

# The Role of International Law in Confidence Building: Resolving Excessive Maritime Claims

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# Overview

- Opportunities to resolve excessive maritime claims
- Potential impact of Philippines-PRC arbitral award
- ILA Committee Studies on State Practice re straight and archipelagic straight baselines and final report
- Conclusions

# Opportunities

- Many ARF nations have maritime claims that are not consistent with the Law of the Sea Convention, by which they are legally bound
- While committed or encouraged to bring those claims into conformity with the LOSC, most do not want to be first or to go it alone
- Two contemporaneous events provide an opportunity for ARF to act together
  - Arbitral decision on merits Philippines-PRC case
  - ILA Baseline Committee Studies on State Practice

# Arbitral Decision

- Arbitral panel in Philippines-PRC case
  - hearings on merits 24-30 November 2015
  - award expected by June 2016
- Award may provide influential guidance on
  - Criteria for applying LOS Convention article 121 to islands and rocks
  - Maritime zone entitlements of islands, rocks, low-tide elevations and submerged features
  - Use of such features as basepoints for straight baselines
  - Restrictions on navigation and overflight

# Potential Impact on ARF Nations (1)

- While arbitral award is binding only on Philippines and China, its reasoning and results may affect almost all ARF nations
- Some ARF nations' domestic laws restrict navigation and overflight
- Arbitral award may clarify navigation rights of the Philippines

## Potential Impact on ARF Nations (2)

- Many ARF nations use off-shore features as turning points for straight baseline segments, which may be called into question by the award
- Effect of International Law Association Baseline Studies and Johannesburg Final Report August 2016
- ARF Regional Forum may wish to undertake a region-wide analysis of implications of arbitral award and ILA studies and report on national compliance with provisions of Law of the Sea Convention
- Results could form basis for all ARF nations to conform national laws and claims to international law

# ILA Committee on Baselines

- Established in 2008 to examine regime of the normal baseline (article 5), rapporteur Coalter Lathrop (US)
- Final report adopted at Sofia Conference in August 2012
- Mandate expanded in 2012 to address straight baselines, archipelagic straight baselines, bay and river closing lines
- Initial study addressing articles 7 and 47 reported at Washington Conference in April 2014, rapporteur Prof. Don Rothwell (Australia)
- Studies in 2014 identified state practice re articles 7 and 47
- Remaining issues being considered 2015-2016 with final report due at Johannesburg Conference August 2016
- [www.ila-hq.org/en/committees/index.cfm/cid/1028](http://www.ila-hq.org/en/committees/index.cfm/cid/1028)

# Baselines (1)

- Three types of baselines:
  - Normal (low-water line) (article 5)
  - Straight baselines (article 7)
  - Straight archipelagic baselines (article 47)
- Other straight closing lines
  - Mouths of rivers (article 9)
  - Bays (article 10)
- Basepoints
  - Reefs (article 6)
  - Ports and roadsteads (articles 11-12)
  - Low-tide elevations (article 13)



# Normal Baselines

- ILA 2014 Study:
- Of the 153 coastal and island States, 59 States use normal baselines
- 8 States use only the normal baseline
- Many States use a combination of normal and straight baselines
- <http://www.ila-hq.org/download.cfm/docid/E18E7457-B41E-4A67-AC8990DA33DAC0BB>

# Straight Baselines Interim Report

ILA Baselines Committee Interim Report (2014):

- Criteria in article 7 is not precise
- State practice quite varied, loosely interpreted and applied
- Some SBL clearly not justified
- No consistent state practice and thus no new customary international law rule
- Remedies not addressed

# Straight Baselines ILA Study

- Of the 153 coastal and island States, 89 States have drawn straight baselines
- Another 5 States have enabling legislation but have not drawn straight baselines
- Article 7 does not contain precise criteria for the drawing of straight baselines
- Many of the straight baseline segments do not appear to conform to the requirements of article 7

# Baselines (2)

- “The Court [ICJ] observes that the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met.
- “This method must be applied restrictively.
- “Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in the immediate vicinity.”
- *Maritime Delimitation and Territorial Question between Qatar and Bahrain*, Merits, Judgment, [2001] ICJ Rep. 40, at 67, para. 212 (16 March)

# Reporting of SBLs to UN

Half of the straight baselines have not been reported to the UN as required by article 16(2):

- Albania, Algeria, Angola, **Bangladesh**, Barbados, Bulgaria, Cameroon, **Canada**, Dem. Rep. Congo, Cote d'Ivoire, Denmark, Djibouti, Dominica, Dominican Republic, Egypt, Estonia, Guinea, Guinea-Bissau, Haiti, Iceland, **Republic of Korea**, **Malaysia**, Malta, Mauritania, Morocco, Mozambique, Oman, Portugal, Senegal, Somalia, South Africa, Sudan. Sweden, **Thailand**, Ukraine, Yemen
- Non-parties: **Cambodia**, Colombia, Iran, Libya, Peru, Syria, Turkey, UAE, Venezuela

List of those States that have compiled online at [www.un.org/Depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm)

# Length of Straight Baselines

- In the 1951 Anglo-Norwegian Fisheries case, the ICJ approved the use of SBL by Norway but gave no specific approval to maximum length of a segment
- The maximum length of a Norwegian SBL segment approved in 1951 was 40 nm
- Today 37 States have all SBL segments < 40 nm
- 52 States have at least one SBL segment > 40 nm
- The total number of SBL segments worldwide > 40 nm = 253 (+ 7 by Taiwan)

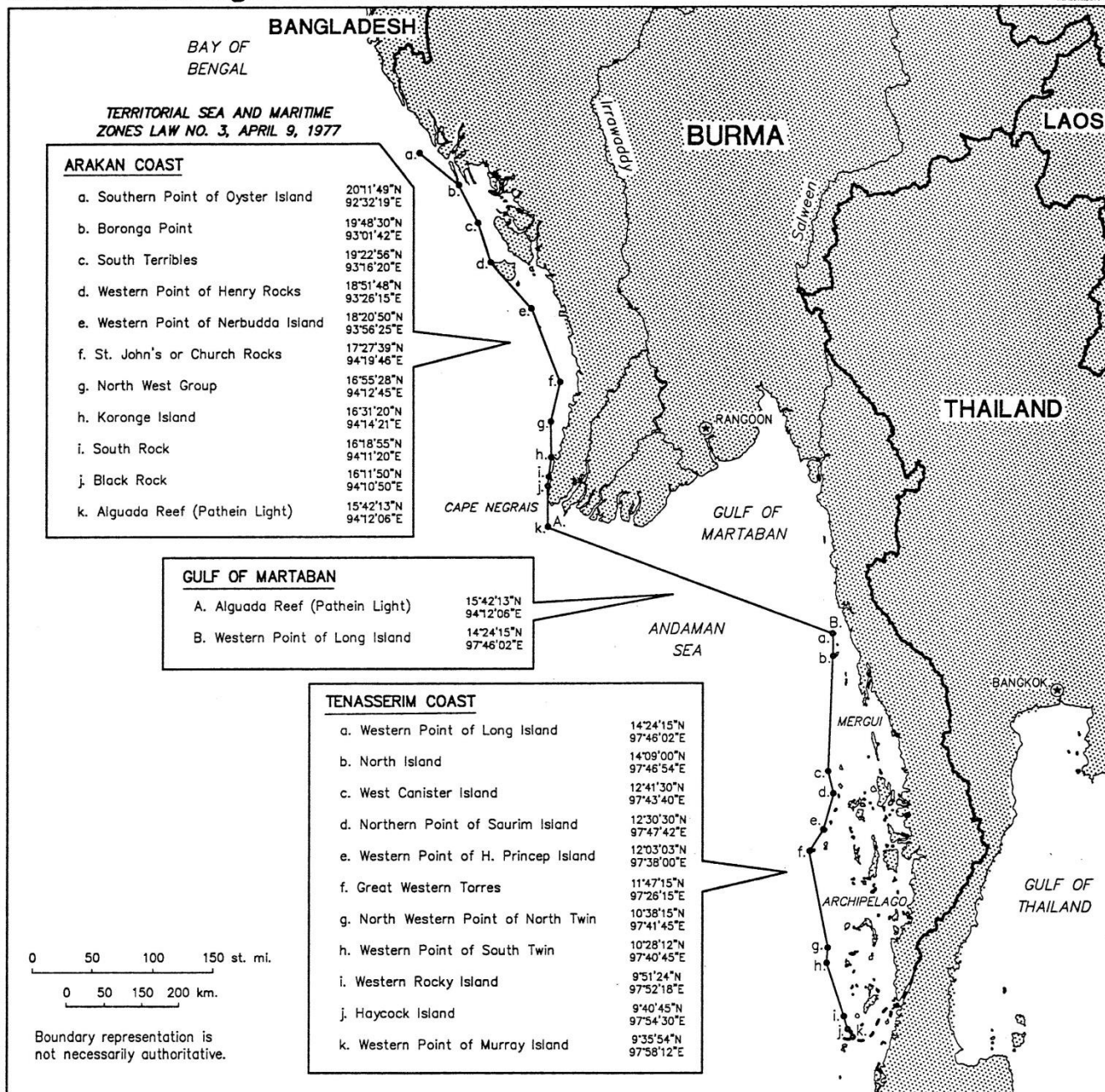
# Longest Straight Baselines

- The longest SBL is 300.8 nm across the Gulf of Sidra by Libya
- The second longest SBL is 222.3 nm across the Gulf of Martaban by Burma (Myanmar)
- Vietnam has the next three longest SBL segments: 161.8, 161.3 and 149.0 nm
- Ecuador has two segments: 136 nm along the mainland, and 124 nm in the Galapagos
- One Argentinian segment of 130.83 nm encloses Golfo San Jorge

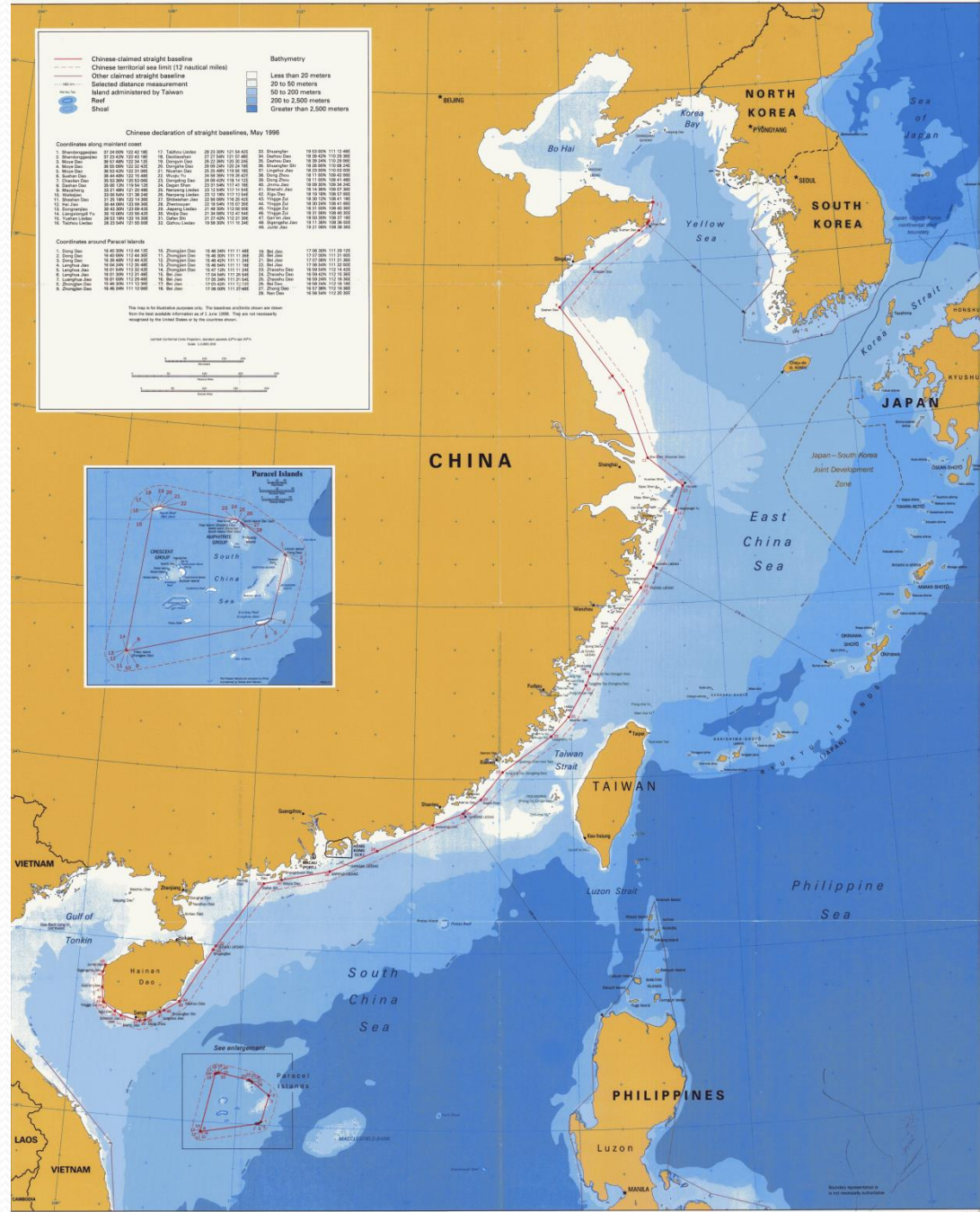
# Largest Number of SBL

- **Japan** has drawn the largest number of SBL segments > 40 nm: 28 between 41 and 80 nm
- Denmark has drawn the second largest number of SBL segments > 40 nm, along the Greenland coast: 26 segments all between 40.8 and 76.6 nm
- **China** has the next largest number of SBL segments > 40 nm: 17 segments along the mainland coast and 3 enclosing the Paracels
- Madagascar has the 4<sup>th</sup> largest number: 15 between 44 and 123 nm





# China's Claimed Straight Baselines





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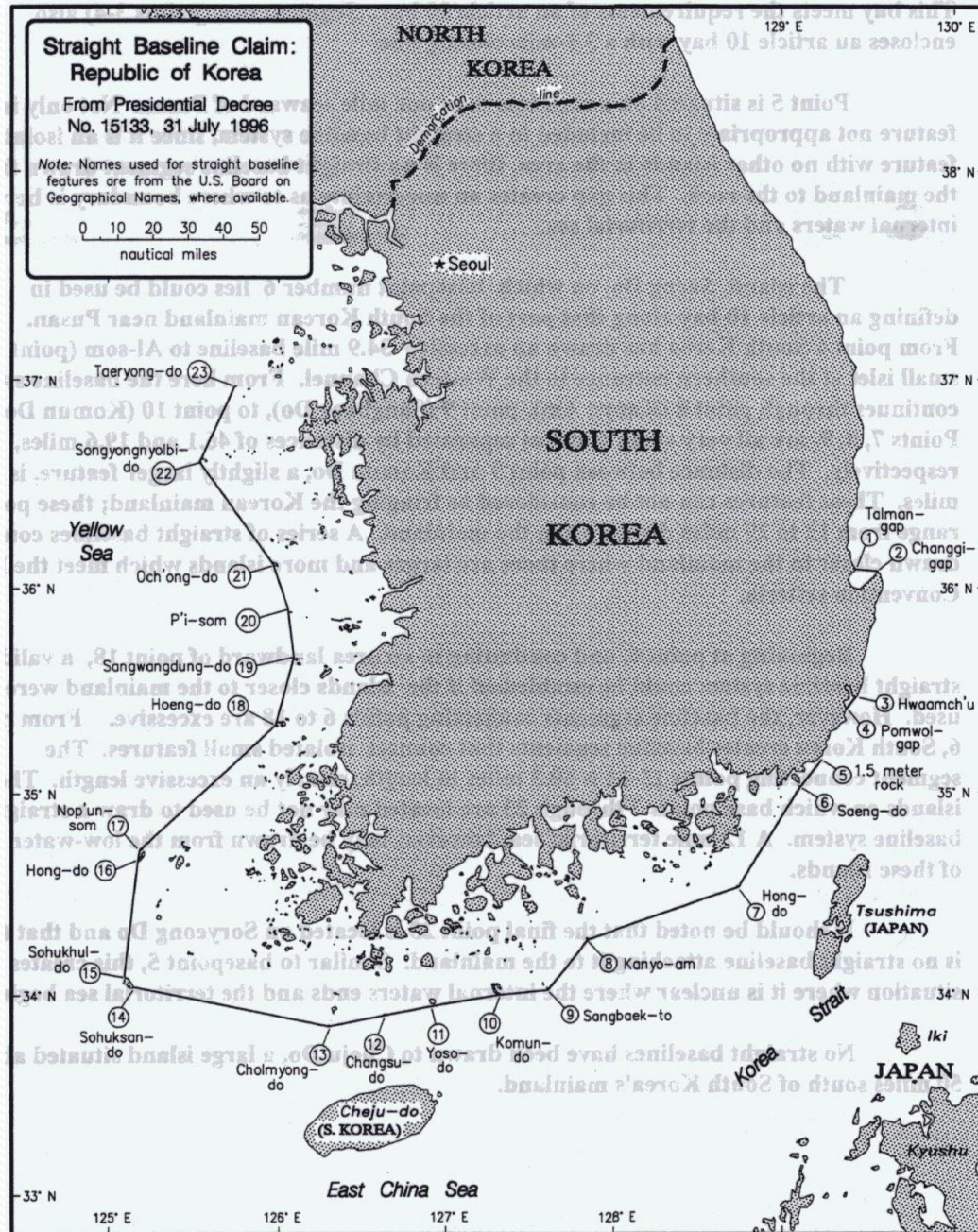
### Chinese Claimed Straight Baseline for Diaoyu Dao and its Affiliated Islands from Statement of September 10, 2012

- Straight baseline points
- Straight baseline
- - - Hypothetical median line

FOR ILLUSTRATIVE PURPOSES

EAST CHINA SEA

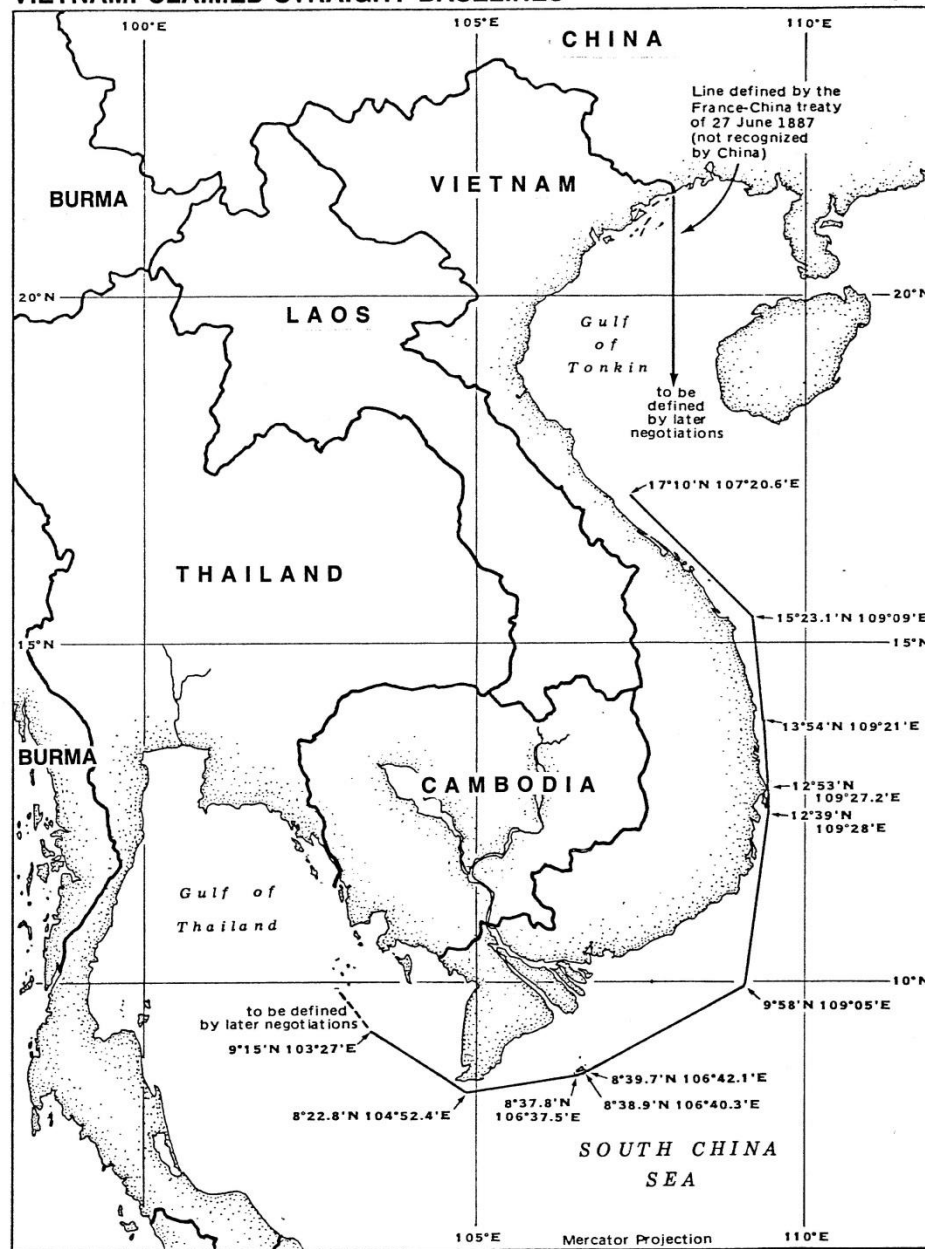




Names and boundary representation are not necessarily authoritative

# VIETNAM: CLAIMED STRAIGHT BASELINES

Map 10





**Thailand:  
Straight Baseline Claim  
Gulf of Thailand  
Area 2 and Area 4**

— Area 2 Baseline  
- - - Area 4 Baseline

\*Source: Area 2: Announcement of the Office of the Prime Minister concerning straight baselines and internal waters of Thailand, Area 2, 12 June 1970.  
Area 4: Announcement of the Office of the Prime Minister concerning straight baselines and internal waters of Thailand, Area 4, 12 June 1970, as amended 17 August 1992.

Boundary representation is not necessarily authoritative.

# Archipelagic SBL

- Unlike article 7 straight baselines, article 47 gives precise criteria for the length, number and location of archipelagic straight baselines

# Archipelagic States (1)

- 20 archipelagic States that have drawn archipelagic baselines:
- Antigua & Barbuda
- Cape Verde
- Dom Rep\*
- Grenada
- Jamaica
- Mauritius
- *Philippines*
- Sao Tome & Principe
- Solomon Islands
- Tuvalu
- The Bahamas
- Comoros
- Fiji
- *Indonesia*
- Maldives
- *Papua New Guinea*
- St Vincent & the Grenadines
- Seychelles
- Trinidad & Tobago
- Vanuatu

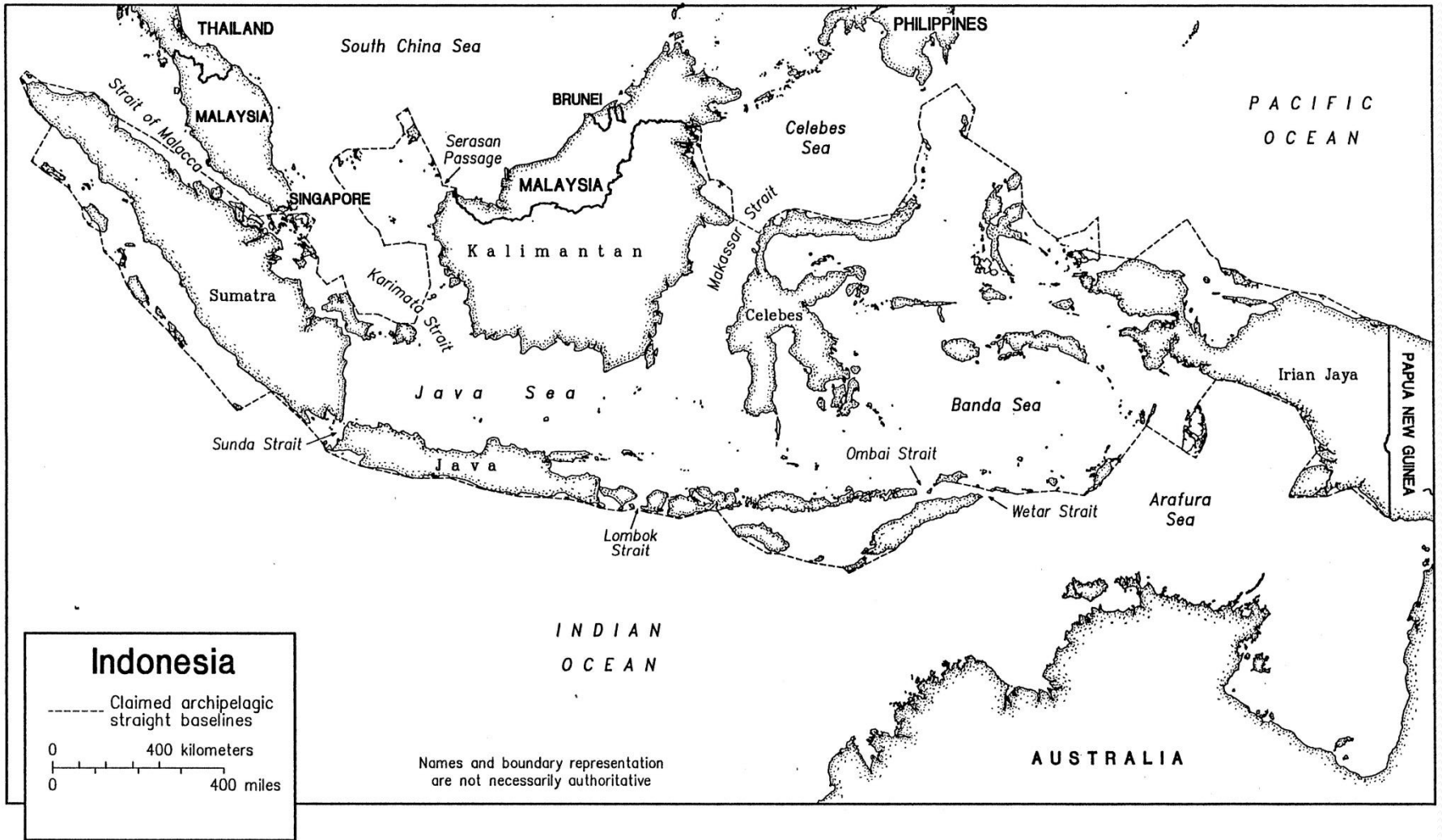


# Archipelagic States (2)

- Two archipelagic States have not drawn archipelagic baselines:
  - Kiribati
  - Marshall Islands
- Only 4 States have not complied with the due publicity requirement of article 47(9): Antigua & Barbuda, Cape Verde, Maldives, Solomon Islands

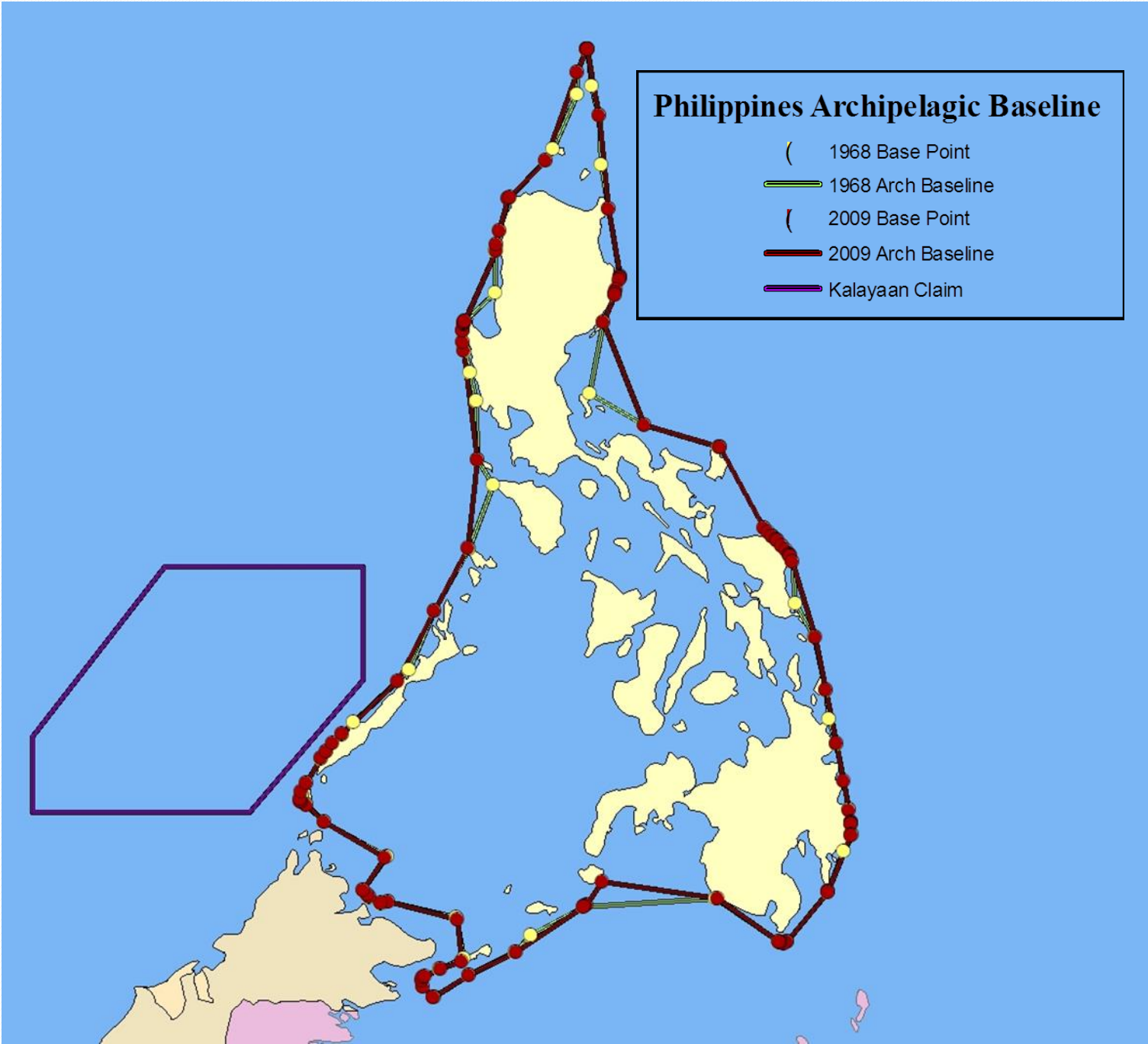
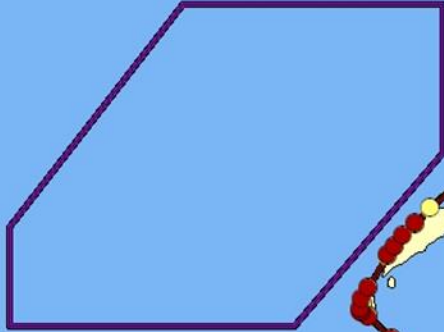
# Archipelagic SBL State Practice

- Of 20 archipelagic States, most ASBL meet all the criteria
- Only two do not meet land:water ratio (Seychelles (3 of 4 archipelagos) and Solomon Islands (4 of 5 archipelagos))
- Only one has segment > 125 nm (PNG (174.78 nm))
- Only one has > 3% 100-125 nm segments (Maldives (3 of 37=8.1%))
- Only one doesn't enclose an archipelago (PNG)
- Only one has turning points at sea (PNG, 50 nm S Wuvulu Island)
- PNG legislation under revision to comply with article 47



### Philippines Archipelagic Baseline

- ( 1968 Base Point
- 1968 Arch Baseline
- ( 2009 Base Point
- 2009 Arch Baseline
- Kalayaan Claim



# ILA Baseline Committee

- Committee documents online (2015):
  - ILA Study – SBL segments
  - ILA Study – protests
  - ILA Study -- remedies
  - ILA Study – draft update on article 47 in Committee's final first report
  - Baumert-Melchior Archipelagic States study
- <http://www.ila-hq.org/en/committees/index.cfm/cid/1028>

# Analyses of State Practice

- Baumert and Melchior, “The Practice of Archipelagic States: A Study of Studies,” 46 *Ocean Development and International Law* 68-80 (2015)
- Roach and Smith, “Straight Baselines: The Need for a Universally Applied Norm,” 31 *Ocean Development and International Law* 53-80 (2000)

# Conclusions

- ARF Regional Forum may wish to undertake a region-wide analysis of implications of arbitral award and ILA studies on national compliance with provisions of Law of the Sea Convention
- Analysis could be undertaken by neutral experts
- Topics
  - National legislation
  - National maritime claims
- Results could form basis for all ARF nations to conform national laws and claims to international law