeting of the First Committee of UNCLOS I on 14 March 1958, as quoted in the book of Phiphat Tangsubkul, *ASEAN and the Law of the Sea*, Singapore: Institute of Southeast Asian Studies, 1982 at pp. 6-7.

Such formal enactment of legislation pertaining to the archipelago concept in Indonesia, was the consequence of the failure of the 1958 and 1960 Conferences of the Law of the Sea to provide a special regime for archipelago. In 1960, the Djuanda Declaration was formally ratified by Indonesia. Its archipelagic baselines were drawn in 1960 and continental shelf boundaries have been negotiated with Malaysia in 1969 and with Australia in April 1971.¹⁶⁸ Hence during the UNCLOS III, Indonesia together with other archipelagic States moved for the acceptance and inclusion of provisions relating to archipelagos. This time the proponents of the archipelagic doctrine were successful, as the adopted UNCLOS provides for the special regime of archipelagos.

Following the adoption of the UNCLOS, Indonesia as signatory, ratified the Convention on 03 February 1986.¹⁶⁹ Then it issued Act No. 6 of 08 August 1996, the Act on Indonesian Waters. Article 2 of the Act states:

Article 2¹⁷⁰

1. The State of the Republic of Indonesia is an archipelago.
2. All waters in the surroundings, in between and those which connect the islands or part of the islands included in the land area of the State of the Republic of Indonesia, without regard to the extent and width thereof, constitute an integral part of the territories of the land area of the State of the Republic of Indonesian waters existing under the sovereignty of the State of the Republic of Indonesia.¹⁷¹

The passage of Act No. 6 made Indonesia's declaration as an archipelagic State official as far as UNCLOS is concerned. This was Indonesia's first step in the

¹⁶⁸ Supra footnote 109 at p. 1456.

¹⁶⁹ Table recapitulating the status of the Convention and of the related Agreements, as at 16 July 2008, http://www.un.org/Depts/los/reference_files/status2008.pdf (retrieved 02 August 2008).

¹⁷⁰ Act No. 6 of 8 August 1996 regarding Indonesian Waters, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IDN_1996_Act.pdf (retrieved 02 August 2008).

¹⁷¹ Act No. 6 of 8 August 1996 regarding Indonesian Waters, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IDN_1996_Act.pdf (retrieved 02 August 2008).

process of incorporating its claims vis-à-vis the provisions of UNCLOS. Article 5 of Act No. 6 provides for straight baselines as the baseline of choice for the Indonesian Archipelago and affirms that such baselines have to be measured from the low-water line of the outermost islands and dry rocks of Indonesia as provided for in Part IV of the UNCLOS.¹⁷² The Indonesian baseline is defined in Governmental Regulation No. 38, 2002, where the list of coordinates of 183 base points used to construct Indonesian baselines are also provided for.¹⁷³ In addition, it undertook verification of its islands which including the naming of the islands that were still nameless. This process was the result of Indonesia's decision to register its islands with the UN in preparation of its submission. Notwithstanding numbering, the naming of these islands is really about strategy for Indonesia. This is considered the first important step in developing and maintaining small islands. While this is important for economic development, it has an even more significant impact on national sovereignty.¹⁷⁴

On 16 June 2008, the Republic of Indonesia submitted to the Commission on the Limits of the Continental Shelf, in accordance with Article 76, paragraph 8, of the Convention, information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured relating to the continental shelf of North West of Sumatra Island.¹⁷⁵ This submission though is not complete and Indonesia has already informed CLCS that it will be submitting another partial submission before the deadline of May 2009.

¹⁷² Article 6, Act No. 6 http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IDN_1996_Act.pdf (retrieved 02 August 2008).

¹⁷³ Sobar Sutisna, T. Patmasari and Khafid, *Indonesian Searching for its Continental Shelf Outer Limits*, National Coordinating Agency for Surveys and Mappings, <http://www.gmat.unsw.edu.au/ablos/ABLOS05Folder/SutisnaPaper.pdf> (retrieved 08 August 2008).

¹⁷⁴ I Made Andy Arsana, "Naming Indonesia's islands has implications for sovereignty", The Jakarta Post.Com, http://www.un.org/Depts/los/nippon/unnff_programme_home/fellows_pages/arsana/Naming_Indonesias_Islands_Arsana.pdf (retrieved 04 August 2008).

¹⁷⁵ Commission on the Limits of the Continental Shelf (CLCS), Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Republic of Indonesia, http://www.un.org/Depts/los/clcs_new/submissions_files/submission_idn.htm (retrieved 13 July 2008).

Partial submission process that was used by Indonesia is based on the decision of the CLCS that provided for the “submission of preliminary information that was only indicative of the outer limits of the continental shelf beyond 200 nautical miles”.¹⁷⁶ The consideration of the submission made by Indonesia will be included in the provisional agenda of the twenty-third session of the Commission to be held in New York in March-April 2009.¹⁷⁷ The Executive Summary of the submission of Indonesia is published in the Division of Ocean Affairs and the Law of the Sea site in accordance to the rule of procedure of the Commission.¹⁷⁸

¹⁷⁶ Paragraph 1(a), SPLOS/183, CLCS <http://daccessdds.un.org/doc/UNDOC/GEN/N08/398/76/PDF/N0839876.pdf?OpenElement> (retrieved 22 August 2009).

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

CHAPTER 6

STATE 2: THE PHILIPPINES AS AN ARCHIPELAGIC STATE AND ITS STATUS IN THE PROCESS OF COMPLIANCE

6.1 Historical¹⁷⁹ Basis of the Philippine Claim

The Philippines, like its neighbour Indonesia was made up of island communities that were governed by local chiefs called *datu* or *rajah*. These communities were related with one another by trade, consanguinity or affinity of the ruling chiefs but all the islands that are part of the present Philippines did not belong to one chief ruler or one central government. They were just groups of island communities sharing several commonalities in features, language, belief system and customs. They might have gone together into war to protect their respective territories and rights but not as belonging to one entity or state. The idea of nationhood arose with the advent of colonization. The first to colonize the islands, and eventually gave these islands the name Philippines, was Spain. The Spanish rule lasted for over three hundred years of continuous occupancy until local insurrection as well as wars faced by Spain with other colonial powers (e.g. the United States) led to the cession of the Philippines. Spain ceded the Philippine Islands to the United States in the Treaty of Paris of 10 December 1898. In this Treaty Spain actually sold the Philippines to the US for 20 million dollars.¹⁸⁰ However, this Treaty was the first document where the expanse of the Philippine territory was described. Article III of the Treaty of Paris states the following:

¹⁷⁹ The historical data used in this Chapter are taken from the Official Website of the Republic of the Philippines. <http://www.gov.ph/aboutphil/general.asp> (retrieved 31 July 2008).

¹⁸⁰ School of History, Philosophy, Political Science and International Relations, "Philippines Timeline: A Victoria Student Project", Victoria University of Wellington, <http://www.philippines-timeline.com/first-independence.htm#pagetop> (retrieved 27 July 2008).

Article III.

Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty-seventh (127th) degree meridian of longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty five minutes (4 [degree symbol] 45') north latitude, thence along the parallel of four degrees and forty five minutes (4 [degree symbol] 45') north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degree symbol] 35') east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degree symbol] 35') east of Greenwich to the parallel of latitude seven degrees and forty minutes (7 [degree symbol] 40') north, thence along the parallel of latitude of seven degrees and forty minutes (7 [degree symbol] 40') north to its intersection with the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning. The United States will pay to Spain the sum of twenty million dollars (\$20,000,000) within three months after the exchange of the ratifications of the present treaty.¹⁸¹

From this point onward the description stated in Article III of the Treaty of Paris has been the extent of what became to be considered as the territory of the Philippines. Before even the advent of the Conventions creating the different regimes, the Philippines treated the area described in Article III of the Treaty of Paris as comprising its territory. This is evinced by the statement of Article I on The National Territory of the 1935 Philippine Constitution, which states:

¹⁸¹ Avalon Project at Yale Law University, "Treaty of Peace Between the United States and Spain; December 10, 1898", The Lillian Goldman Library, <http://www.yale.edu/lawweb/avalon/diplomacy/spain/sp1898.htm> (retrieved 29 July 2008).

ARTICLE I

The National Territory

Section 1. The Philippines comprises all the territory *ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight*, the limits which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington between the United States and Spain on the seventh day of November, nineteen hundred, and the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty, and all territory over which the present Government of the Philippine Islands exercises jurisdiction.¹⁸²

The adoption of the Philippines of the Treaty of Paris area predates any international convention and it was enjoyed as such by the State. Noteworthy is the fact that the 1935 Constitution was enacted at the time that the Philippines was still under the rule of the United States as a Commonwealth. Thus the passage of this fundamental law was sanctioned by the United States through its President to whom the draft Constitution was submitted for approval by the Constitutional Convention.¹⁸³ The Philippines eventually gained full independence on 04 July 1946.

In 1951 the International Court of Justice decided upon a dispute between the United Kingdom and Norway that came to be known as the *Anglo-Norwegian Fisheries Case*. In essence, the decision basically said that the straight baselines drawn along the outer coastlines between fixed base points on the mainland itself or on the innumerable islands, islets or skerries forming the Norwegian *skaergaard*, thus including inside the base lines the waters of all the Norwegian fjords and sounds formed by the mainland and/or the *skaergaard* was not contrary to the principles of

¹⁸² The 1935 Constitution of the Republic of the Philippines.

¹⁸³ School of History, *supra* footnote 180 at <http://www.philippines-timeline.com/first-independence.htm#pagetop> (retrieved 27 July 2008).

international law.¹⁸⁴ The decision also stated that the waters within the straight baselines are considered to be internal waters. This decision churned the first move of the Philippines' claim for recognition as an archipelagic State.

Influenced by the *Anglo-Norwegian Case* decision, the Philippines in a *note verbale* to the UN Secretary-General stated:

All waters around, between and connecting the different islands belonging to the Philippine Archipelago irrespective of their widths or dimensions, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters subject to the exclusive sovereignty of the Philippines.’¹⁸⁵ All other water areas are embraced within the lines described in the Treaty of Paris of 18 December 1898, the Treaty concluded at Washington D.C. between the United States and Spain on 7 November 1900, the Agreement between the United States and the United Kingdom of 2 January 1930 and the Convention of 6 July 1932 between the United States and Great Britain as reproduced in section 6 of the Commonwealth Act.¹⁸⁶

The Philippines based this claim on “historical grounds” maintaining that the Philippines have viewed all the islands as one unit and so has Spain as a colonizer. The Treaty of Paris is a further evidence of this assertion. However, this opposed declaration met opposition from other States, one of which, ironically, was the US.

6.2 Philippines in the Law of the Sea Conferences

The Philippines did not stop with the *note verbale* to the UN Secretary-General. When UNCLOS I convened in 1958 in Geneva to examine the Law of the Sea, there was a preparatory document prepared by Mr. Jens Evensen, advocate in

¹⁸⁴ Jens Evensen, “The Anglo-Norwegian Case and Its Legal Consequences”, *AJIL* Vol.46 [1952] 4 at p. 610.

¹⁸⁵ Anand, *supra* footnote 9 at p.206.

¹⁸⁶ *Supra* 43 at p. 12.

the Supreme Court of Norway, at the request of the United Nations Secretariat made conclusion on mid-ocean archipelagos along the following lines:¹⁸⁷

- i) Though a state must be allowed the latitude necessary in order to be able to adopt the delimitation of the territorial sea of its midocean archipelagos to practical needs and local requirements, such delimitation has international law aspects.
- ii) The close dependence of the territorial sea upon the local domain of the archipelago will always be paramount importance.
- iii) The drawing of baselines must not depart appreciably from the general direction of the coast of the archipelago viewed as a whole.
- iv) Although there was no fixed maximum as to the length of baselines, the drawing of exorbitantly long baselines, closing vast areas of sea to free navigation and fishing would be contrary to international law. In such cases, there could not be a sufficiently close dependence between the land domain and the water areas concerned.
- v) The question as to whether the waters situated between and inside the constituent parts of an archipelago may be considered as internal waters would depend upon whether such areas are so closely linked to the surrounding land domain of the archipelago as to be treated in the same manner as the surrounding land.
- vi) The waters situated between and inside the islands and islets of an archipelago shall be considered as internal waters and where such waters form a strait, such waters cannot be closed to the innocent passage of foreign ships.¹⁸⁸

However, the Philippines have also submitted at the start of the Conference a proposal that it sought to have inserted as part of draft Article 5, a new paragraph which states:

When islands lying off the coast are sufficiently close to one another as form a compact whole and have been historically considered collectively as a single unit, they may be taken in their totality and the method of straight baselines provided in Article 5 may be applied to determine their territorial sea. The baseline shall be drawn along the coast of the outermost islands, following the general configuration of

¹⁸⁷ *Supra* footnote 10 at p. 81.

¹⁸⁸ *Ibid.*, at p. 82.

the group. The waters inside such lines shall be considered internal waters.¹⁸⁹

Nevertheless, the proposal as well as the efforts of the Philippines to table the issue on archipelagos for discussion was unsuccessful. UNCLOS I, though successful in drafting four conventions overlooked the issue on archipelagos because it had difficulty in reaching an agreement among the members on the breadth of the territorial sea. The same thing happened during UNCLOS II that convened in 1960 as the same problem on the breadth of the territorial and the contiguous zone was carried over and took all the time and consideration of the Conference.¹⁹⁰

6.3 Problems on the Philippine Claim

As previously stated the archipelagic States' struggle for the proper recognition in the international forum of their status and unique requirements met much resistance. Starting from the *note verbale*, the only positive actions that were made were mostly unilateral at most and therefore not binding internationally or on any State. In 1955 Indonesia issued *Djuanda Declaration*, which was the first unilateral legal act by an archipelagic State. The Philippines on its part already had its territory described in its Constitution that was enacted in 1935. The point from which the Philippines was arguing its case was not only from the view of "territorial integrity" or the islands forming a "single unit" but that these two reasons were being claimed on the basis of "*historical grounds*". The principle of "historic waters", invoked in support of the argument for special treatment was because historically the islands of the archipelago were treated and regarded as a unit, was the underlying argument brought by the Philippines in its efforts to have the subject on archipelago be discussed during UNCLOS I.¹⁹¹ Failing to consider the issue of archipelagos,

¹⁸⁹ Ibid., at p. 83.

¹⁹⁰ Edward L. Miles, *Global Ocean Politics: The Decision Process at the Third United Nations Conference on the Law of the Sea 1973-1982*, The Hague: Martinus Nijhoff Publishers, 1997, at p. 18.

¹⁹¹ Supra footnote 105 at p.108.

UNCLOS I postponed it because it was thought to be too complex for solution.¹⁹² This explains in part why the Philippines did not sign the four Geneva Conventions adopted in 1958.¹⁹³

At the Second United Nations Law of the Sea Conference in 1960, the Philippines, now joined by Indonesia, maintained their claim for unitisation.¹⁹⁴ However, UNCLOS II again failed to take action on the proposals of the Philippines and Indonesia¹⁹⁵ even when the Philippines called for a special solution to the problem.¹⁹⁶ Following the disappointment that the Philippines encountered, the Philippines instead turned internally. Formal enactment of legislation pertaining to the archipelago concept was instead adopted as a consequence of the failure of the 1958 and 1960 Conferences on the Law of the Sea.¹⁹⁷ On 17 June 1961, the Philippines enacted an Act to Define the Baselines of the Territorial Sea of the Philippines which states that:¹⁹⁸

... all waters within the Treaty Limits have always been regarded as part of the territory of the Philippine Islands: all water around, between and connecting the various islands of the Philippine archipelago, irrespective of their width or dimension, forming part of the inland or internal waters of the Philippines; therefore all the waters beyond the outermost islands of the archipelago connected by straight baselines but within the Treaty Limits comprise the Territorial Waters of the Philippines.¹⁹⁹

This law, later amended in 1968, provides for baselines from which the territorial sea of the Philippines is determined to consist of 79 straight lines joining 80 designated points on the outermost islands of the archipelago.²⁰⁰ Following the enactment of R.A. No. 3046, the Philippines received protests from the United

¹⁹² Supra footnote 9 at p. 206.

¹⁹³ Supra footnote 43 at p. 13.

¹⁹⁴ Supra footnote 105 at p.124.

¹⁹⁵ Supra footnote 9.

¹⁹⁶ Supra footnote 105 at p.133.

¹⁹⁷ Supra footnote 10 at p.65.

¹⁹⁸ Supra footnote 43.

¹⁹⁹ Republic Act No. 3046 of 1961, otherwise known as “An Act to Define the Baselines of the Territorial Sea of the Philippines.”

²⁰⁰ Supra footnote 43.

States, the United Kingdom and Australia expressing the concern of these States about the passage through the archipelagic waters, particularly with reference to warships.²⁰¹ Nevertheless, before the very first session of UNCLOS III in December 1973, the Philippines in 17 January 1973 ratified a new Constitution that contained the following Article containing its claim to the Treaty Limits stating:

ARTICLE I
The National Territory

Section 1. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines by historic or legal title, including the territorial sea, the air space, the subsoil, the sea-bed, the insular shelves, and the submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.²⁰²

Subsequently, after the enactment of local laws emphasising its territorial claims, the Philippines once again turned its attention to the international level where together with other archipelagic nations, they continued their struggle for recognition at the UNCLOS III. Nonetheless, the Philippines had to contend with protests that ironically were made by the US, who was one of the parties of the Treaty of Paris. Basically, what the US was claiming was that the description in the Treaty of Paris sketched only the land territory and was not meant to be construed as to include the seas around and between the islands. As a counter argument, the Filipino delegate, Ambassador Arturo Tolentino made the following statement at the Summer Session of the U.N. Sea-Bed Committee in Geneva in 1973, saying:

Mr. Chairman, I know the United States adheres to the three-mile limit of the territorial sea. But in connection with the statement of the distinguished delegate of the United States that the Treaty of Paris

²⁰¹ Supra footnote 10 at p.64.

²⁰² Article I, The 1973 Constitution of the Republic of the Philippines.

between Spain and the United States in 1898 did not transfer any waters but only the land area, I ask: Why were the boundaries made on the waters and far away from land, 270 miles away towards the Pacific and 147 miles towards the China Sea?

Then, consider these points:

(1) The Fisheries Act of 1932, passed by the Philippine Legislature, stated that the territorial sea of the Philippines extended to the Treaty Limits. We were then still under the United States and the American Governor-General, representing American sovereignty in the Philippines, approved and signed that law.

(2) In 1935, the Constitution of the Philippines was submitted to the President of the United States for approval. Its very first article described Philippine territory as extending to the Treaty Limits. The President of the United States approved and signed that Constitution.

(3) When the Philippines was still under American sovereignty there maps published by agencies of the United States government indicating these Treaty Limits as the boundaries of the Philippines.

It may be very convenient now for the United States to say that she did not exercise sovereignty over the territorial sea of the Philippines because she is no longer there.²⁰³

In UNCLOS III, the archipelagic States eventually gained the recognition they had been fighting for in the previous Conferences. Finally, with modification, the UNCLOS provides for archipelagic baselines producing a new regime called archipelagic waters which describes the waters landwards that are enclosed by archipelagic baselines. Notwithstanding this seeming victory, the Philippine claim based on the Treaty of Paris is still not tenable within the requirements provided in the UNCLOS. Thus, as far as the water to land ratio then the Philippines very much qualifies but using the Treaty Limits baselines and claiming waters enclosed within those baselines are internal waters and basing such claim on “*historic grounds*” was not accepted. Another criterion in Article 47 is that the length of the baseline may not exceed 100 miles except that up to three percent of the total number of baselines may be drawn to a maximum length of 125 miles. Out of the 79 identified straight

²⁰³ Supra footnote 43 at pp. 13-14.

lines of the Philippines, two measured beyond the 125 miles maximum with the longest measuring up to 140.05 miles.²⁰⁴

6.4 Status of Philippine Boundary Delimitation

Interestingly, the Philippines was one of the States that signed the UNCLOS on 10 December 1982, which was the first day the Convention was opened for signature. On 8 May 1984, the Philippines became the first State in the Southeast Asian region to ratify the Convention and the tenth State among all the signatories.²⁰⁵ Since the issuance of R.A. No. 3046 outlining the Philippine baselines, which was pre-UNCLOS, there has been no new law that sets out baselines in accordance with the Convention. The lack of priority of baselines delimitation within the Government of the Philippines was exacerbated by political instability. Just two years after the Philippines ratified the Convention, the first of a series of “bloodless revolution” was mounted to depose the then President Ferdinand E. Marcos in 1986. Several revolutions followed but only one other successfully removed a President, the actor Joseph Estrada.

It was only in 1993 that the issue on delimitation was revived within the Government through a bill dealing with baseline delimitation sponsored by Senator Leticia Ramos-Shahani.²⁰⁶ Senator Shahani herself several years after her sponsoring of the bill admitted that it was because the bill was full of loopholes and problems that made the bill unsuccessful. From then on several proposals have been filed concerning delimitation in both chambers of Congress but not one has been successful enough to be passed into law. On 27 February 2008, a news item in Manila Standard, a nationally circulated broadsheet warned that the Philippines was on the verge of losing the Spratlys or the *Kalayaan Island Group* (KIG), which is

²⁰⁴ Supra footnote 7 at p.154.

²⁰⁵ Ibid., p.6.

²⁰⁶ Vera Files, “Arroyo Neglect, Gov't Infighting Jeopardize RP's Territorial Claim”, <http://www.gmanews.tv/story/85939/Arroyo-neglect-govt-infighting-jeopardize-RPs-territorial-claim> (retrieved 15 May 2008).

one of the contested areas of the Philippines. The other claimants for this area are: Malaysia, Taiwan, China, Brunei, and Vietnam.

HB 3216, the seeking to delimit the Philippine boundaries authored by three representatives has already passed a second reading in December 2007.²⁰⁷ It proposes to include even disputed areas in the drawing of baselines. In a note to the Philippine Embassy, China expressed objection to HB 3216 stating that China was shocked by and gravely concerned with the negative development and request clarification from the Philippine side.²⁰⁸ This lead some groups to call for changes in HB 3216 and deleting provisions that provides for the inclusion of disputed areas in the delimitation of boundaries. Different arguments have then surfaced forcing the passing of HB 3216 to be stalled. One school of thought stated that the Philippine Congress can not pass a law delimiting the Philippine baselines in accordance with UNCLOS because it will be unconstitutional. The present Constitution of the Philippines ratified in 1987 states:

ARTICLE I
National Territory

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. **The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.**²⁰⁹

The language of Article I of the 1987 Constitution of the Philippines bears a marked difference from the two previous Constitutions in that it does no longer state the Treaty of Paris, especially the description stated in its Article III as the basis of it

²⁰⁷ Press Releases, “Baselines Issue Should Unite Not Divide: Nograles, Congress of the Philippines, House of Representatives,” <http://www.congress.gov.ph/press/details.php?pressid=2233> (retrieved 9 June 2008).

²⁰⁸ “China Opposes RP Archipelagic Bill,” Sun Star Network Online, March 13, 2008, <http://www.sunstar.com.ph/static/net/2008/03/13/china.opposes.rp.archipelagic.baseline.bill.html> (retrieved 3 July 2008).

²⁰⁹ Article I, The 1987 Constitution of the Philippines.

its definition of the Philippine territory. However, Article I of the present Constitution claims that the waters around, between and connecting the islands of the archipelago form part of the internal waters of the Philippines.²¹⁰ This is in contradiction with the provisions of UNCLOS which states that the waters enclosed by archipelagic baselines shall be archipelagic waters which have different attributes from internal waters.²¹¹ This actually is a mistake that can be attributed to the Philippines because the present Constitution was ratified after the Philippines signed and ratified the UNCLOS. Hence as signatory the Philippines was duty bound to draft its laws in accordance with its existing obligations in the international community. In other words, the language or the way that the 1987 Philippine Constitution was written was not in accordance with the provisions of UNCLOS. However, government officials, lawyers and common Filipinos alike felt strongly about its claim over parts of the sea which are considered forming part of the Philippines territory based on “historical grounds”.

Another contentious issue is the KIG and the Scarborough Shoal because it has divided lawmakers and officials from the executive branch into different sides as to how it should be properly dealt with. This led the executive branch to issue four options, which are:

Option 1. Enclose the main archipelago and Scarborough Shoal only while the Kalayaan Island Group (KIG) is treated as a regime of islands under Article 121 of UNCLOS.

Option 2. Enclose the main archipelago then treat Scarborough Shoal and KIG as regimes of islands.

Option 3. Enclose the main archipelago and KIG then treat Scarborough Shoal as a regime of islands.

²¹⁰ Ibid.

²¹¹ Article 49, UNCLOS 1982.

Option 4. Enclose all three--the main archipelago, KIG and Scarborough Shoal.²¹²

This is a source of disagreement because aside from the mentioned objections made by China, lawmakers themselves can not seem to come into agreement as to what will be most beneficial to the Philippines.²¹³ Consequently, due to difference of opinion and a lot of in fighting and power struggle, HB 3216 is on hold though officially Congress claims that it is due to the fact that the bill is currently being consolidated with that of the Senate which also deals with the same issue of baseline delimitation.

²¹² Vera Files, Palace, Lawmakers Eye Four Baselines Options, <http://www.verafiles.org/index.php/focus/34-top-story/70-palace-lawmakers-eye-four-baseline-options> (retrieved 25 June 2008).

²¹³ Asian Journal Online, "Don't Include Kalayaan Group of Islands in Baselines Bill", 7 August 2008, <http://asianjournal.com/?c=186&a=29364> (retrieved 10 August 2008).

CHAPTER 7

CONCLUSION

In determining the extent of a coastal State's territorial sea and other maritime zones, it is obviously necessary first of all to establish from what points on the coast the outer limits of such zones are to be measured – this is the function of baselines.²¹⁴ One of the reasons why the UNCLOS underwent a total of 24 years in the making was because, like people, States want to be treated differently from each other. Obviously no two coastlines are the same and considering that the land configuration around the world is so diverse, enacting one law that covers all the quirks and uniqueness of each State was a daunting task. Add to this milieu the special concern of archipelagos seeking recognition of their particular status and the archipelagos are sitting in the middle of important maritime trade routes. The result is either chaos or like the UNCLOS experience, a very long waiting before finally being adopted.

UNCLOS consolidated the existing maritime zonal regimes stated in separate conventions plus the new regime of archipelagos. All these are dependent on the delimitation of the baselines, which serve as a starting point of the delimitation of maritime zones along a coast to close off internal waters of the coastal State concerned.²¹⁵ Article 47(1) provides that “an archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago”.²¹⁶ However, this seemingly free rein to extend the territory is limited by the criteria the UNCLOS provided.

²¹⁴ Supra footnote 32 at p. 31.

²¹⁵ Supra footnote 7 at p.13.

²¹⁶ Supra footnote 32 at p.123.

It has been 26 years since the adoption of the UNCLOS in 1982 and just less than a year away from the deadline for submission, some of the signatories have yet to delimit their baselines. Looking back in the history of UNCLOS, the two fervent proponents of the archipelagic principle were the Philippines and Indonesia. Hence it is deemed interesting to revisit these two States and assess whether they retained their zeal in their efforts to comply with the provisions of UNCLOS.

On 16 June 2008, Indonesia had already submitted to the Commission on the Limits of the Continental Shelf, information on the limits of the continental shelf beyond 200 nautical miles from the baselines. Indonesia is still preparing other partial submissions that it is trying to submit before the deadline in May. Despite any internal problems, Indonesia was able to pull itself by the “bootstrap” to meet its international obligation. Unfortunately, the Philippines have not reached this level.

As the second largest archipelago, the Philippines have been very vigilant in the time prior to and during the Conferences in campaigning for the archipelagic principle. It has argued well and long and was eventually paid off when provisions dealing with archipelagos were inserted in the Convention. The Philippines has been the first in its promotion of the archipelagic principle but has failed in the application part. With just months from the deadline, internal conflict and partisan politics still affect its ability to comply within the period allocated to member States wherein to comply. The law delimiting the Philippine baselines is still being hotly debated in Congress while the disputed areas or the contentious areas like the KIG and the Scarborough Shoal are being snapped up by the other claimants who are already in the process of submitting or are more powerful militarily than the Philippines. Losing sovereignty over the disputed area does not only mean that the Philippine territory is reduced, but also the fact that these losses will mean fewer sources of marine resources. Another contributory reason for the delay is the stubbornness of the Philippines to maintain the Treaty Limits claim even when it has already signed and ratified the UNCLOS. The Philippines should instead concentrate on how to re-

draw the line that exceeds the UNCLOS' requirement of a maximum of 125 nautical miles.

If the Philippine Government will just keep its acts together and try to come up with the all important baselines law that will be its basis for its compliance to the submission to the CLCS then it may beat the 13 May 2008 deadline. Like Indonesia, the Philippines can make submission based on Paragraph 1(a) of the Decision of the CLCS as stated in SPLOS/183 dated 20 June 2008 made during the 18th meeting of States Parties in New York from 13-20 June 2008.²¹⁷ The decision to relax the requirement relating to submission is because the Commission recognizes that some coastal States, in particular developing countries, including small island developing States, continue to face particular challenges in submitting information to the Commission in accordance with Article 76 due to a lack of financial and technical resources and relevant capacity and expertise, or other similar constraints.²¹⁸

At this point in time, States like the Philippines has no other recourse but to work on the delimitation of their boundaries before 13 May 2009. A request for the extension of the deadline is not an assurance that the date will indeed be extended. Non-compliance on the other hand will only be detrimental to States like the Philippines as it will not only mean losing much more of the disputed islands and islets but also compromising the State's territorial integrity and put into question its credibility as a responsible member of the community of nations.

²¹⁷ Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfill the requirements of Article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph(a).<http://daccessdds.un.org/doc/UNDOC/GEN/N08/398/76/PDF/N0839876.pdf?OpenElement> (retrieved 22 August 2008).

²¹⁸ Ibid.

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APPENDICES

Appendix A. Treaty of Paris

Treaty of Peace Between the United States and Spain; December 10, 1898

The United States of America and Her Majesty the Queen Regent of Spain, in the name of her august son Don Alfonso XIII, desiring to end the state of war now existing between the two countries, have for that purpose appointed as plenipotentiaries:

The President of the United States, William R. Day, Cushman K. Davis, William P. Frye, George Gray, and Whitelaw Reid, citizens of the United States;

And Her Majesty the Queen Regent of Spain,

Don Eugenio Montero Rios, president of the senate, Don Buenaventura de Abarzuza, senator of the Kingdom and ex-minister of the Crown; Don Jose de Garnica, deputy of the Cortes and associate justice of the supreme court; Don Wenceslao Ramirez de Villa-Urrutia, envoy extraordinary and minister plenipotentiary at Brussels, and Don Rafael Cerero, general of division;

Who, having assembled in Paris, and having exchanged their full powers, which were found to be in due and proper form, have, after discussion of the matters before them, agreed upon the following articles:

Article I. Spain relinquishes all claim of sovereignty over and title to Cuba. And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

Article II. Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

Article III. Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty-seventh (127th) degree meridian of

longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty five minutes (4 [degree symbol] 45') north latitude, thence along the parallel of four degrees and forty five minutes (4 [degree symbol] 45') north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degree symbol] 35') east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degree symbol] 35') east of Greenwich to the parallel of latitude seven degrees and forty minutes (7 [degree symbol] 40') north, thence along the parallel of latitude of seven degrees and forty minutes (7 [degree symbol] 40') north to its intersection with the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning. The United States will pay to Spain the sum of twenty million dollars (\$20,000,000) within three months after the exchange of the ratifications of the present treaty.

Article IV. The United States will, for the term of ten years from the date of the exchange of the ratifications of the present treaty, admit Spanish ships and merchandise to the ports of the Philippine Islands on the same terms as ships and merchandise of the United States.

Article V. The United States will, upon the signature of the present treaty, send back to Spain, at its own cost, the Spanish soldiers taken as prisoners of war on the capture of Manila by the American forces. The arms of the soldiers in question shall be restored to them.

Spain will, upon the exchange of the ratifications of the present treaty, proceed to evacuate the Philippines, as well as the island of Guam, on terms similar to those agreed upon by the Commissioners appointed to arrange for the evacuation of Porto Rico and other islands in the West Indies, under the Protocol of August 12, 1898, which is to continue in force till its provisions are completely executed.

The time within which the evacuation of the Philippine Islands and Guam shall be completed shall be fixed by the two Governments. Stands of colors, uncaptured war vessels, small arms, guns of all calibres, with their carriages and accessories, powder, ammunition, livestock, and materials and supplies of all kinds, belonging to the land and naval forces of Spain in the Philippines and Guam, remain the property of Spain.

Pieces of heavy ordnance, exclusive of field artillery, in the fortifications and coast defences, shall remain in their emplacements for the term of six months, to be reckoned from the exchange of ratifications of the treaty; and the United States may, in the meantime, purchase such material from Spain, if a satisfactory agreement between the two Governments on the subject shall be reached.

Article VI. Spain will, upon the signature of the present treaty, release all prisoners of war, and all persons detained or imprisoned for political offences, in connection with the insurrections in Cuba and the Philippines and the war with the United States.

Reciprocally, the United States will release all persons made prisoners of war by the American forces, and will undertake to obtain the release of all Spanish prisoners in the hands of the insurgents in Cuba and the Philippines.

The Government of the United States will at its own cost return to Spain and the Government of Spain will at its own cost return to the United States, Cuba, Porto Rico, and the Philippines, according to the situation of their respective homes, prisoners released or caused to be released by them, respectively, under this article.

Article VII. The United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war.

The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article.

Article VIII. In conformity with the provisions of Articles I, II, and III of this treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other islands in the West Indies, in the island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain.

And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, can not in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be.

The aforesaid relinquishment or cession, as the case may be, includes all documents exclusively referring to the sovereignty relinquished or ceded that may exist in the

archives of the Peninsula. Where any document in such archives only in part relates to said sovereignty, a copy of such part will be furnished whenever it shall be requested. Like rules shall be reciprocally observed in favor of Spain in respect of documents in the archives of the islands above referred to.

In the aforesaid relinquishment or cession, as the case may be, are also included such rights as the Crown of Spain and its authorities possess in respect of the official archives and records, executive as well as judicial, in the islands above referred to, which relate to said islands or the rights and property of their inhabitants. Such archives and records shall be carefully preserved, and private persons shall without distinction have the right to require, in accordance with law, authenticated copies of the contracts, wills and other instruments forming part of notarial protocols or files, or which may be contained in the executive or judicial archives, be the latter in Spain or in the islands aforesaid.

Article IX. Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

Article X. The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

Article XI. The Spaniards residing in the territories over which Spain by this treaty cedes or relinquishes her sovereignty shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the country wherein they reside, pursuant to the ordinary laws governing the same; and they shall have the right to appear before such courts, and to pursue the same course as citizens of the country to which the courts belong.

Article XII. Judicial proceedings pending at the time of the exchange of ratifications of this treaty in the territories over which Spain relinquishes or cedes her sovereignty shall be determined according to the following rules:

1. Judgments rendered either in civil suits between private individuals, or in criminal matters, before the date mentioned, and with respect to which there is no recourse or right of review under the Spanish law, shall be deemed to be final, and shall be executed in due form by competent authority in the territory within which such judgments should be carried out.
2. Civil suits between private individuals which may on the date mentioned be undetermined shall be prosecuted to judgment before the court in which they may then be pending or in the court that may be substituted therefor.
3. Criminal actions pending on the date mentioned before the Supreme Court of Spain against citizens of the territory which by this treaty ceases to be Spanish shall continue under its jurisdiction until final judgment; but, such judgment having been rendered, the execution thereof shall be committed to the competent authority of the place in which the case arose.

Article XIII. The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba and in Porto Rico, the Philippines and other ceded territories, at the time of the exchange of the ratifications of this treaty, shall continue to be respected. Spanish scientific, literary and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories, for the period of ten years, to be reckoned from the date of the exchange of the ratifications of this treaty.

Article XIV. Spain will have the power to establish consular officers in the ports and places of the territories, the sovereignty over which has been either relinquished or ceded by the present treaty.

Article XV. The Government of each country will, for the term of ten years, accord to the merchant vessels of the other country the same treatment in respect of all port charges, including entrance and clearance dues, light dues, and tonnage duties, as it accords to its own merchant vessels, not engaged in the coastwise trade.

Article XVI. It is understood that any obligations assumed in this treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof; but it will upon termination of such occupancy, advise any Government established in the island to assume the same obligations.

Article XVII. The present treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Majesty the Queen Regent of Spain; and the ratifications shall be exchanged at Washington within six months from the date hereof, or earlier if possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this treaty and have hereunto affixed our seals.

Done in duplicate at Paris, the tenth day of December, in the year of Our Lord one thousand eight hundred and ninety-eight.

[Seal] William R. Day
[Seal] Cushman K. Davis
[Seal] William P. Frye
[Seal] Geo. Gray [Seal] Whitelaw Reid
[Seal] Eugenio Montero Rios
[Seal] B. de Abarzuza
[Seal] J. de Garnica
[Seal] W. R. de Villa Urrutia
[Seal] Rafael Cerero

Appendix B. Republic Act. No. 3046

Page 1

Republic Act No. 3046 of 17 June 1961.
An Act to Define the Baselines
of the Territorial Sea of the Philippines

Whereas, the Constitution of the Philippines describes the national territory as comprising all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on December 10, 1898, the limits of which are set forth in Article III of said treaty together with all the islands embraced in the treaty concluded in Washington, between the United States and Spain on November 7, 1900, and in the treaty concluded between the United States and Great Britain on January 2, 1930, and all the territory over which the Government of the Philippine Islands exercised jurisdiction at the time of the adoption of the Constitution;

Whereas, all the waters within the limits set forth in the above-mentioned treaties have always been regarded as part of the territory of the Philippine Islands;

Whereas, all the waters around, between and connecting the various islands of the Philippine archipelago, irrespective of their width or dimension, have always been considered as necessary appurtenances of the land territory, forming part of the inland or internal waters of the Philippines;

Whereas, all the waters beyond the outermost islands of the archipelago but within the limits of the boundaries set forth in the aforementioned treaties comprise the territorial sea of the Philippines;

Whereas, the baselines from which the territorial sea of the Philippines is determined consist of straight lines joining appropriate points of the outermost islands of the archipelago; and

Whereas, the said baselines should be clarified and specifically defined and described for the information of all concerned;

Section 1. (See Republic Act No. 5446 *infra*.)

Section 2. All waters within the baselines provided for in section one hereof are considered inland or internal waters of the Philippines.

Appendix C. Republic Act No. 5446

Republic Act No. 5446 of 18 September 1968,
An Act to Amend Section One of the Republic Act
Numbered Thirty Hundred and Forty-Six,
Entitled "An Act to Define the Baselines
of the Territorial Sea of the Philippines"

Section 1. To correct typographical errors, Section One of Republic Act numbered thirty hundred and forty six is amended to read as follows:

"Section 1. The baselines for the territorial sea of the Philippines are hereby defined and described specifically as follows:

	<u>N. Latitude</u>	<u>E. Longitude</u>	<u>Azimuth</u>	<u>Distance in Metres</u>
Y'AMI Island (E) Line 1 (Y'AMI I. (E.)- Tumaruk Rk.)	21°07'03"	121°57'24"	353°27'	81,656
Tumaruk Rk. Line 2 (Tumaruk Rk. -Balintang Is.)	20°28'28"	122°02'06"	347°13'	58,105
Balintang Islands Line 3 (Balintang Is. -Didicas Rk.)	19°57'45"	122°09'28"	357°05'	97,755
Didicas Rk. Line 4 (Didicas Rk.- Higan Pt.)	19°04'50"	122°12'18"	350°39'	86,155
Iligan Pt. Line 5 (Iligan Pt. -Ditolong Pt.)	18°18'45"	122°20'15"	351°23'	136,030
Ditolong Pt. Line 6 (Ditolong Pt.- Diviuisa Pt.)	17°05'50"	122°31'44"	16°56'	34,378
Diviuisa Pt. Line 7 (Diviuisa Pt.- Dijohan Pt.)	16°48'00"	122°26'06"	21°01'	57,781
Dijohan Pt. Line 7a (Dijohan Pt.- Bulubalik Pt.)	16°18'45"	122°14'28"	10°52'	142,360

Bulubalik Pt. Line 8 (Bulubalik Pt.- Tinaga I.)	15°02'56"	121°59'30"	300°15'	120,986
Tinaga I. Line 9 (Tinaga I.- Horadaba Rks.)	14°29'45"	122°57'40"	286°27'	148,690
Horadaba Rks. Line 10 (Horadaba Rk. -Matulin Rk.)	14°06'41"	124°17'23"	306°34'	1,083
Matulin Rk. Line 11 (Matulin Rk. -Atalaya Pt.)	14°06'20"	124°17'23"	331°46'	178,480

	<u>N. Latitude</u>	<u>E. Longitude</u>	<u>Azimuth</u>	<u>Distance in Metres</u>
Atalaya Pt. Line 11a (Atalaya Pt.-Finch Rk.)	12°40'59"	125°04'02'	313°30'	22,268
Finch Rk. Line 12 (Finch Rk.- SE of Manjud Pt.)	12°32'40"	125°12'57"	322°27'	14,225
SE Manjud Pt. Line 12a (SE of Manjud Pt.-Sora Cay)	12°27'54"	125°17'59"	322°27'	14,225
Sora Cay Line 13 (Sora Cay- Bunga Pt.)	12°21'47"	125°22'46"	321°03'	22,793
Bunga Pt. Line 13a Bunga Pt.- Tubabao I.)	12°12'10"	125°30'40"	331°50'	12,686
Tubabao I. Line 14 (Tubabao I.- Tugnug Pt.)	12°06'06"	125°33'58"	355°22'	83,235
Tugnug Pt. Line 15 (Tugnug Pt.- Suluan I.)	11°21'06"	125°37'40"	331°03'	75,326
Suluan I. Line 16 (Suluan I.- Tuason Pt.)	10°45'20"	125°57'40"	347°51'	107,070
Tuason Pt. Line 17 (Tuason Pt.- Cauit Pt.)	9°48'33"	126°10'00"	355°25'	55,415
Cauit Pt. Line 18 (Cauit Pt. -Arangasa Is.)	9°18'35"	126°12'25"	342°44'	49,703
Arangasa Is. Line 19 (Arangasa Is. -Quinablangan I.)	8°52'50"	126°20'28"	348°40"	131,330
Quinablangan I. Line 19a (Quinablangan I.-Above Languyan R.)	7°42'58"	126°34'30"	353°08'	25,619

	<u>N. Latitude</u>	<u>E. Longitude</u>	<u>Azimuth</u>	<u>Distance in Metres</u>
Above Languyan R. Line 20 (Above Languyan R.-Pusan Pt.)	7°29'10"	126°36'10"	356°52"	22,489
Pusan Pt. Line 21 (Pusan Pt.- Tuguban Pt.)	7°16'59"	126°36'50"	26°39"	36,259
Tuguban Pt. Line 22 (Tuguban Pt.- Cape S. Agustin (N))	6°59'24"	126°28'00"	20°33"	83,350
Cape San Agustin (N) Line 22a (Cape S. Agustin (N)- Cape San Agustin (S))	6°17'03"	126°12'08"	30°16'	1,707
Cape San Agustin (S) Line 23 (Cape S. Agustin (S)-Panguil Bato Pt.)	6°16'15"	126°11'40"	39°23'	125,100
Panguil Bato Pt. Line 23a (Panguil Bato Pt.-Tapundo Pt.)	5°23'45"	125°28'42"	66°32'	7,484
Tapundo Pt. Line 24 (Tapundo Pt. -Manamil I.)	5°22'08"	125°24'59"	88°19'	7,667
Manamil I. Line 24a (Manamil I. -Balut I. (W))	5°22'05"	125°20'50"	139°01'	3,051
Balut I. (W) Line 25 (Balut I. (W) -Middle of 3 Rk. Awash)	5°23'20"	125°19'45"	124°47'	149,840
Middle of 3 Rk. Awash Line 26 (Middle of 3 Rk. Awash- TONGQUIL I.)	6°09'39"	124°13'02"	86°18'	259,400
TONGQUIL I. Line 27 (TONGQUIL I.-Sumbasumba I.)	6°00'15"	121 52'45"	61°29'	115,950

	<u>N. Latitude</u>	<u>E. Longitude</u>	<u>Azimuth</u>	<u>Distance in Metres</u>
Sumbasumba I. Line 28 (Sumbasumba I. -Kinapusan Is.)	5°30'10"	120°57'35"	43°19'	44,445
Kinapusan Is. Line 29 (Kinapusan Is. -Manuk Manka I.)	5°12'37"	120°41'05"	63°14'	101,290
Manuk Manka I. Line 30 (MANUK MANKA I.- FRANCES REEF)	4°47'50"	119°52'10"	58°30'	80,847
Frances Reef Line 31 (Frances Reef -Bajapa Reef)	4°24'54"	119°14'54"	134°34'	29,330
Bajapa Reef Line 32 (Bajapa Reef -Panguan I.)	4°36'04"	119°03'36"	164°05'	13,480
Panguan I. Line 33 (Panguan I. -Omapoy I.)	4°43'06"	119°01'36"	238°48'	42,470
Omapoy I. Line 34 (Omapoy I.- Sanga-Sanga I.)	4°55'02"	119°21'15"	246°11'	51,005
Sanga-Sanga I. Line 35 (Sanga-Sanga I. -Pearl Bank)	5°06'12"	119°46'30"	170°05'	80,200
Pearl Bank Line 36 (Pearl Bank- Baguan I.)	5°49'04"	119°39'01"	103°12'	137,050
Baguan I. Line 36a (Baguan I.- Taganak I.)	6°06'00"	118°26'42"	76°52'	15,535
Taganak I. Line 37 (Taganak I.- Gt. Bakkungaan)	6°04'05"	118°18'30"	118°39'	24,805

	<u>N. Latitude</u>	<u>E. Longitude</u>	<u>Azimuth</u>	<u>Distance in Metres</u>
Gt. Bakkungaan Line 37a (Gt. Bakkungaan-SIBAUNG [Sibaung] I.)	6°10'32"	118°06'42"	136°04'	18,470
SIBAUNG I. Line 38 (SIBAUNG I.- Muligi I.)	6°17'45"	117°59'45"	215°36'	79,915
Muligi I. Line 39 (Muligi I.- Mangsee Is.)	6°53'00"	118°25'00"	119°14'	140,541
Mangsee Is. Line 39a Mangsee Is. -Cape Melville)	7°30'10"	117°18'20"	134°50'	48,815
Cape Melville Line 49 (Cape Melville -Ligas Pt.)	7°48'50"	116°59'30"	153°54'	15,665
Ligas Pt. Line 41 (Ligas Pt.- Cay)	7°56'28"	116°55'45"	170°40'	5,666
Cay Line 41a (Cay-Secam I.)		7°59'30"	116° 55'15" 204°52'	22,925
Secam I. Line 42 (SECAM I.- N. of Canipan Bay)	8°10'47"	117°00'30"	209°09'	54,990
N. of Canipan Bay Line 43 (N. of Canipan Bay-Tatub Pt.)	8°36'50"	117°15'06"	218°57'	18,570
Tatub Pt. Line 44 (Tatub Pt.- Punta Baja)	8°44'40"	117°21'28"	222°04'	45,125
Punta Baja Line 45 (Punta Baja- Malapackun I.)	9°02'50"	117°37'58"	223°30'	32,195
Malapackun I. Line 46 (Malapackun I. -PIEIRAS Pt.)	9°15'30"	117°50'04"	225°50'	148,260

PIEIRAS Pt.	10°11'28"	118°48'18"		
Line 47 (PIEIRAS Pt.- Tapiutan I.)			203°19'	124,900

	<u>N. Latitude</u>	<u>E. Longitude</u>	<u>Azimuth</u>	<u>Distance in Metres</u>
Tapiutan I. Line 48 (Tapiutan I.- Pinnacle Rk.)	11°13'40"	119°15'28"	208°47'	136,590
Pinnacle Rk. Line 49 (Pinnacle Rk. -Cape Calavite)	12°18'34"	119°51'45"	200°40'	134,230
Cape Calavite Line 50 (Cape Calavite -Cabra I.)	13°26'40"	120°18'00"	148°12'	58,235
Cabra I. Line 51 (Cabra I.- Capones Is.)	13°53'30"	120°00'58"	179°26'	113,400
Capones Is. Line 52 (Capones Is. -PALAUIG Pt.)	14°55'00"	120°00'20"	168°09'	58,100
PALAUIG Pt. Line 53 (PALAUIG Pt.- Hermana Mayor I.)	15°25'50"	119°53'40"	164°17'	40,870
Hermana Mayor I. Line 53a (Hermana Mayor I.-Tambobo Pt.)	15°47'10"	119°47'28"	167°10'	20,490
Tambobo Pt. Line 54 (Tambobo Pt.- Rena Pt.)	15°58'00"	119°44'55"	181°43'	22,910
Rena Pt. Line 54a (Rena Pt.- -Cape Bolinao)	16°10'25"	119°45'18"	191°39'	18,675
Cape Bolinao Line 55 (Cape Bolinao -Darigayos Pt.)	16°20'20"	119°47'25"	226°20'	80,016
Darigayos Pt. Line 56 Darigayos Pt.-Dile Pt.)	16°50'15"	120°20'00"	179°58'	81,616
Dile Pt. Line 56a (Dile Pt.- Pinget I.)	17°34'30"	120°19'58"	188°27'	12,060

	<u>N. Latitude</u>	<u>E. Longitude</u>	<u>Azimuth</u>	<u>Distance in Metres</u>
Pinget I. Line 56b (Pinget I.- Badoc I.)	17°40'58"	120°20'58"	192°46'	27,170
Badoc I. Line 57 (Badoc I.- Cape Bojeador)	17°55'20"	120°24'22"	195°03'	65,270
Cape Bojeador Line 58 (Cape Bojeador -Dalupiri I.)	18°29'30"	120°34'00"	222°16'	101,740
Dalupiri I. Line 59 (Dalupiri I.- Catanapan Pt.)	19°10'15"	121°13'02"	213°29'	25,075
Catanapan Pt. Line 60 (Catanapan Pt. -Dequey I.)	19°21'35"	121°20'56"	202°27'	116,870
DEQUEY I. Line 61 (DEQUEY I.- RAILE)	20°20'06"	121°46'35"	180°47'	42,255
RAILE Line 62 (RAILE- Y'AMI I. (W))	20°43'00"	121°46'55"	200°30'	43,140
Y'ami I. (W) Line 63 (Y'ami I. (W)- Y'ami I. (M))	21°07'26"	121°56'39"	238°40'	237
Y'ami I. (M) Line 64 (Y'ami I. (M)- -Y'Ami I. (E))	21°07'30"	121°56'46"	307°08'	1,376
Y'Ami I. (E)	21°07'03"	121°57'24"		

Section 2. The definiton of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.

Appendix D. Presidential Proclamation No. 370

Presidential Proclamation No. 370 of 20 March 1968
Declaring as Subject to the Jurisdiction and Control
of the Republic of the Philippines all Mineral
and other Natural Resources in the Continental Shelf

Now, therefore, I, Ferdinand E. Marcos, President of the Philippines, do hereby proclaim that all the mineral and other natural resources in the sea bed and subsoil of the continental shelf adjacent to the Philippines, but outside the area of its territorial sea to where the depth of the superjacent waters admits of the exploitation of such resources, including living organisms belonging to sedentary species, appertain to the Philippines and are subject to its exclusive jurisdiction and control for purposes of exploration and exploitation. In any case where the continental shelf is shared with an adjacent state, the boundary shall be determined by the Philippines and that state in accordance with legal and equitable principles. The character of the waters above these submarine areas as high seas and that of the airspace above those waters, is not affected by this proclamation.

Appendix E. Presidential Decree No. 1599

Presidential Decree No. 1599 of 11 June 1978 establishing an Exclusive Economic Zone and for other purposes

Section 1. There is hereby established a zone to be known as the exclusive economic zone of the Philippines. The exclusive economic zone shall extend to a distance of two hundred nautical miles beyond and from the baseline from which the territorial sea is measured: provided, that, where the outer limits of the zone as thus determined overlap the exclusive economic zone of an adjacent or neighbouring State, the common boundaries shall be determined by agreement with the State concerned or in accordance with pertinent generally recognized principles of international law on delimitation.

Section 2. Without prejudice to the rights of the Republic of the Philippines over its territorial sea and continental shelf, it shall have and exercise in the exclusive economic zone established herein the following:

A. Sovereign rights for the purpose of exploration and exploitation, conservation and management of the natural resources whether living or non-living, both renewable and non-renewable, of the seabed, including the subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the resources of the zone, such as the production of energy from the water, currents and winds;

B. Exclusive rights and jurisdiction with respect to the establishment and utilization of artificial islands, off-shore terminals, installations and structures, the preservation of the marine environment, including the prevention and control of pollution, and scientific research;

C. Such other rights as are recognized by international law or State practice.

Section 3. Except in accordance with the terms of any agreement entered into with the Republic of the Philippines or of any licence granted by it or under authority by the Republic of the Philippines, no person shall, in relations to the exclusive economic zone:

A. Explore or exploit any resources;

B. Carry out any research, excavation or drilling operations;

C. Conduct any research;

D. Construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device; or

E. Perform any act or engage in any activity which is contrary to, or in derogation of, the sovereign rights and jurisdiction herein provided.

Nothing herein shall be deemed a prohibition on a citizen of the Philippines, whether natural or juridical, against the performance of any of the foregoing acts, if allowed under existing laws.

Section 4. Other States shall enjoy in the exclusive economic zone freedoms with respect to navigation and overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea relating to navigation and communications.

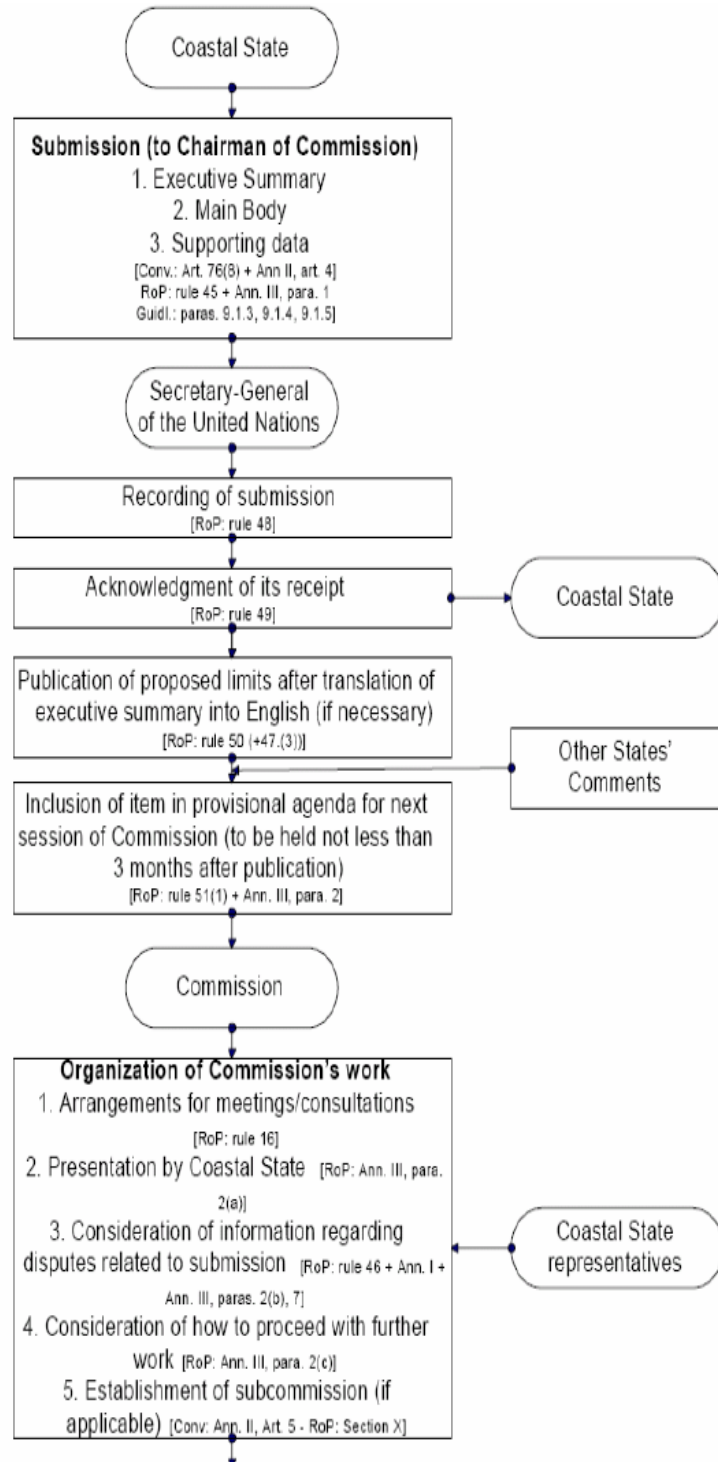
Section 5. (a) The President may authorize the appropriate government office/agency to make and

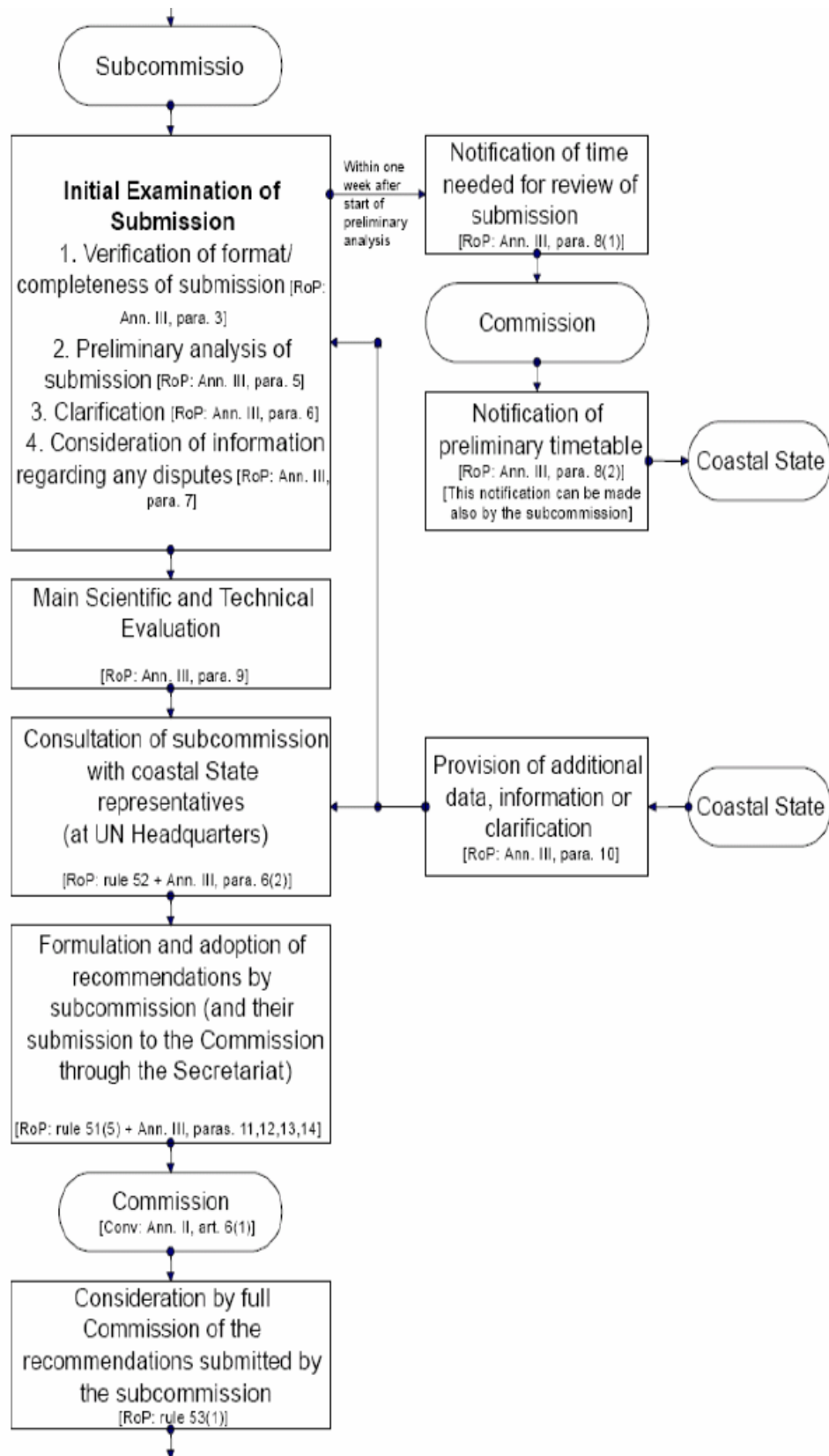
promulgate such rules and regulations which may be deemed proper and necessary for carrying out the purposes of this decree.

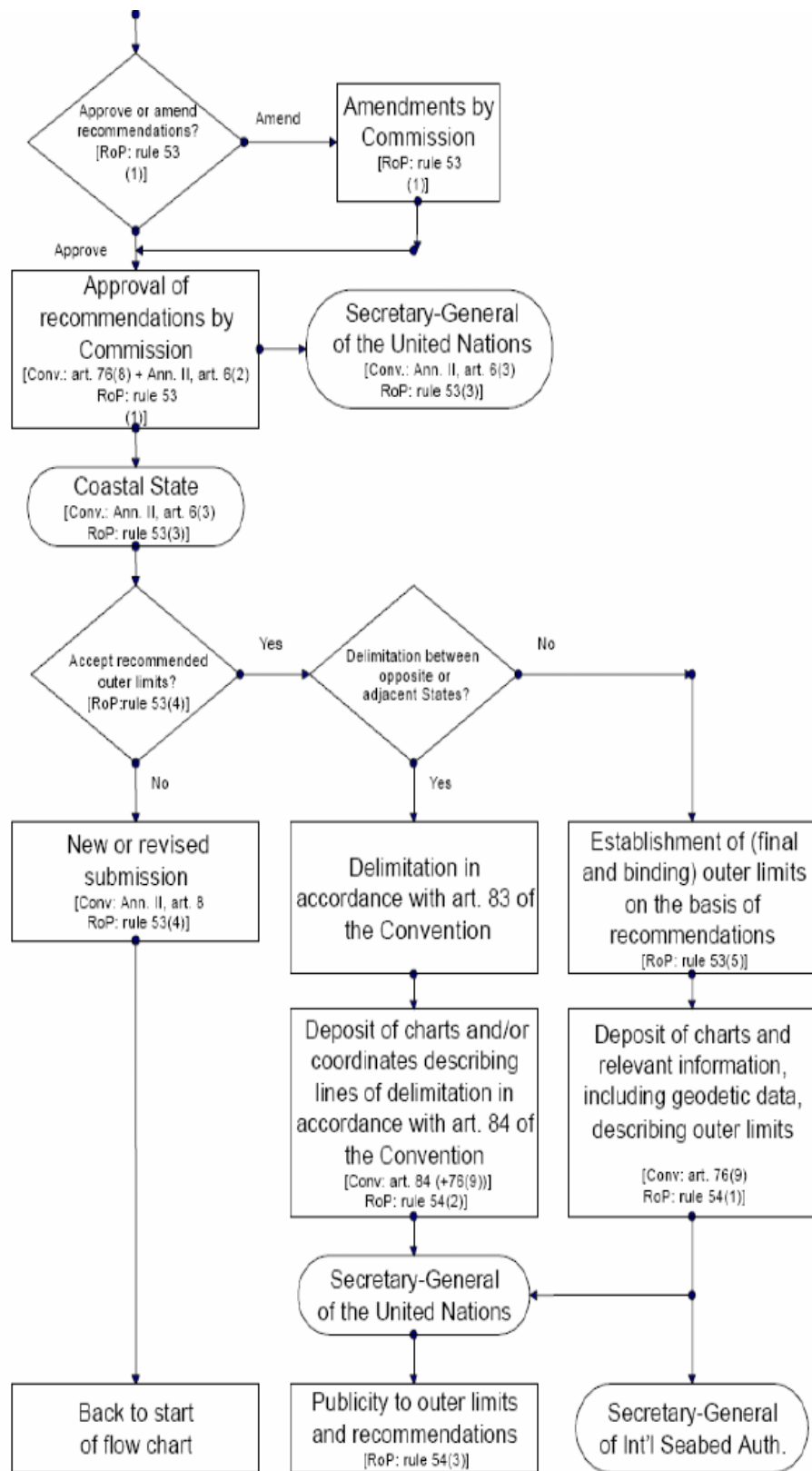
(b) Any persons who shall violate any provision of this decree or of any rule or regulation promulgated hereunder and approved by the President shall be subject to a fine which shall not be less than two thousand pesos (Pesos 2,000.00) nor be more than one hundred thousand pesos (Pesos/100,000.00) or imprisonment ranging from six (6) months to ten (10) years, or both such fine and imprisonment, in the discretion of the Court. Vessels and other equipment or articles used in connection therewith shall be subject to seizure and forfeiture.

Section 6. This decree shall take effect thirty (30) days after publication in the official Gazette.

Appendix F. Flowchart of the Procedures Concerning a Submission made to the Commission by Indonesia







Appendix G. Executive Summary, Continental Shelf Submission of Indonesia

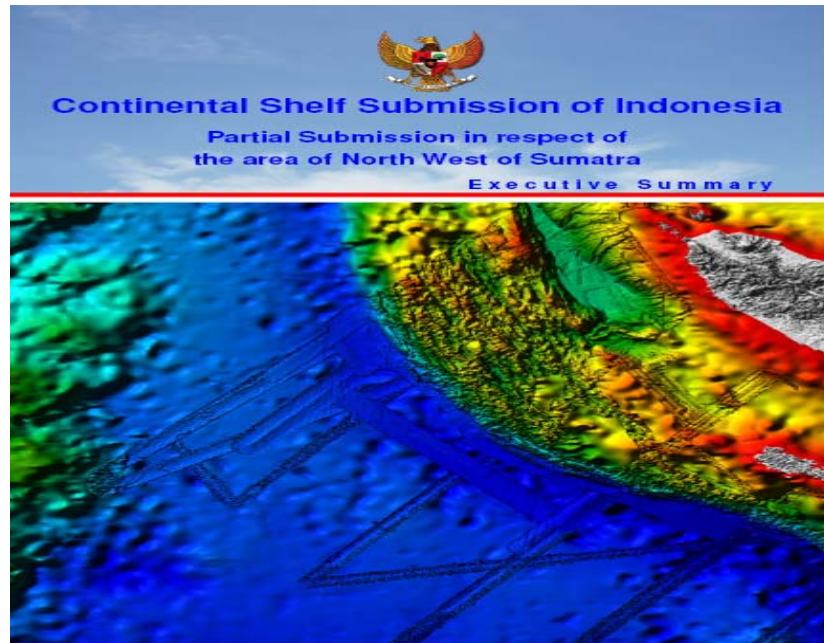


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1. Introduction

By Djoeanda Declaration of 13 December 1957, Indonesia declared itself as an archipelagic state. Indonesia later drew archipelagic baselines connecting base points located in its outermost islands by Law No. 4 of 1960. Prior to the conclusion of the 1982 United Nations Convention on the Law of the Sea (hereinafter UNCLOS), Indonesia established its continental shelf through a number of agreements on the delimitation of continental shelf with a number of its neighboring states in various sea areas, namely with India in Indian Ocean and Andaman Sea, Thailand in the Andaman Sea, Malaysia in the Strait of Malacca and South China Sea, Papua New Guinea in the Pacific Ocean and Arafura Sea, and Australia in Timor Sea and Arafura Sea.

Indonesia ratified the 1982 United Nations Convention on the Law of the Sea (hereinafter UNCLOS) by Law No. 17 of 1985 on 31 December 1985 and it entered into force with respect to Indonesia on 3 February 1986.

Indonesia started its preparation to submit the extended Continental Shelf through the collection of existing bathymetric data resulting from the Digital Marine Resources Management Project (DMRM), ETOPO-2 and also global seismic or sediment thickness data since 1999.

2. Outer limit of the extended continental shelf in the area of North West of Sumatra

The present submission concerns only with the outer limit of the extended continental shelf in the area of North West of Sumatra. In accordance with paragraph 3 of Annex I of the Rules of Procedures, submissions of the outer limits of the extended continental shelf of Indonesia in other areas will be made at a later stage.

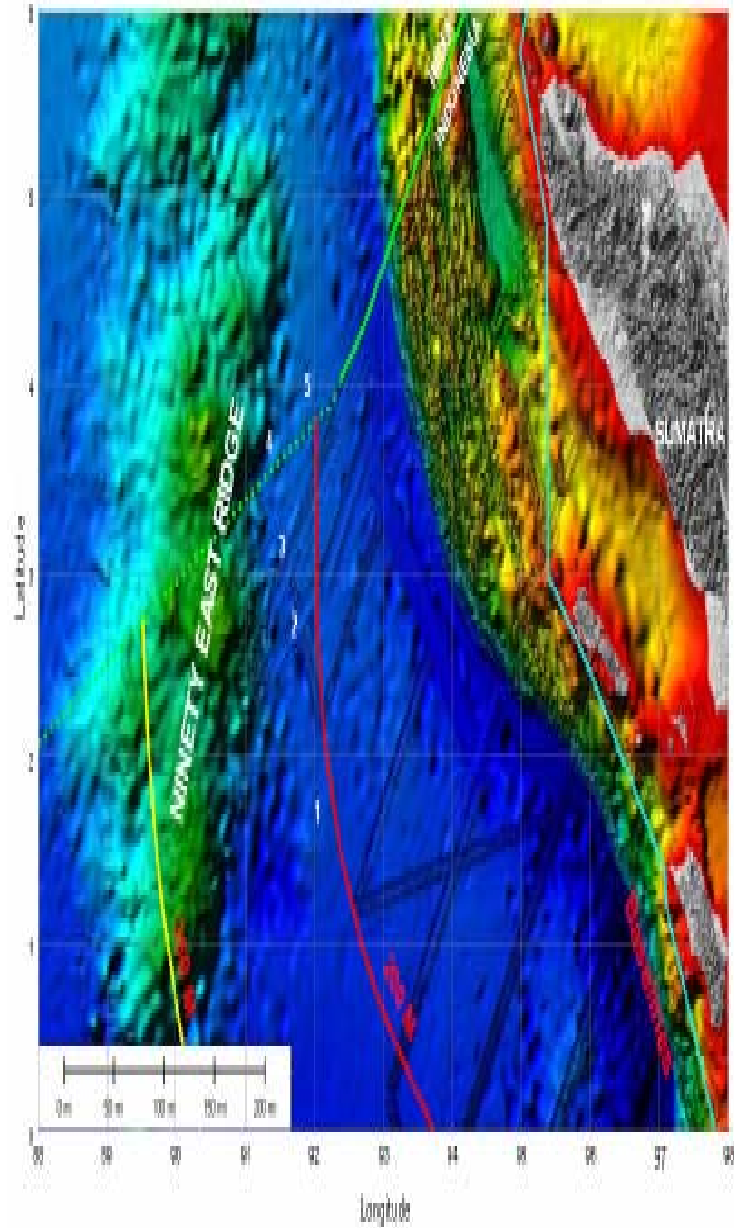


Figure 1. An overview of the area of extended continental shelf in respect of the area of North West of Sumatra

3. Specific provisions of Article 76 invoked to support this partial submission

The outer limits contained in this partial submission are based on the provisions of Article 76.1 and Article 76.4.a (i) UNCLOS.

4. Names of Commission Members who provided advice during the preparation of the partial submission

No member of the Commission on the Limits of the Continental Shelf assisted Indonesia in the preparation of this partial submission.

5. Absence of disputes

In accordance with paragraph 2 (a) of Annex of the Rules of Procedures, Indonesia wishes to inform the Commission that the area of continental shelf in North West of Sumatra that is the subject of this partial submission is not the subject to any dispute between Indonesia with any other state.

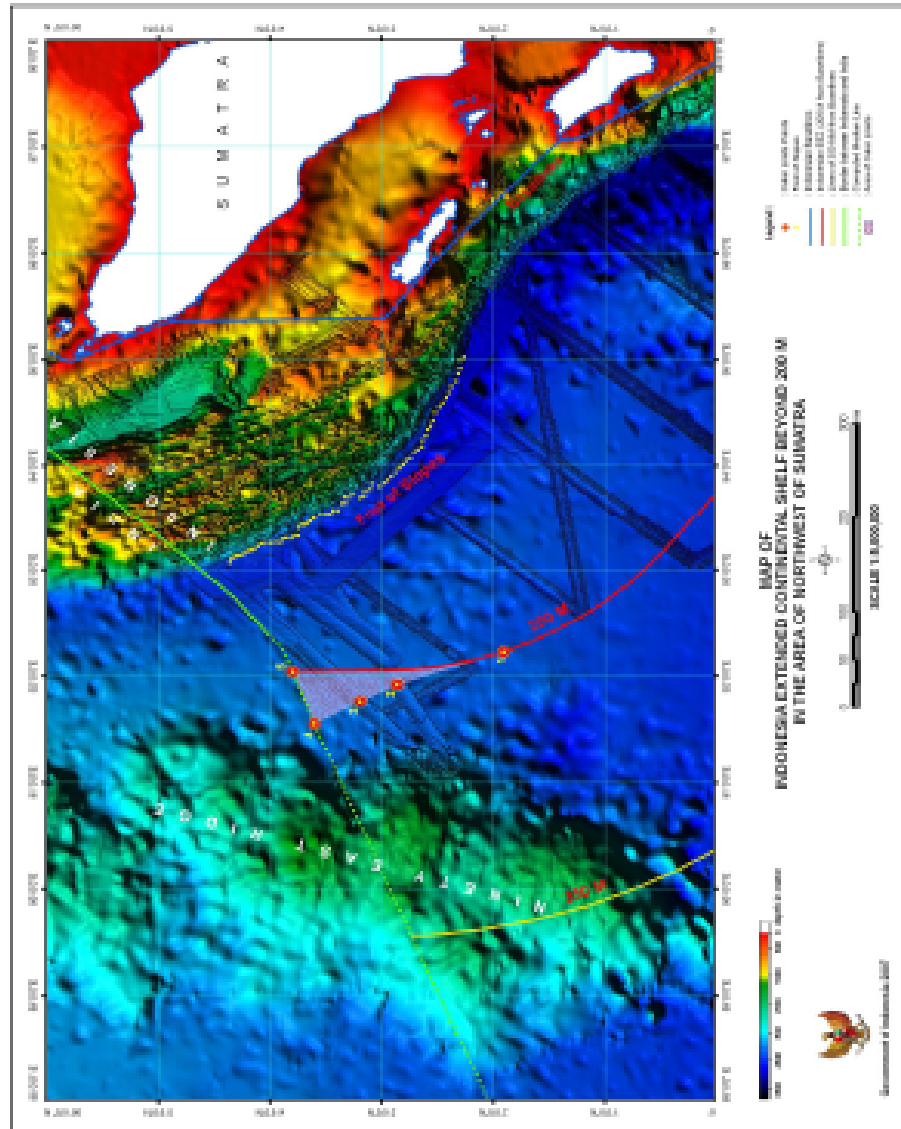


Figure 2. Details of the formula line used to define the outer limit of extended continental shelf in the area of North West of Sumatra

6. Detailed description of the outer limit of the extended continental shelf in the area of North West of Sumatra

Indonesia has established the lines determined by the 1% sediment thickness formula (the Gardiner or Irish formula) for the area under this partial submission. On the seismic data provided, sufficient sediment thickness has been demonstrated to allow the application of this formula of 1% sediment thickness with respect to the shortest distance to the foot of slope. Accordingly 5 fixed points have been established, which combined with 200 M limit, forming the outer limit of extended continental shelf in the area of North West of Sumatra (Figure 2). The coordinates of the fixed points and the lengths of the connecting straight lines are listed in Appendix 1.

7. State Bodies responsible for the preparation of the extended Continental Shelf Submission of Indonesia

This partial submission, together with all maps, figures, appendices and data bases were prepared jointly by an interagency team consisting of Department of Foreign Affairs, Department of Energy and Mineral Resources, National Coordinating Agency for Survey and Mapping, Agency for Assessment and Application of Technology, Indonesian Institute of Science, Agency for Marine and Fisheries Research and Hydro-Oceanographic Office. This interagency team is a national project dedicated to the establishment of the outer limits of the extended continental shelf of Indonesia funded by the Government of the Republic of Indonesia.

Appendix 1.1: List of coordinates defining the outer limits of extended continental shelf in the area of North West of Sumatra (All coordinates relate to the WGS 84 geodetic reference system)

FP	Latitude (°N)	Longitude (°E)	Method	From FP	To FP	Distance	
						m	M
1.	1.942284	92.21615	Fixed point on Indonesian 200M continental Shelf				
2.	2.857800	91.918861	1% Sediment Thickness	1	2	111,200	60.0
3.	3.189650	91.762839	1% Sediment Thickness	2	3	40,765	22.01
4.	3.603128	91.550536	Fixed point on the computed median line between Indonesia and India	3	4	51,660	27.90
5.	3.798494	92.039533	Fixed point on Indonesian 200M continental Shelf	4	5	58,450	31.56

Appendix H. Maps

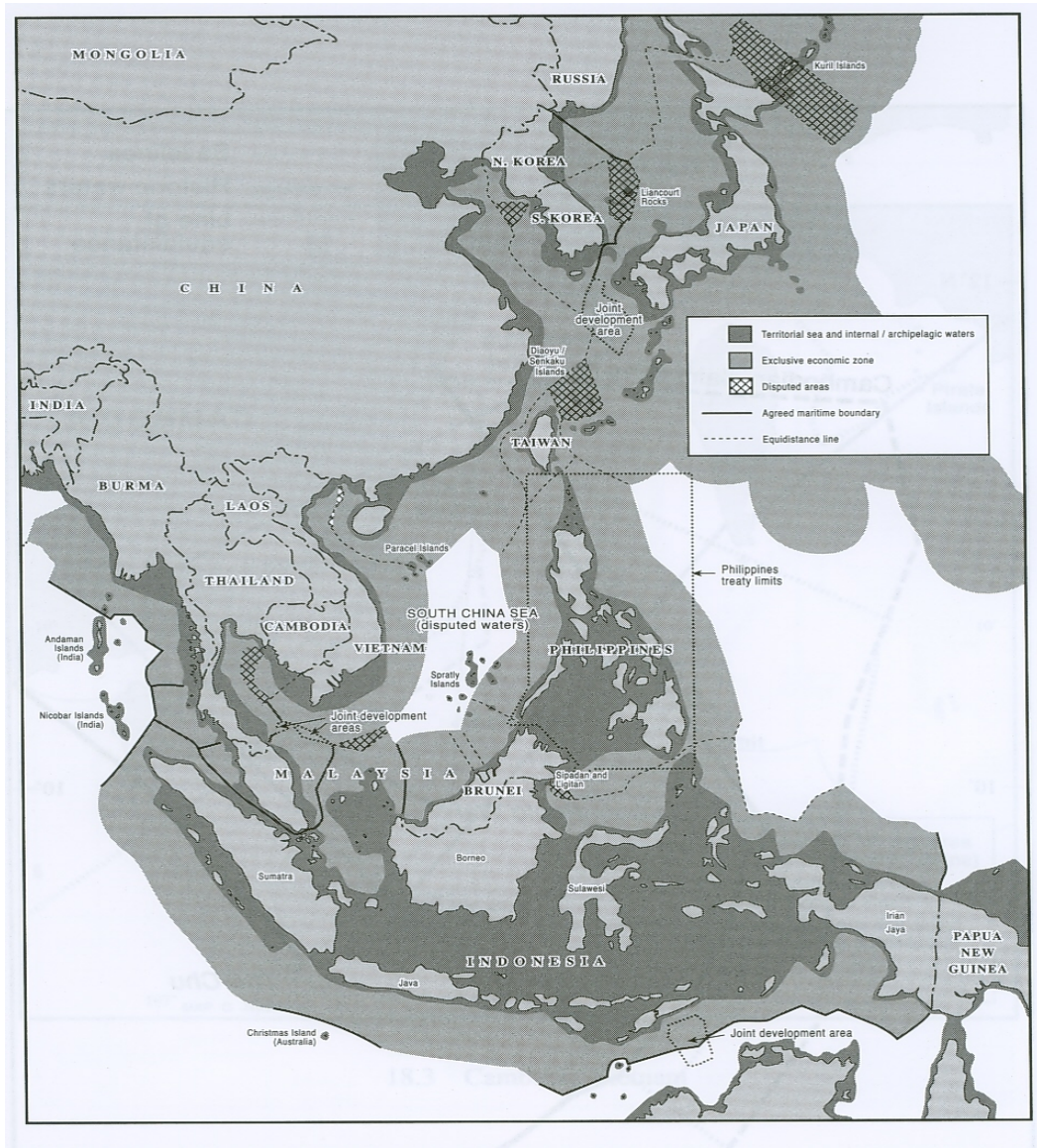


Figure 1 - Maritime boundaries and disputed areas along the Asian Rim in the Pacific Ocean

Source: Prescott, V. and Schofield, C., *The Maritime Political Boundaries of the World*, 2nd Edition, Leiden, Koninklijke Brill NV, 2005

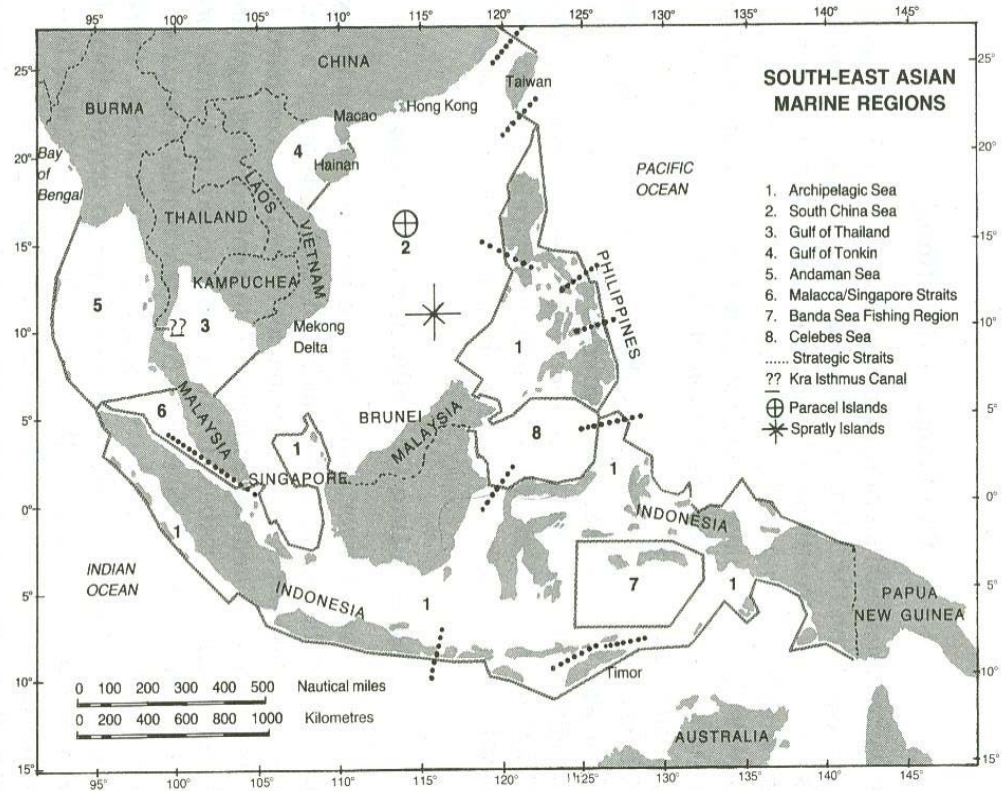


Figure 2 - South-East Asian Marine Regions

Source: Kattichaisaree, K., *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia*, Oxford, Oxford University Press, 1987

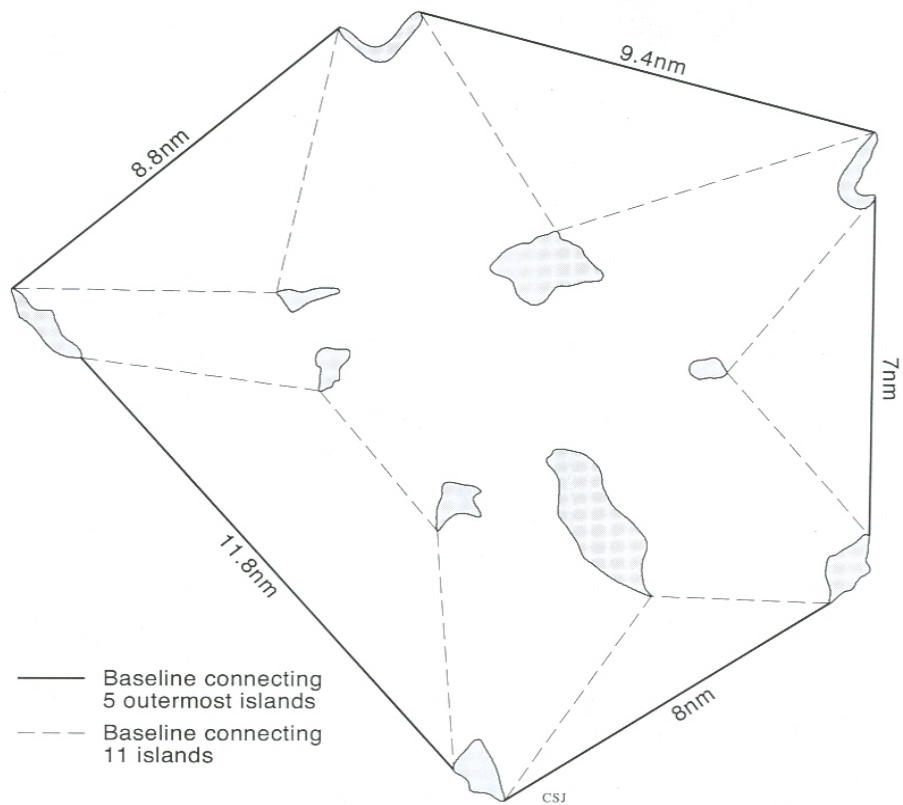


Figure 3 - Archipelagic Baselines I

Source: Prescott, V. and Schofield, C., *The Maritime Political Boundaries of the World*, 2nd Edition, Leiden, Koninklijke Brill NV, 2005

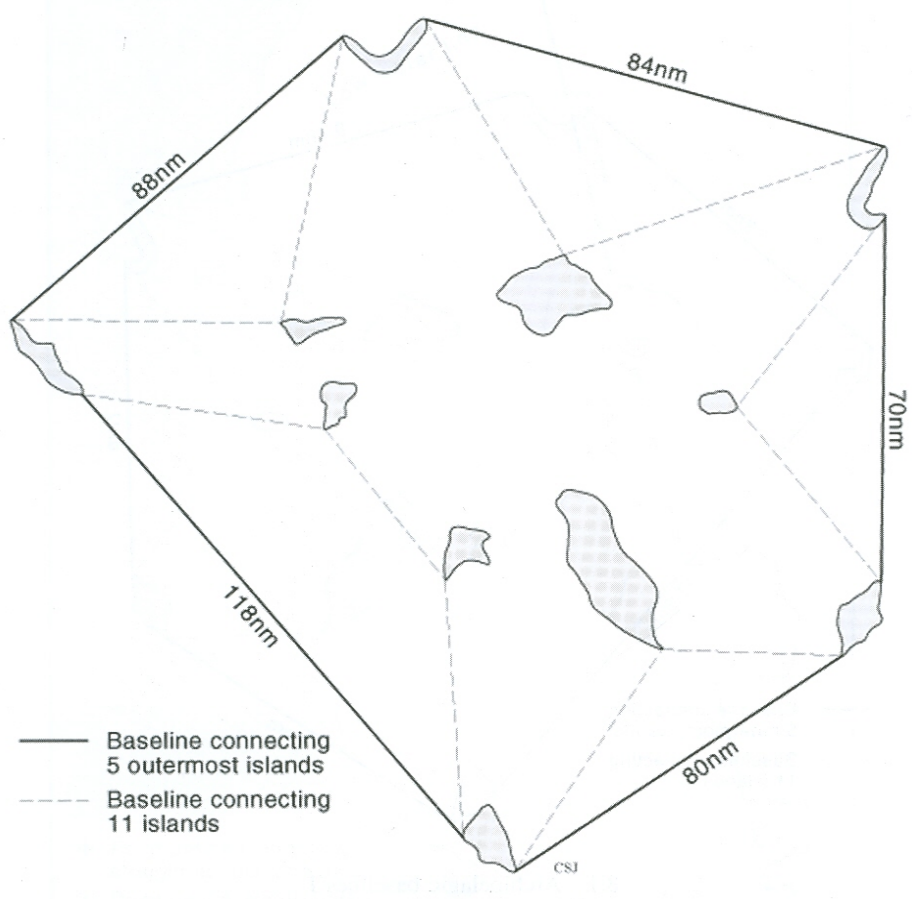
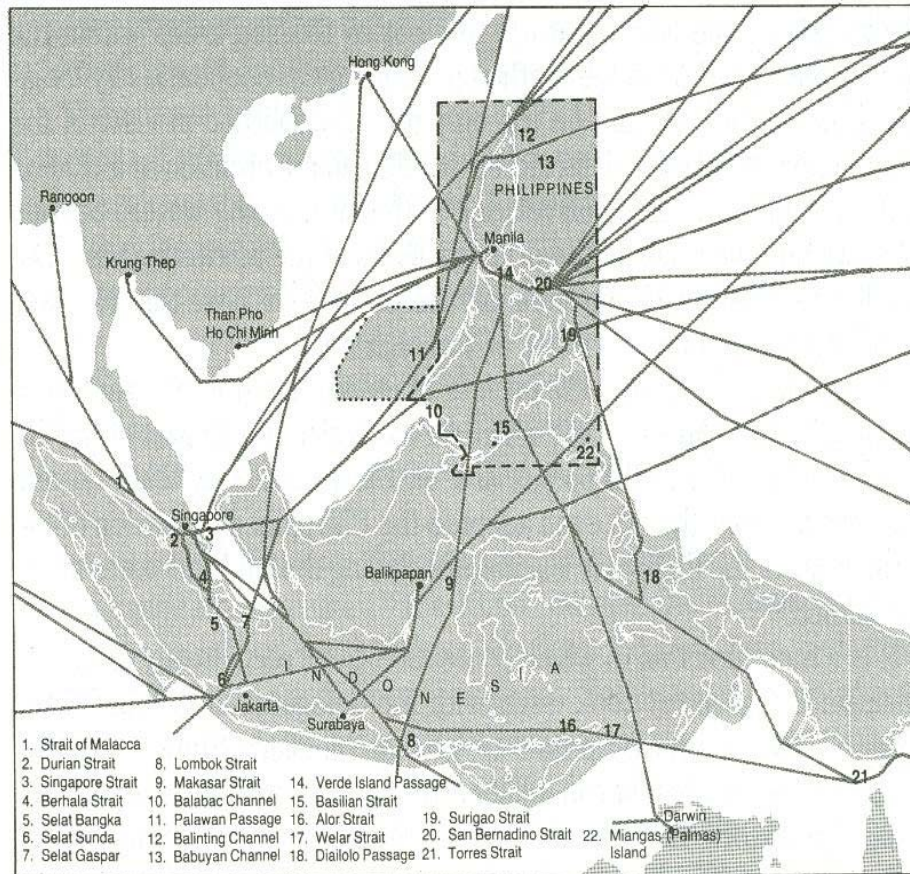


Figure 4 - Archipelagic Baselines II

Source: Prescott, V. and Schofield, C., *The Maritime Political Boundaries of the World*, 2nd Edition, Leiden, Koninklijke Brill NV, 2005



Source: Adapted from Phiphat Tungsubkul, *The Southeast Asian Archipelagic States: Concept, Evolution, and Current Practice*, Research Report No. 15, Feb. 1984, 26; East-West Environment and Policy Institute, East-West Center, Honolulu, Hawaii.

Notes:

- = 'Treaty Limits' claimed by the Philippines
-= Kalayaan Claim of the Philippines
- * = Location of Indonesia's Miangas (Palmas) Island
- White lines connote archipelagos and the enclosing straight baselines

Figure 5 - South-East Asian Archipelagos and Major Shipping Routes

Source: Kattichaisaree, K., *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia*, Oxford, Oxford University Press, 1987

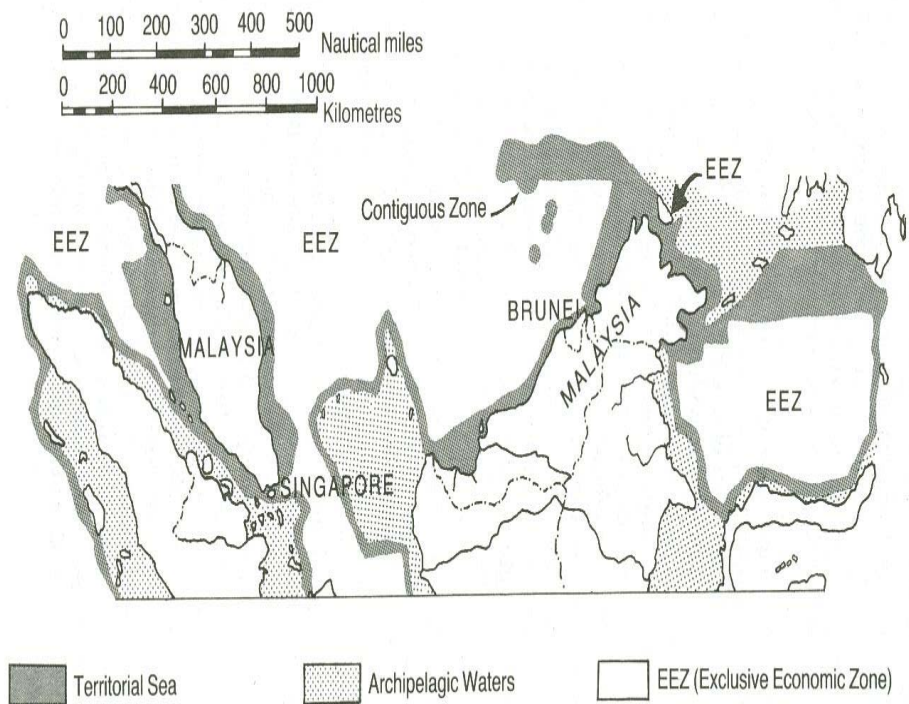


Figure 6 - Indonesia's Maritime Jurisdictional Regimes (Claims as of July 1982)

Source: Kattichaisaree, K., *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia*, Oxford, Oxford University Press, 1987

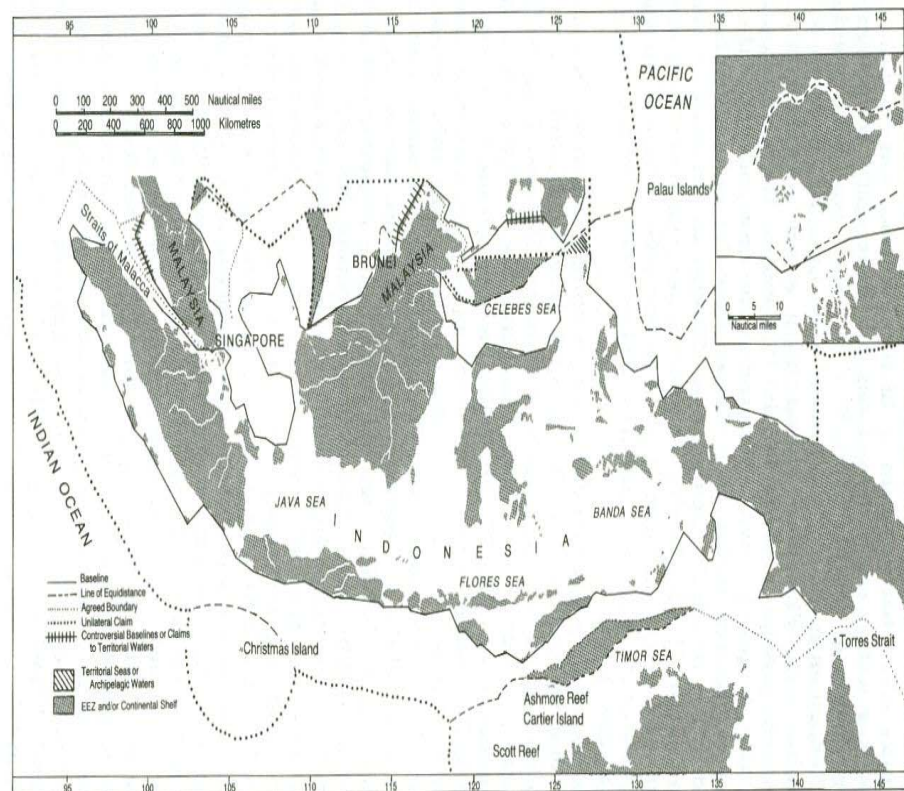


Figure 7 - The Indonesian Archipelago

Source: Kattichaisaree, K., *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia*, Oxford, Oxford University Press, 1987



Figure 8 – Indonesian Map: Agreed and Pending Maritime Boundaries with Neighboring States

Source: Arsana, I Made Andi, *The Delineation of Indonesia's Outer Limits of Its Extended Continental Shelf and Preparation for its Submission: Status and Problems*, United Nations, 2007



Figure 9 - The Straight Baseline of the Philippines

Source: Prescott, V. and Schofield, C., *The Maritime Political Boundaries of the World*, 2nd Edition, Leiden, Koninklijke Brill NV, 2005



Figure 10 - Occupied Spratly Islands

Source: Prescott, V. and Schofield, C., *The Maritime Political Boundaries of the World*, 2nd Edition, Leiden, Koninklijke Brill NV, 2005

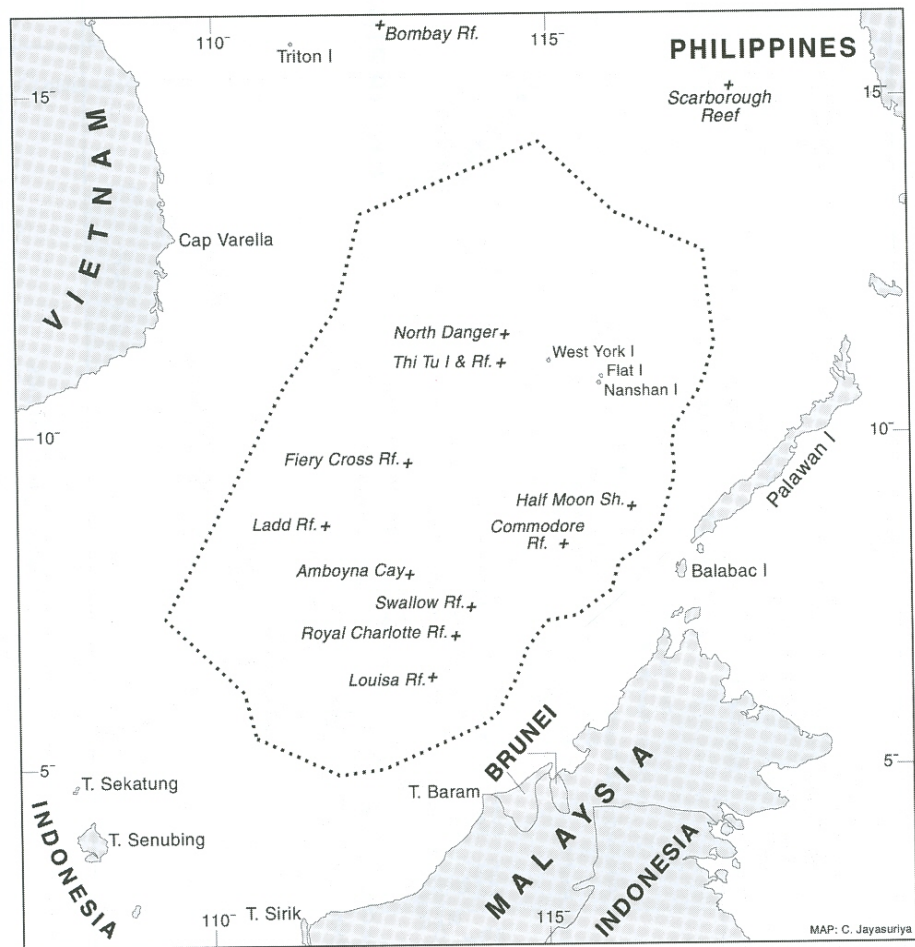


Figure 11 - Potential marine area attached to the Spratly Islands

Source: Prescott, V. and Schofield, C., *The Maritime Political Boundaries of the World*, 2nd Edition, Leiden, Koninklijke Brill NV, 2005