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Limits in the Seas

No. 142

Philippines:

Archipelagic and other Maritime Claims and Boundaries



LIMITS IN THE SEAS

No. 142

PHILIPPINES

ARCHIPELAGIC AND OTHER MARITIME CLAIMS AND BOUNDARIES

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**Office of Ocean and Polar Affairs
Bureau of Oceans and International Environmental and Scientific Affairs
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This study is one of a series issued by the Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs in the Department of State. The purpose of the series is to examine a coastal State's maritime claims and/or boundaries and assess their consistency with international law. This study represents the views of the United States Government only on the specific matters discussed therein and does not necessarily reflect an acceptance of the limits claimed.

This study, and earlier studies in this series, may be downloaded from <http://www.state.gov/e/oes/ocns/opa/c16065.htm>. Comments and questions should be emailed to LimitsInTheSeas@state.gov. Principal analysts for this study are Brian Melchior and Kevin Baumert.

Introduction

This study analyzes the maritime claims and maritime boundaries of the Republic of the Philippines, including its archipelagic baseline claim. Republic Act No. 3046 of June 17, 1961 (R.A. 3046; Annex 1 to this study), defined the baselines and territorial sea of the Philippines.¹ This Act was amended by Republic Act No. 5446 of 1968,² and again by Republic Act No. 9522 (R.A. 9522; Annex 2 to this study) in 2009. R.A. 9522 revised the archipelagic baselines of the Philippines, which are shown on Map 1 to this study.³

Presidential Proclamation No. 370 of March 20, 1968 claimed jurisdiction and control over the natural resources of the continental shelf adjacent to the Philippines.⁴ Presidential Decree No. 1599 of June 11, 1978, established a 200-nautical mile (nm) exclusive economic zone (EEZ).⁵ The Philippines ratified the UN Convention on the Law of the Sea (LOS Convention) on May 8, 1984 and ratified the 1994 Agreement Relating to the Implementation of Part XI of the Convention on July 23, 1997.⁶

¹ Republic Act No. 3046 of June 17, 1961, An Act to Define the Baselines of the Territorial Sea of the Philippines, is available from the UN Division for Ocean Affairs and the Law of the Sea (DOALOS), *Practice of Archipelagic States* 75-83 (1992); *UN Legislative Series*, ST/LEG/SER.B/15, at 105-222; and at:

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1961_Act.pdf and http://www.lawphil.net/statutes/repacts/ra1961/ra_3046_1961.html. The United States protested this Act in 1961. See J.A. Roach and R.W. Smith, *Excessive Maritime Claims*, 3rd ed. (Martinus Nijhoff, 2012) at 211. This Act is analyzed in *Limits in the Seas* No. 33, "Straight Baselines: Philippines" (1973).

² Republic Act No. 5446 of September 18, 1968, amending Republic Act No. 3046, is available from DOALOS at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1968_Act.pdf. The United States protested this act in 1969. See Roach and Smith, *supra* note 1, at 213 n.44.

³ Republic Act No. 9522 (with illustrative map) is available from DOALOS in *Law of the Sea Bulletin* No. 70 (2009), at 32-35, and at: http://www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html. See *infra* note 14 and accompanying text for the court decision upholding the constitutionality of this Act.

⁴ 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, is available from DOALOS at:

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1968_Proclamation.pdf.

⁵ Presidential Decree No. 1599 of 11 June 1978 establishing an Exclusive Economic Zone and for other purposes is available from DOALOS at:

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1978_Decree.pdf.

⁶ United Nations Convention on the Law of the Sea, Montego Bay, opened for signature Dec. 10, 1982, entered into force Nov. 16, 1994, 1833 UNTS 397, available from DOALOS, at:

http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm. The Philippines made eight understandings upon its signature of the Convention and confirmed upon ratification which are available at:

http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm. Objections to these understandings have been filed with the UN by Australia, Belarus, Bulgaria, Czechoslovakia, the Ukraine and the former USSR and are available at:

http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXI~6&chapter=21&Temp=mtdsg3&lang=en. The U.S. objection appears in II *Cumulative Digest of United States Practice in International Law 1981-1988*, at 2066-2068. See also Roach and Smith, *supra* note 1, at 213-215 and 371-373 for the reactions to these declarations by the United States and other countries.

Basis for Analysis

The LOS Convention contains certain provisions related to archipelagic States. Article 46 provides that an “archipelagic State” means “a State constituted wholly by one or more archipelagos and may include other islands” (Article 46.a). An “archipelago” is defined as “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such” (Article 46.b).

Only an “archipelagic State” may draw archipelagic baselines. Article 47 sets out criteria to which an archipelagic State must adhere when establishing its archipelagic baselines (Annex 3 to this study).

Under Article 47.1, 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. In addition, the length of any baseline segment shall not exceed 100 nm except that up to 3 percent of the total number of baselines may have a length up to 125 nm (Article 47.2).

Additional provisions of Article 47 state that such baselines shall not depart to any appreciable extent from the general configuration of the archipelago; that such baselines shall not be drawn, with noted exceptions, using low-tide elevations; and that the system of such baselines shall not be applied in such a manner as to cut off from the high seas or exclusive economic zone (EEZ) the territorial sea of another State (Article 47.3 - 47.5).

Article 48 provides that the breadth of the territorial sea, contiguous zone, EEZ and continental shelf shall be measured from archipelagic baselines drawn in accordance with Article 47. Article 49 provides that the waters enclosed by archipelagic baselines drawn in accordance with Article 47 are “archipelagic waters,” over which the sovereignty of an archipelagic State extends, subject to the provisions in Part IV of the LOS Convention.

The LOS Convention further reflects the specific rights and duties given to archipelagic States over their land and water territory. Article 53 allows the archipelagic State to “designate sea lanes . . . suitable for the continuous and expeditious passage of foreign ships . . . through . . . its archipelagic waters and the adjacent territorial sea.” Also, Article 53.12 provides that “[i]f an archipelagic State does not designate sea lanes . . . , the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.”

Analysis⁷

The Republic of the Philippines is an archipelagic State located in Southeast Asia in the western Pacific Ocean between the Philippine Sea and the South China Sea, east of Vietnam, north of

⁷ The analysis was conducted in ESRI ArcMap 10, using the Universal Transverse Mercator, Zone 51 North, projection and is based on the World Geodetic System 1984 (WGS84) datum.

Malaysia and Indonesia, and south of Taiwan. The Philippines is composed of more than 7,000 islands and other features. The Philippines claims Scarborough Reef, which is also claimed by China and Taiwan. The Philippines claims some of the Spratly Islands, referred to by the Philippines as the Kalayaan Island Group (Map 1), which are also claimed in whole or part by China, Taiwan, Malaysia, and Vietnam.⁸

Baselines

The archipelagic baseline system of the Philippines is composed of 101 line segments, ranging in length from 0.08 nm (segment 99-100) to 122.88 nm (segment 46-47), with a total length of 2,808 nm. The archipelagic baseline system includes all of the Philippines' main islands and does not include Scarborough Reef or the Kalayaan Island Group.⁹

The archipelagic baseline system of the Philippines meets the water-to-land-area ratio set forth in Article 47.1:

Total Area = 887,909 square kilometers
 Water Area = 589,739 square kilometers
 Land Area = 298,170 square kilometers¹⁰
 Water-to-land area ratio = 1.98 to 1

Consistent with Article 47.2 of the LOS Convention, three baseline segments (11-12, 46-47, and 82-83), which comprise 2.97 percent of the total number of segments, exceed 100 nm in length; none of the segments exceed 125 nm. Annex 2 to this study (R.A. 9522) lists the lengths of each segment. Our separate analysis of the baseline segments and the results confirm what is listed in R.A. 9522.

The configuration of the baselines does not appear to depart to any appreciable extent from the general configuration of the archipelago (Article 47.3). None of the baselines appear to be drawn using low-tide elevations (Article 47.4). The baselines are not drawn in a way that would cut off from the high seas or EEZ the territorial sea of another State (Article 47.5).

⁸ In addition, the Philippines disputes Malaysian sovereignty over Sabah on the island of Borneo. Section 2 of Republic Act 5446 of 1968, which R.A. 9522 did not repeal, provides that “[t]he definition 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 Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.” *See supra*, note 2. *See also* Philippine Mission to the UN Diplomatic Note No. 000819, Aug. 4, 2009, available at:

http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/clcs_33_2009_los_phl.pdf and Malaysian Mission to the UN Diplomatic Note HA 41/09, Aug. 21, 2009, available at:

http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_re_phl_2009re_mys_vnm_e.pdf.

⁹ Section 2 of R.A. 9522 provides that “[t]he baseline in [the Kalayaan Island Group and Scarborough Reef] shall be determined by the ‘Regime of Islands’ . . . consistent with Article 121 [of the LOS Convention].” Although Article 121 of the LOS Convention does not contain any provisions regarding baselines, it appears as though the intent of this provision is to use the normal baseline for each island, provided for in Article 5 of the LOS Convention, rather than archipelagic baselines around each group of islands.

¹⁰ Land area number may be found in The World Factbook entry for Philippines, at: <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html>.

Therefore, the Philippines' archipelagic baseline system set forth in R.A. 9522 appears to be consistent with Article 47 of the LOS Convention.

Internal Waters and Archipelagic Waters

Article 1 of the Philippine Constitution provides that “[t]he 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.”¹¹ Upon signing the LOS Convention in 1982 and again in ratifying the Convention in 1984, the Philippines stated: “The concept of archipelagic waters [under the LOS Convention] is similar to the concept of internal waters under the Constitution of the Philippines.” The United States and other countries have protested this understanding.¹² In response, the Philippines stated in 1988 that it “intends to harmonize its domestic legislation with the provisions of the Convention” and that it “will abide by the provisions of the said Convention.”¹³

In 2009, through its R.A. 9522, the Philippines established new archipelagic baselines; however, this legislation did not clarify whether the waters within the baselines are archipelagic waters (rather than internal waters), as provided for in the LOS Convention. In July 2011, the Philippine Supreme Court considered the question of whether R.A. 9522 “unconstitutionally ‘converts’ internal waters into archipelagic waters, hence subjecting these waters to the right of innocent and sea lanes passage under [the LOS Convention].”¹⁴ In unanimously upholding the constitutionality of R.A. 9522, the Philippine Supreme Court stated that “[w]hether referred to as Philippine ‘internal waters’ under Article I of the Constitution or as ‘archipelagic waters’ under [Article 49 of the LOS Convention], the Philippines exercises sovereignty over the body of water lying landward of the baselines.” The court recognized that Philippine sovereignty over the waters within the baselines is subject to the rights of innocent passage and archipelagic sea lanes passage, as provided for under international law.¹⁵

In 2011, the “Philippine Maritime Zones Act” was introduced in the Philippine Congress, Section 4 of which would clarify, consistent with the LOS Convention, that “[t]he Archipelagic

¹¹ The 1987 Constitution of the Republic of the Philippines, published Feb. 11, 1987, available at: <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/>. In signing and ratifying the LOS Convention, however, the Philippines stated: “The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, states.” *Supra*, note 6.

¹² *See supra*, note 6.

¹³ Declaration of the Republic of the Philippines in response to Australia’s Objection to the Declaration of the Philippines upon Signature of the United Nations Convention on the Law of the Sea, Oct. 26, 1988, available at: https://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtmsg_no=XXI-6&chapter=21&Temp=mtmsg3&lang=en#EndDec.

¹⁴ *Prof. Merlin M. Magallona, et.al. v. Hon. Eduardo Ermita, in his capacity as Executive Secretary, et al.* G.R. No. 187167, 16 July 2011, *en banc* (Carpio, J.). Court’s unanimous opinion is available at: <http://sc.judiciary.gov.ph/jurisprudence/2011/august2011/187167.html>.

¹⁵ “The fact of sovereignty, however, does not preclude the operation of municipal and international law norms subjecting the territorial sea or archipelagic waters to necessary, if not marginal, burdens in the interest of maintaining unimpeded, expeditious international navigation, consistent with the international law principle of freedom of navigation. Thus, domestically, the political branches of the Philippine government, in the competent discharge of their constitutional powers, may pass legislation designating routes within the archipelagic waters to regulate innocent and sea lanes passage.” *Id.*

Waters of the Philippines refer to the waters on the landward side of the archipelagic baselines ...” and that “[w]ithin the archipelagic waters, closing lines for the delimitation of internal water shall be drawn pursuant to Article 50 of [the LOS Convention]....”¹⁶ This legislation, which would confirm that the Philippines is treating these waters in a manner consistent with the LOS Convention, has not yet been enacted into law.

Territorial Sea, Exclusive Economic Zone, and Continental Shelf

R.A. 3046 of June 17, 1961 defined the territorial sea of the Philippines as follows: “all the waters within the limits set forth in the [Treaty of Paris between the United States and Spain of 1898, the treaty between the United States and Spain of November 7, 1900, and the treaty between the United States and Great Britain of January 2, 1930] have always been regarded as part of the territory of the Philippine Islands.”¹⁷ Map 1 depicts the Treaty of Paris limits.

R.A. 9522 of 2009, which modified R.A. 3046, provides that the territorial sea of the Philippines is to be measured from the baselines established in that Act. Likewise, in its decision of July 2011, the Philippine Supreme Court referred to the applicability of Article 48 of the LOS Convention to the maritime zones of the Philippines as follows: “The breadth of the territorial sea [and other maritime zones] *shall be measured from archipelagic baselines* drawn in accordance with article 47 [of the LOS Convention].” (Emphasis supplied by the court.)¹⁸ R.A. 9522, however, did not specify the breadth of the territorial sea of the Philippines.¹⁹

Presidential Decree No. 1599 of June 11, 1978, established a 200-nm EEZ measured from the baselines from which the breadth of the territorial sea is measured.²⁰

Presidential Proclamation No. 370 of March 20, 1968, claimed jurisdiction and control over the mineral and other natural resources of the continental shelf adjacent to the Philippines “to where the depth of the superjacent waters admits of the exploitation of such resources.”²¹ On April 8, 2009, the Philippines made a submission to the Commission on the Limits of the Continental Shelf (CLCS) concerning the continental shelf beyond 200 nm in the Benham Rise (Benham Plateau) region, east of the Philippines in the Philippine Sea.²² On April 12, 2012, the CLCS gave supportive recommendations concerning this submission, and on July 2, 2012, the

¹⁶ An Act to Define the Maritime Zones of the Republic of the Philippines, Senate, S. No. 2737, Mar. 10, 2011, available at: <http://www.senate.gov.ph/lisdata/109329322!.pdf>. Article 50 of the LOS Convention states: “Within its archipelagic waters, the archipelagic State may draw closing lines for the delimitation of internal waters, in accordance with articles 9, 10 and 11 [pertaining to mouths of rivers, bays, and ports].”

¹⁷ The United States has objected to this characterization. *See supra*, note 6.

¹⁸ Opinion, *supra*, note 14.

¹⁹ The proposed Maritime Zone Act aims to address this matter by providing that the territorial sea “shall be the belt of sea measured twelve (12) nautical miles from the baselines or from the low-water line, as the case maybe.” Act to Define the Maritime Zones, *supra* note 16 at Section 5.

²⁰ Decree, *supra*, note 5.

²¹ Declaration, *supra*, note 4.

²² The Executive Summary and Notification is available from DOALOS, at: http://www.un.org/depts/los/clcs_new/submissions_files/submission_phl_22_2009.htm.

Philippines delineated the outer limits of its continental shelf in the Benham Rise region on the basis of those recommendations.²³ Map 1 depicts these outer limits.

For Scarborough Reef and the Kalayaan Island Group, Section 2 of R.A. 9522 refers to the applicability of the “Regime of Islands” under Article 121 of the LOS Convention. In the context of an arbitration case brought against China under Annex VII of the LOS Convention, the Philippines has taken the view that Scarborough Reef and at least some of the islands within the Kalayaan Island Group fall under paragraph 3 of Article 121 as “[r]ocks which cannot sustain human habitation or economic life of their own” and therefore “have no exclusive economic zone or continental shelf.”²⁴ In response to R.A. 9522, China protested the Philippines’ sovereignty claims to these features and reiterated its own claims.²⁵

Navigation

Upon signing and ratifying the LOS Convention, the Philippines stated that “[t]he concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines.”²⁶ In its 1986 protest of this characterization, the United States stated the following:

...as generally understood in international law, including that reflected in the 1982 Law of the Sea Convention, the concept of internal waters differs significantly from the concept of archipelagic waters. Archipelagic waters are only those enclosed by properly drawn archipelagic baselines and are subject to the regimes of innocent passage and archipelagic sea lanes passage.²⁷

Articles 52 and 53 of the LOS Convention describe the rights of innocent passage and archipelagic sea lanes passage, respectively. In upholding the constitutionality of R.A. 9522, the Supreme Court of the Philippines stated that the right of innocent passage is a matter of customary international law and thus part of Philippine law and applies both in the archipelagic waters and territorial sea of the Philippines. The Court also recognized that the right of archipelagic sea lanes passage applies in those waters, and that “the Philippine government . . . may pass legislation designating routes within the archipelagic waters to regulate . . . sea lanes passage.”²⁸

²³ For the CLCS’s recommendations, *see supra* note 22. The Philippines chart and relevant information concerning the establishment of the continental shelf beyond 200 nm in the Benham Rise region is available from DOALOS, *LOS Bulletin* No. 79, at: http://www.un.org/Depts/los/doalos_publications/los_bult.htm.

²⁴ *See e.g.*, “Notification and Statement of Claim,” Jan. 22, 2013, available from the Philippines Department of Foreign Affairs at: http://www.dfa.gov.ph/index.php/component/docman/doc_download/56-notification-and-statement-of-claim-on-west-philippine-sea?Itemid=546. *See also*, “Philippine position on Bajo de Masinloc (Scarborough Shoal) and the waters within its vicinity,” Dept. of Foreign Affairs, Apr. 18, 2012, available at: <http://www.gov.ph/2012/04/18/philippine-position-on-bajo-de-masinloc-and-the-waters-within-its-vicinity/>.

²⁵ China diplomatic note CML/12/2009 dated April 13, 2009, available at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn69_2009_chn.pdf.

²⁶ Understandings, *supra*, notes 6 and 12 and accompanying text.

²⁷ U.S. objection, *supra* note 6.

²⁸ Opinion, *supra* note 14.

An archipelagic State may designate such sea lanes, and also traffic separation schemes, provided that “an archipelagic State shall refer [such] proposals to the competent international organization with a view to their adoption” (LOS Convention, Article 53, paragraphs 1 and 9). As the competent international organization, the International Maritime Organization (IMO) may “adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe, or substitute them” (Article 53.9). As of August 2014, the Philippine government had not formally designated any archipelagic sea lanes, nor had it presented proposals to this effect to the IMO.²⁹ Since no archipelagic sea lanes have been designated in accordance with the LOS Convention, the “right of archipelagic sea lane passage may be exercised through the routes normally used for international navigation” (Article 53.12).

Exclusive Economic Zone Jurisdiction

Section 4 of Presidential Decree No. 1599 of June 11, 1978 recognized that “[o]ther 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.” The provisions of international law to which the Proclamation refers are reflected in the LOS Convention, Parts V (pertaining to the EEZ); VI (pertaining to the continental shelf, including Article 79 pertaining to submarine cables and pipelines); and VII (pertaining to the high seas).

Maritime Boundaries

The Philippines has established a maritime boundary with Indonesia. The Philippines and Indonesia concluded a maritime boundary agreement in May 2014 (not yet in force) that establishes an EEZ boundary and is without prejudice to the delimitation of the continental shelf

²⁹ In 2011, the Philippine Administration introduced legislation to establish the archipelagic sea lanes passage regime, including three archipelagic sea lanes. Senate Bill No. 2738 and House Bill No. 4153, 15th Congress. The House bill is available at: http://www.congress.gov.ph/download/billtext_15/hbt4153.pdf. This draft legislation did not recognize the role of the IMO set out in Article 53.9 of the LOS Convention and was not consistent with Article 53.12 of the LOS Convention. Sections 3 and 11 of the draft legislation would have permitted the exercise of archipelagic sea lanes passage through only three routes and precluded the exercise of archipelagic sea lanes passage through many other routes normally used for international navigation. The scheme contemplated in this legislation would thus establish a partial, not a complete, system of archipelagic sea lanes within the meaning of Part H of the IMO publication, *Ships' Routeing*. Part H, entitled, *Adoption, designation, and substitution of archipelagic sea lanes*, contains general provisions for the adoption, designation and substitution of archipelagic sea lanes, and specific provisions on archipelagic sea lanes adopted by the IMO, to date the only ones being the partial system of archipelagic sea lanes in Indonesian archipelagic waters. The general provisions of Part H were adopted, pursuant to SOLAS V/10 and Assembly Resolution 572(14), as amended, by resolution MSC 71(69) at the 69th session of the Maritime Safety Committee (MSC), and the Indonesian partial system of archipelagic sea lanes was adopted at the same session by MSC 72(69). When these two resolutions were adopted, the Philippine delegation at the IMO stated that the discussions and agreements on the designation of Indonesian archipelagic sea lanes should apply exclusively to the Indonesian archipelagic sea lanes and should not be interpreted as creating a precedent for future applications for the designation of archipelagic sea lanes. The MSC resolutions are available at: <http://www.imo.org/KnowledgeCentre/IndexofIMOResolutions/Pages/Maritime-Safety-Committee-%28MSC%29.aspx>.

boundary between the two countries.³⁰ The EEZ boundary provided for in the agreement is 627 nm in length and composed of geodesic lines connecting eight points. Map 1 depicts this boundary.

As of August 2014, the Philippines had not yet established maritime boundaries with Japan, China, Malaysia, Palau, and Taiwan.³¹ Malaysia may consider that it has already established a maritime boundary with the Philippines.³²

With respect to the EEZ, Section 1 of Decree No. 1599 provides “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.”

Conclusion

The Philippines’ archipelagic baseline system appears to be consistent with Article 47 of the LOS Convention. The legislation establishing the baselines, however, did not clarify whether the waters within the baselines are internal waters or archipelagic waters, nor did it specify the breadth of the territorial sea of the Philippines. In upholding the Philippine legislation that established its archipelagic baselines, the Philippine Supreme Court has recognized that Philippine sovereignty over the waters within the baselines is subject to the rights of innocent passage and archipelagic sea lanes passage, as provided for under international law. It appears that the Government of the Philippines intends to enact additional legislation that will further clarify its maritime zones in a manner consistent with the LOS Convention.

³⁰ Agreement between the Government of the Republic of the Philippines and the Government of the Republic Indonesia concerning the delimitation of the Exclusive Economic Zone boundary, Manila, May 23, 2014, available at: <http://www.gov.ph/2014/05/23/agreement-between-the-government-of-the-republic-of-the-philippines-and-the-government-of-the-republic-indonesia-concerning-the-delimitation-of-the-exclusive-economic-zone-boundary/>.

³¹ For a discussion of these undelimited boundaries, see V. Prescott and C. Schofield, *The Maritime Political Boundaries of the World*, 2nd ed. (Martinus Nijhoff, 2005), pp. 430, 433-436, 449-450, 452.

³² The Philippines and Malaysia are the successor States to the United States and Great Britain, respectively, with respect to the Convention Between the United States of America and Great Britain Delimiting the Boundary between the Philippine Archipelago and the State of North Borneo, signed at Washington, Jan. 2, 1930, entered into force Dec. 13, 1932, 47 Stat. 2198, TS 856, 12 Bevans 473, 137 LNTS 297, available at:

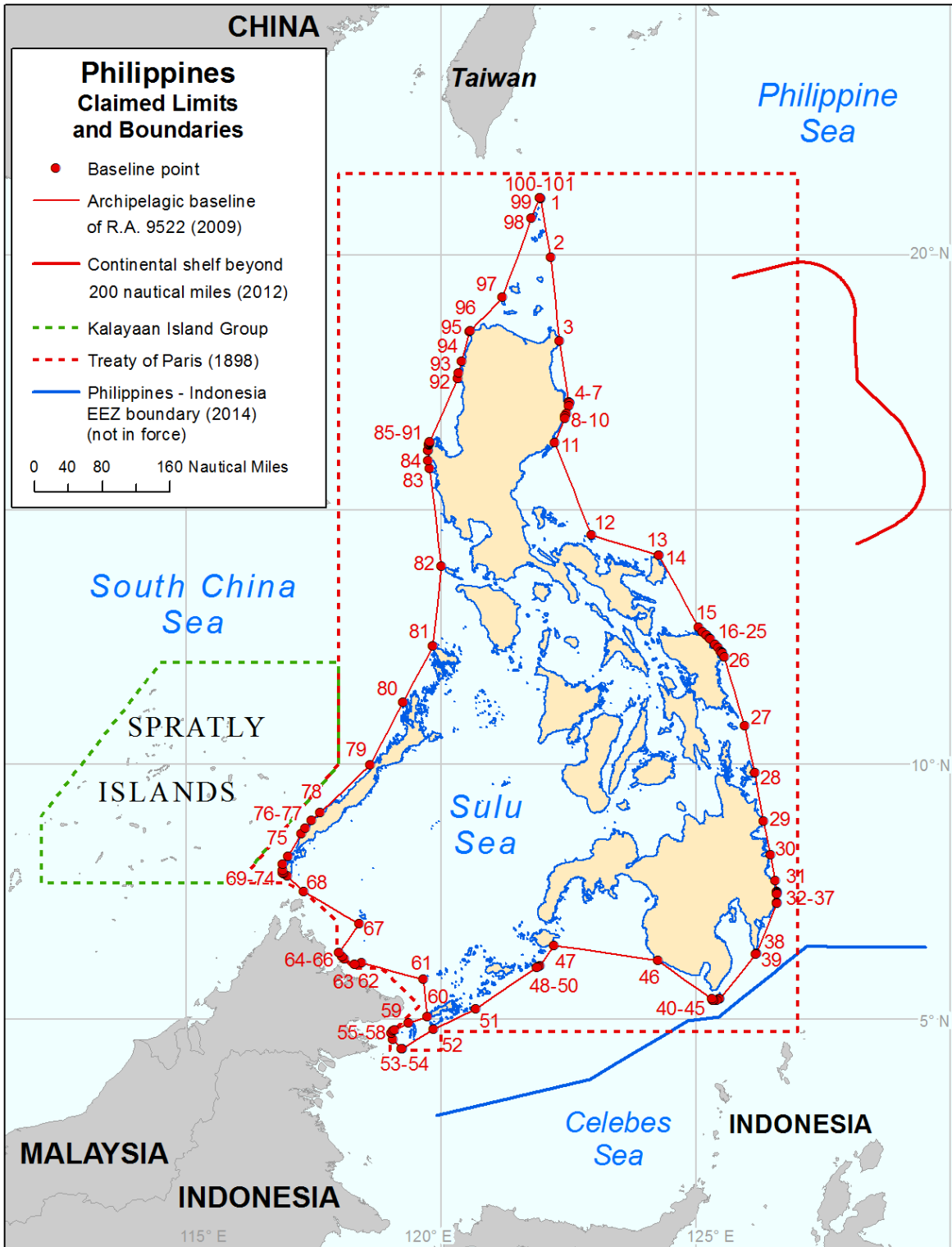
<http://treaties.un.org/doc/Publication/UNTS/LON/Volume 137/v137.pdf> and <http://www.gov.ph/1932/12/15/convention-between-the-united-states-of-america-and-great-britain-delimiting-the-boundary-between-the-philippine-archipelago-and-the-state-of-north-borneo-1930/>. The purpose of the boundary

line established in Article 1 of this treaty was to allocate to Great Britain and United States the islands in that area; no mention appears in the treaty as to the waters on either side of the line. However, this line is depicted on a map published by the government of Malaysia in 1979, and also on the maps contained in the 2009 joint submission of Malaysia and Vietnam to the Commission on the Limits of the Continental, available at:

http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/mys_vnm2009excutivesummary.pdf.

Map 1

Illustrative Map of the Claimed Limits and Boundaries of the Philippines



Annex 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 R.A. 9522, Annex 2 to this study.]

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

Annex 2
Republic Act No. 9522
March 10, 2009

AN ACT TO AMEND CERTAIN PROVISIONS OF REPUBLIC ACT NO. 3046, AS AMENDED BY REPUBLIC ACT NO. 5446, TO DEFINE THE ARCHIPELAGIC BASELINE OF THE PHILIPPINES AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Section 1 of Republic Act No. 3046, entitled “An Act to Define the Baselines of the Territorial Sea of the Philippines”, as amended by Section 1 of Republic Act No. 5446, is hereby amended to read as follows:

Section 1. The baselines of the Philippines archipelago are hereby defined and described specifically as follows:

Basepoint Number	Station Name	Location	World Geodetic System of 1984 (WGS 84) Coordinates		Distance to next basepoint (M)
			Latitude (N)	Longitude (E)	
1	PAB-01	Amianan Is.	21°6'57.73"	121°57'27.71"	70.08
2	PAB-02	Balintang Is.	19°57'38.19"	122°9'46.32"	99.17
3	PAB-04	Bigan Pt.	18°18'35.30"	122°20'19.07"	71.83
4	PAB-05A	Ditolong Pt.	17°7'16.30"	122°31'28.34"	1.05
5	PAB-05B	Ditolong Pt.	17°6'14.79"	122°31'43.84"	0.39
6	PAB-05	Ditolong Pt.	17°5'51.31"	122°31'42.66"	3.29
7	PAB-06	Spires Is.	17°2'36.91"	122°31'3.28"	9.74
8	PAB-06B	Digollorin Pt.	16°59'18.03"	122°27'56.61"	3.51
9	PAB-06C	Digollorin Rk.	16°49'56.11"	122°26'50.78"	2.40
10	PAB-07	Divimisa Pt.	16°47'38.86"	122°26'4.40"	30.94
11	PAB-08	Dinoban Pt.	16°18'44.33"	122°14'06.69"	116.26
12	PAB-10A	Tinaga Is.	14°29'54.43"	122°57'51.15"	80.29
13	PAB-11	Horodaba Rk.	14°6.29.91"	124°16'59.21"	0.54
14	PAB-12	Matulin Rk.	14°6.10.40"	124°17'26.28"	96.04
15	PAB-13	Atalaya Pt.	12°41'6.37"	125°3'53.71"	6.79
16	PAB-13A	Bacan Is.	12°36'18.41"	125°8'50.19"	5.52
17	PAB-14	Finch Rk.	12°32.33.62"	125°12'59.70"	0.80
18	PAB-14A	Cube Rk.	12°31.57.45"	125°13'32.37"	4.90
19	PAB-14D	NW Manjud Pt.	12°28'36.42"	125°17'12.32"	1.30

Basepoint Number	Station Name	Location	World Geodetic System of 1984 (WGS 84) Coordinates		Distance to next basepoint (M)
			12		
			Latitude (N)	Longitude (E)	
20	PAB-15	SE Manjud Pt.	12°27'37.51"	125°18'5.23"	7.69
21	PAB-16A	S Sorz Cay	12°21'41.64"	125°23'7.41"	5.68
22	PAB-16B	Panablihon	12°17'27.17"	125°27'0.12"	5.21
23	PAB-16C	Alugon	12°13'21.95"	125°30'19.47"	1.94
24	PAB-16D	N Bunga Pt.	12°11'48.16"	125°31'30.88"	0.54
25	PAB-17	E Bunga Pt.	12°11'20.67"	125°31'48.29"	5.71
26	PAB-18A	SE Tobabao Is.	12°6'7.00"	125°34'11.94"	83.94
27	PAB-19C	Suluan Is.	10°45'16.70"	125°58'8.78"	56.28
28	PAB-19D	N Tuason Pt.	9°49'59.58"	126°10'6.39"	57.44
29	PAB-20A	Arangasa Is.	8°53'16.62"	126°20'48.81"	40.69
30	PAB-21B	Sanco Pt.	8°13'11.53"	126°28'53.25"	30.80
31	PAB-22	Bagoso Is	7°42'45.02"	126°34'29.08"	12.95
32	PAB-22C	Languyan	7°29'49.47"	126°35'59.24"	0.54
33	PAB-23	Languyan	7°29'16.93"	126°35'59.50"	0.76
34	PAB-23B	Languyan	7°28'30.97"	126°35'57.30"	1.2
35	PAB-23C	N Baculin Pt.	7°27'29.42"	126°35'51.31"	10.12
36	PAB-24	Pusan Pt.	7°17'19.80"	126°36'18.26"	1.14
37	PAB-24A	S Pusan Pt.	7°16'14.43"	126°35'57.20"	63.28
38	PAB-25B	Cape San Agustin	6°17'14.73"	126°12'14.40"	1.28
39	PAB-25	Cape San Agustin	6°16'8.35"	126°11'35.06"	67.65
40	PAB-26	SE Sarangani Is.	5°23'34.20"	125°28'42.11"	0.43
41	PAB-27	Pangil Bato Pt.	5°23'21.80"	125°28'19.59"	3.44
42	PAB-28	Tapundo Pt.	6°21'55.66"	126°25'11.21"	3.31
43	PAB-29	W Calia Pt.	5°21'58.48"	125°21'52.03"	0.87
44	PAB-30	Manamil Is.	5°22'2.91"	125°20'59.73"	1.79
45	PAB-31	Marampog Pt.	5°23'20.18"	125°19'44.29"	78.42
46	PAB-32	Pola Pt.	6°9'8.44"	124°15'42.81"	122.88
47	PAB-33A	Kantuan Is	6°26'47.22"	122°13.34.50"	29.44
48	PAB-34A	Tongquil Is.	6°2'33.77"	121°56'36.20"	2.38
49	PAB-35	Tongquil Is	6°1'8.51"	121°54'41.45"	1.72
50	PAB-35A	Tongquil Is.	6°0'17.88"	121°63'11.17"	85.94
51	PAB-38A	Kirapusan Is	5°12.8.70"	120°41'38.14"	55.24

Basepoint Number	Station Name	Location	World Geodetic System of 1984 (WGS 84) Coordinates		Distance to next basepoint (M)
			Latitude (N)	Longitude (E)	
			13		
52	PAB-39	Manuk Manka Is.	4°47'39.24"	119°51'58.08"	43.44
53	PAB-40	Frances Reef	4°24'53.84"	119°14'50.71"	0.61
54	PAB-40A	Frances Reef	4°25'3.83"	119°14'15.15"	15.48
55	PAB-41A	Bajapa Reef	4°36'9.01"	119°3'22.75"	6.88
56	PAB-42A	Paguan Is.	4°42'52.07"	119°1'44.04"	3.40
57	PAB-43	Alice Reef	4°45'55.25"	119°3'15.19"	2.28
58	PAB-44	Alice Reef	4°47'5.36"	119°5'12.94"	18.60
59	PAB-45	Omapoy Rk.	4°55'10.45"	119°22'1.30"	23.37
60	PAB-46	Bukut Lapis Pt.	5°2'23.73"	119°44'18.14"	44.20
61	PAB-47	Pearl Bank	5°46'35.15"	119°39'51.77"	75.17
62	PAB-48	Bagnan Is.	6°5'58.41"	118°26'57.30"	8.54
63	PAB-48A	Taganak Is	6°4'14.08"	118°18'33.33"	13.46
64	PAB-49	Great Bakkungaan Is.	6°11'4.65"	118°6'54.15"	3.97
65	PAB-50	Libiman Is.	6°13'39.90"	118°3'52.09"	5.53
66	PAB-51	Sibaung Is.	6°17'43.99"	118°0'5.44"	41.60
67	PAB-52	Muligi Is.	6°52'14.53"	118°23'40.49"	75.06
68	PAB-53	South Mangsee Is.	7°30'26.05"	117°18'33.75"	26.00
69	PAB-54	Balabac Is.	7°48'30.69"	116°59'39.18"	6.08
70	PAB-54A	Balabac Great Reef	7°51'27.17"	116°54'17.19"	1.18
71	PAB-54B	Balabac Great Reef	7°52'19.86"	116°53'28.73"	2.27
72	PAB-55	Balabac Great Reef	7°54'36.35"	116°53'16.64"	7.42
73	PAB-60	Ada Reef	8°2'0.26"	116°54'10.04"	10.85
74	PAB.61	Secam Is.	8°11'18.36"	116°59'51.87"	30.88
75	PAB-62	Latua Pt.	8°87'56.37"	117°15'51.23"	7.91
76	PAB-63	SW Tatub Pt.	8°44'17.40"	117°20'39.37"	11.89
77	PAB-63A	W Sicud Pt.	8°53'32.20"	117°28'15.78"	13.20
78	PAB-64	Tarumpitao Pt.	9°2.57.47"	117°37'38.88"	81.12
79	PAB.64B	Dry Is.	9°59'22.54"	118°36'53.61"	82.76
80	PAB-65C	Sinangcolan Pt.	11°13'19.82"	119°15'17.74"	74.65
81	PAB-67	Pinnacle Rk.	12°19'35.22"	119°50'56.00"	93.88
82	PAB-68	Cabra Is	13°53'24.45"	120°1'5.86"	115.69
83	PAB-71	Hermana Mayor Is.	15°48'43.61"	119°46'56.09"	9.30

Basepoint Number	Station Name	Location	World Geodetic System of 1984 (WGS 84) Coordinates		Distance to next basepoint (M)
			Latitude (N)	Longitude (E)	
84	PAB-72	Tambobo Pt.	15°57'61.67"	119°44'55.32"	12.06
85	PAB-72B	Rena Pt.	16°9'57.90"	119°45'15.76"	0.25
86	PAB-73	Rena Pt.	16°10'12.42"	119°45'11.95"	6.43
87	PAB-74	Rocky Ledge	16°16'34.46"	119°46'19.50"	0.65
88	PAB-74A	Piedra Pt.	16°37'12.70"	119°46'28.62"	1.30
89	PAB-75	Piedra Pt.	16°18'29.49"	119°46'44.94"	1.04
90	PAB-75C	Piedra Pt.	16°19'28.20"	119°47'7.69"	0.63
91	PAB-75D	Piedra Pt.	16°20'4.38"	119°47'20.48"	80.60
92	PAB-76	Dile Pt.	17°34'24.94"	120°20'33.36"	6.86
93	PAB-77	Pinget Is.	17°41'17.56"	120°21'2.20"	14.15
94	PAB-78	Baboc Is.	17°55'4.13"	120°24'40.56"	35.40
95	PAB-79	Cape Bojeador	18°29'32.42"	120°33'42.41"	1.77
96	PAB-79B	Bobon	18°30'52.88"	120°34'55.35"	53.23
97	PAB-80	Calagangan Pt.	19°10'14.78"	121°12'52.64"	98.07
98	PAB-82	Itbayat Is.	20°43'15.74"	121°46'57.80"	25.63
99	PAB-83	Amianan Is	21°7'17.47"	121°56'43.85"	0.08
100	PAB-84	Amianan Is.	21°7'18.41"	121°56'48.79"	0.25
101	PAB-85	Amianan Is.	21°7'12.04"	121°57'3.65"	0.44

Section 2. The baseline in the following areas over which the Philippines likewise exercises sovereignty and jurisdiction shall be determined as “Regime of Islands” under the Republic of the Philippines consistent with Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS):

- a) The Kalayaan Island Group as constituted under Presidential Decree No. 1596; and
- b) Bajo de Masinloc, also known as Scarborough Shoal.

Section 3. This Act affirms that the Republic of the Philippines has dominion, sovereignty and jurisdiction over all portions of the national territory as defined in the Constitution and by provisions of applicable laws including, without limitation, Republic Act No. 7160, otherwise known as the Local Government Code of 1991, as amended.

Section 4. This Act, together with the geographic coordinates and the chart and maps indicating the aforesaid baselines, shall be deposited and registered with the Secretary General of the United Nations.

Section 5. The National Mapping and Resource Information Authority (NAMRIA) shall forthwith produce and publish charts and maps of the appropriate scale clearly representing the delineation of basepoints and baselines as set forth in this Act.

Section 6. The amount necessary to carry out the provisions of this Act shall be provided in a supplemental budget or included in the General Appropriations Act of the year of its enactment into law.

Section 7. If any portion or provision of this Act is declared unconstitutional or invalid the other portions or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 8. The provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, and all other laws, decrees, executive orders, rules and issuances inconsistent with this Act are hereby amended or modified accordingly.

Section 9. This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in any two (2) newspaper of general circulation.

Approved

(Sgd.) **PROSPERO C. NOGRALES**
Speaker of the House of Representatives

(Sgd.) **JUAN PONCE ENRILE**
President of the Senate

This Act which is a consolidation of Senate Bill No. 2699 and House Bill No. 3216 was finally passed by the Senate and the House of Representative on February 17, 2009.

(Sgd.) **MARILYN B. BARUA-YAP**
Secretary General
House of Representatives

(Sgd.) **EMMA LIRIO-REYES**
Secretary of Senate

Approved: **MAR 10, 2009**

(Sgd.) **GLORIA MACAPAGAL-ARROYO**
President of the Philippines

Annex 3**United Nations Convention on the Law of the Sea*****Article 47******Archipelagic baselines***

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.
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 State 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 early 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.