

THE PHILIPPINE BASELINES LAW

by

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Outline

- Introduction
- Legal Framework
- Extended Continental Shelf
- Options for establishing Philippine baselines
- Reactions to the new baselines law
- Conclusion

Introduction

- Baselines serve as basis for a country's maritime jurisdiction and a means to establish maritime boundaries with neighboring coastal States.
- Establishment of archipelagic baselines
 - will meet requirements of statehood
 - fulfill Philippine treaty obligations under UNCLOS
 - clearly define Philippine maritime zones under UNCLOS including the ECS claim
- Prior to RA 9522, Philippine baselines law is not compliant with UNCLOS
- On 10 March 2009, the President of the Philippines signed into law Republic Act 9522. This was immediately protested by China and Vietnam.

Legal Framework

- Republic Act 3046 (1961) as amended by Republic Act 5446 or the Philippine Baselines Law – established Philippine baselines and basepoints
- 1987 Philippine Constitution
- Republic Act 7160 (Local Government Code of 1991)
- 2002 ASEAN-China Declaration on the Code of Conduct of Parties in the South China Sea (DoC)
- 1982 United Nations Convention on the Law of the Sea (UNCLOS)

Article 47, UNCLOS

- 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
- 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;
- drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago;
- 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

Article 47, UNCLOS cont..

- (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;
- (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.

Article 121, UNCLOS

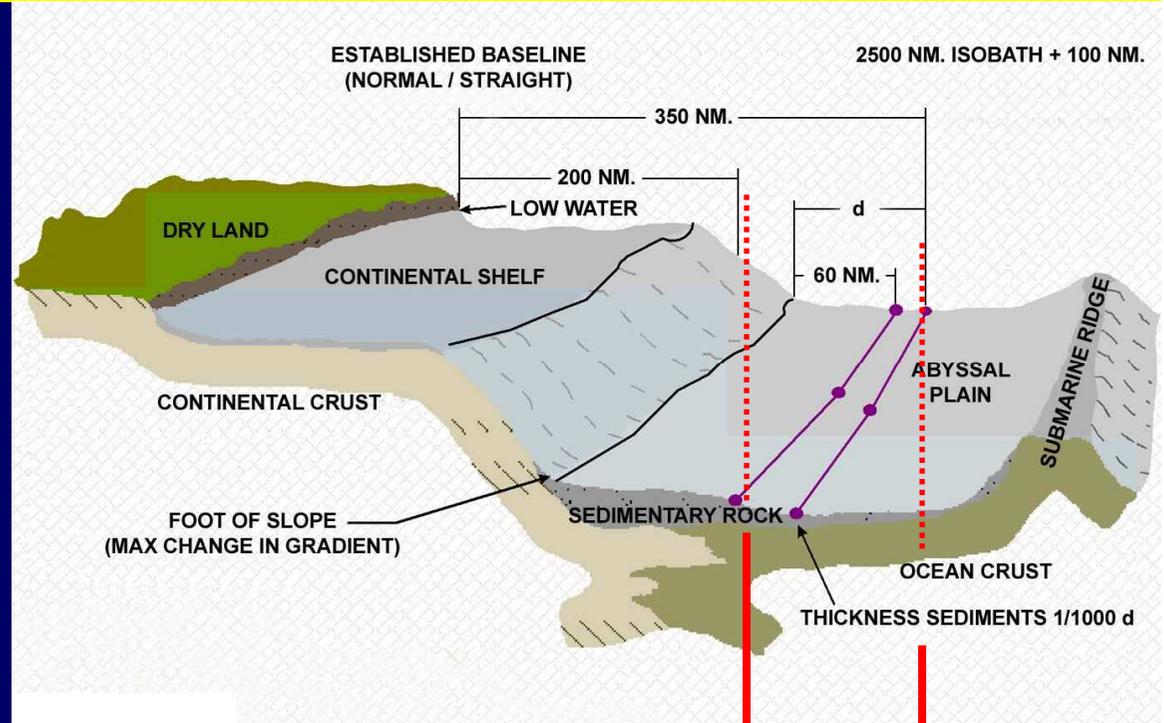
- with respect to the “other islands” which do not geographically form an integral part of the archipelago, Regime of Islands principle allows a different legal treatment for the purpose of the baselines.

Why RA 3046, as amended by RA 5446, is not in compliance with UNCLOS

- The existing 80 baselines delineated under RA 3046 have a total length of 8,174.8974 miles.
- Three (3) of these 80 baselines or 2.4% of the total number of baselines exceed 100 miles in length
- The baseline to the southeast of Mindanao in the Gulf of Moro is of 140.05 miles in length. This is beyond the 125 miles limit under UNCLOS

EXTENDED CONTINENTAL SHELF

The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. (Article 77)



TWO CATEGORIES:

Juridical/Legal – up to 200 nm.

- It inheres automatically to all coastal States whether or not the continental margin does not extend to 200 nm.

“Extended” – up to 350 nm. or 2,500m. isobath + 100nm.

- Considers the submerged prolongation of the land mass of the coastal State which terminates to what is referred to as “foot of the slope”

THE “EXTENDED” CONTINENTAL SHELF

- A COASTAL STATE FULLY ENJOYS ITS RIGHTS IN THE **JURIDICAL** CONTINENTAL SHELF UP TO A DISTANCE OF 200 NM FROM THE BASELINES AND **NEEDS NO PROCLAMATION**.
- IN SITUATION WHEREIN THE CONTINENTAL MARGIN EXTENDS BEYOND 200 NM, A COASTAL STATE MUST **SUBMIT A CLAIM TO AN “EXTENDED” CONTINENTAL SHELF** WITH THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF (**CLCS**).
- **FAILURE TO MAKE A SUBMISSION FORECLOSES STATE’S CLAIM TO AN “EXTENDED” CONTINENTAL SHELF**, AND THEIR JURIDICAL CONTINENTAL SHELF OF 200 NM WOULD NOW MARK THE LIMITS OF THE INTERNATIONAL SEABED AREA WHICH IS THE “COMMON HERITAGE OF MANKIND”.
- Such delimitation shall be **final and perpetually binding**.

Criteria for choosing the best option in defining the baselines

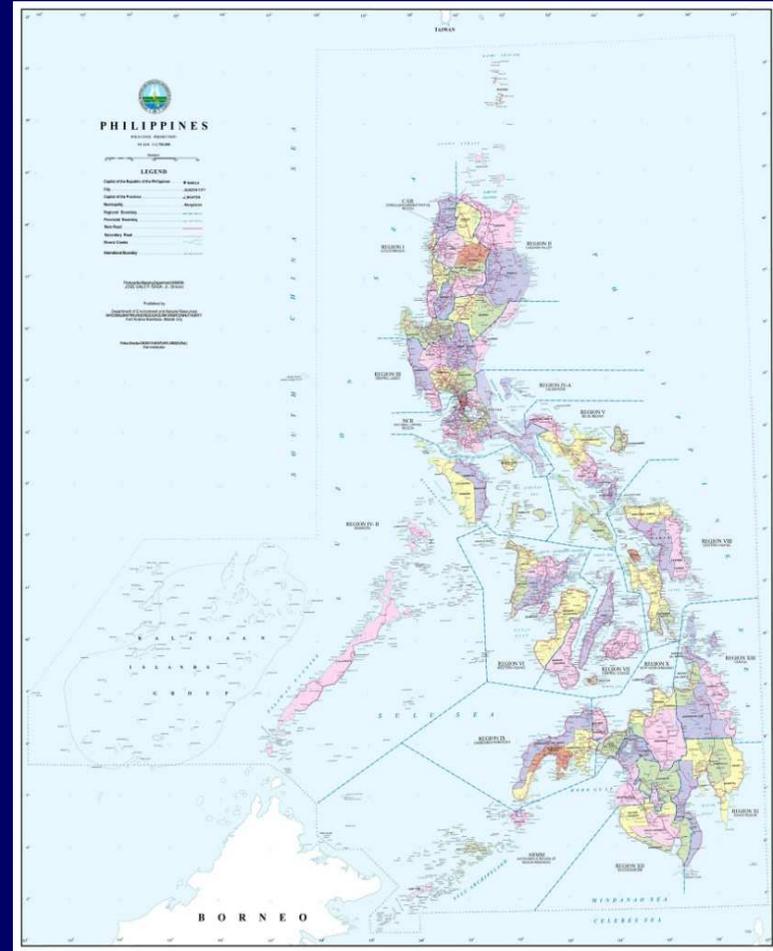
- Consistent with UNCLOS and international law
- Upholds national interests
- Acceptable to international community

Option 1

OPTION 1
Enclosing Main
Archipelago and
Scarborough Shoal;

**KIG as Regime of
Islands**

- Maximizes area
- UNCLOS
compliant

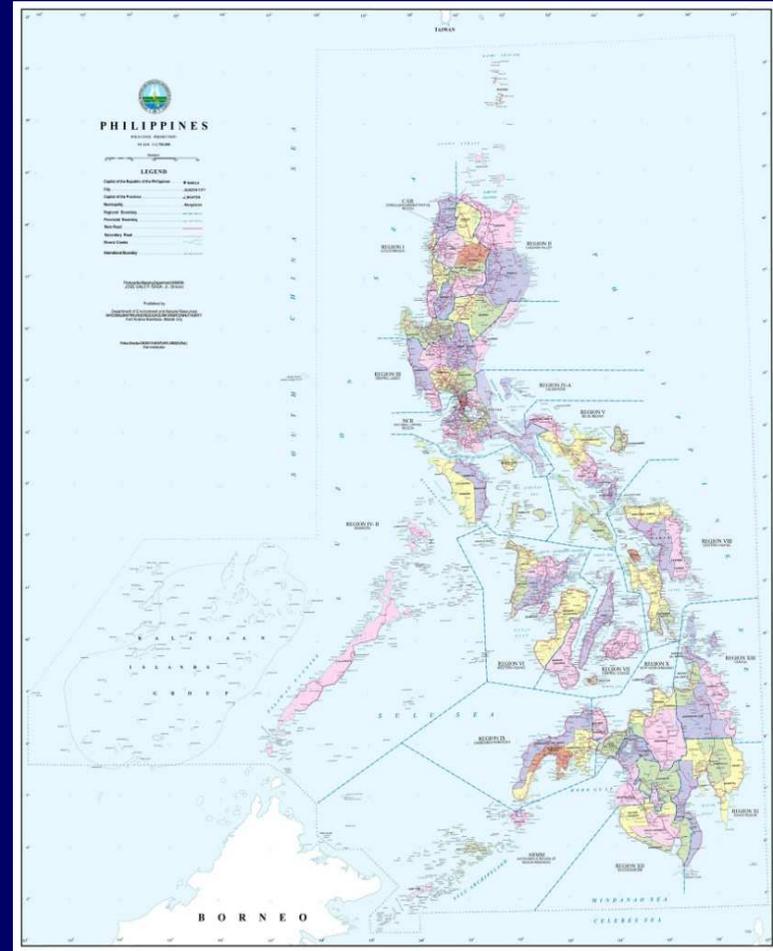


Option 2

OPTION 2
Enclosing Main Archipelago
only;

KIG and Scarborough as
Regime of Islands

- UNCLOS compliant
- Preserves diplomatic relations

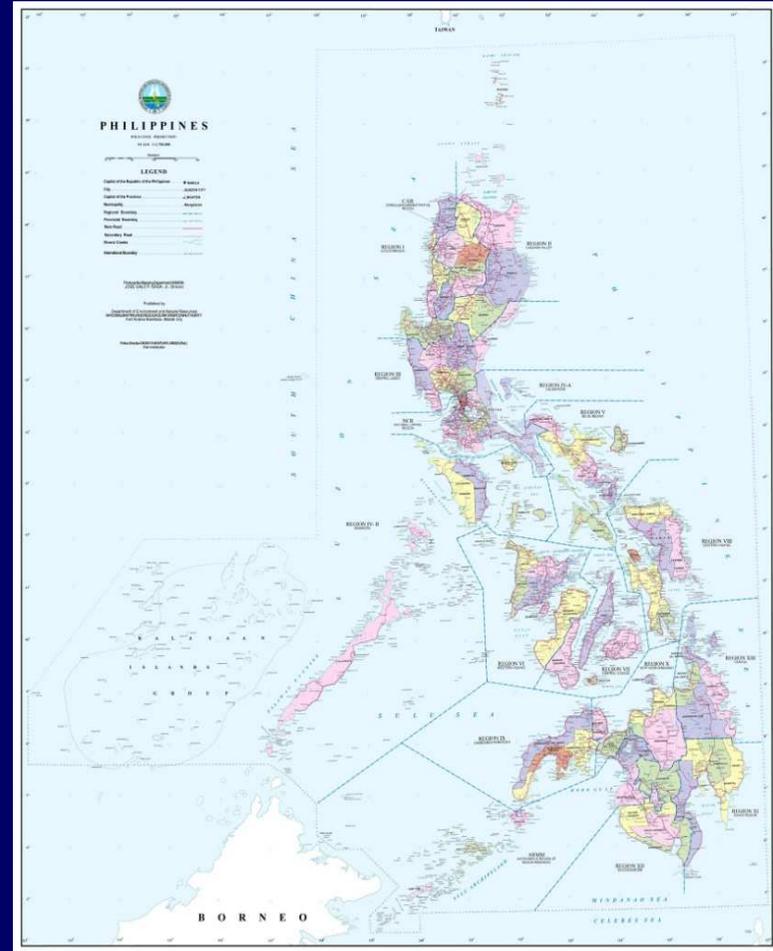


Option 3

OPTION 3
Enclosing Main Archipelago and
KIG;

Scarborough as Regime of Islands

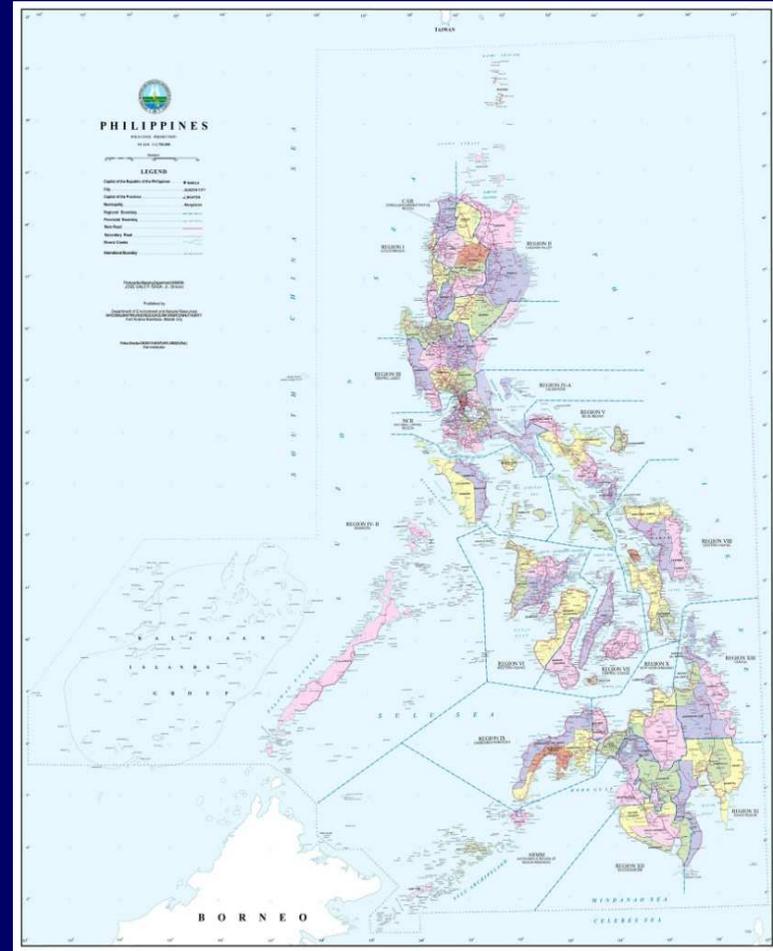
Not UNCLOS-compliant
Violates commitment under the
ASEAN Declaration of Conduct
of Parties in the South China
Sea in 2002



Option 4

OPTION 4
Enclosing Main Archipelago, KIG
and Scarborough Shoal;

- Not UNCLOS compliant
- Violates commitment under ASEAN Declaration on the Conduct of Parties in the South China Sea



BEST OPTION

- Option 2 - Enclosing Main Archipelago only
- Scarborough and KIG as regime of islands

Republic Act 9522: new Philippine baselines law

- Technical adjustments to baselines and basepoints under RA 3046 (1961) / RA 5446 (1968)
- Section 2: Treatment of KIG and Scarborough Shoal (Bajo de Masinloc) as regime of islands

REACTIONS TO THE NEW BASELINES LAW

- China and Vietnam
- Domestic opposition

CONCLUSION

- The new baselines law assures compliance with UNCLOS
- It reaffirms Philippines' commitment to the ASEAN-China Declaration on the Code of Conduct in the South China Sea.

Thank you.