

FINAL ARBITRAL AWARD

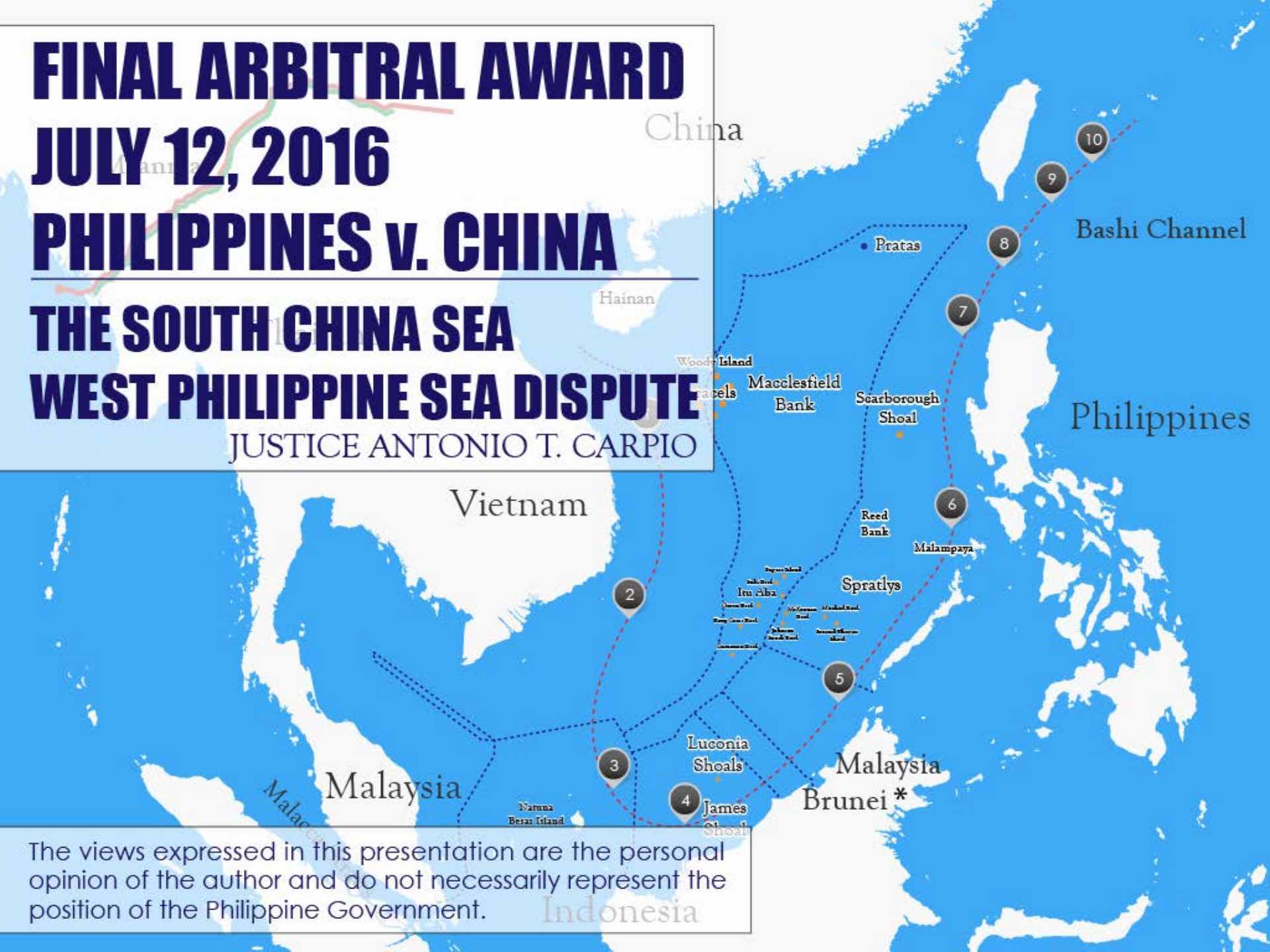
JULY 12, 2016

PHILIPPINES v. CHINA

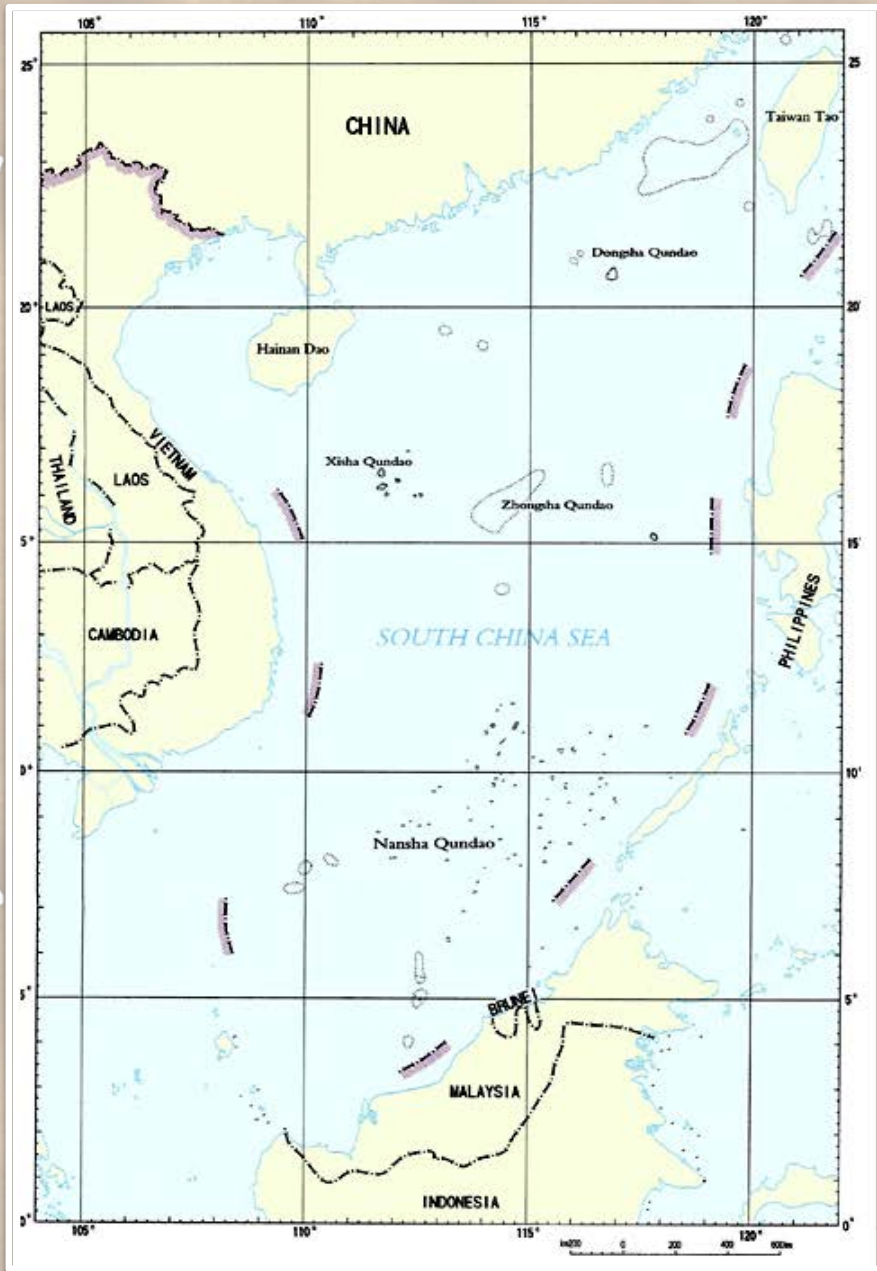
THE SOUTH CHINA SEA

WEST PHILIPPINE SEA DISPUTE

JUSTICE ANTONIO T. CARPIO



The views expressed in this presentation are the personal opinion of the author and do not necessarily represent the position of the Philippine Government.



Nine-dashed Lines Map Submitted by China to United Nations on 7 May 2009

China did not explain the legal basis for the dashes. The dashes had no fixed coordinates.

“China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.” - China’s *Note Verbale* of 7 May 2009

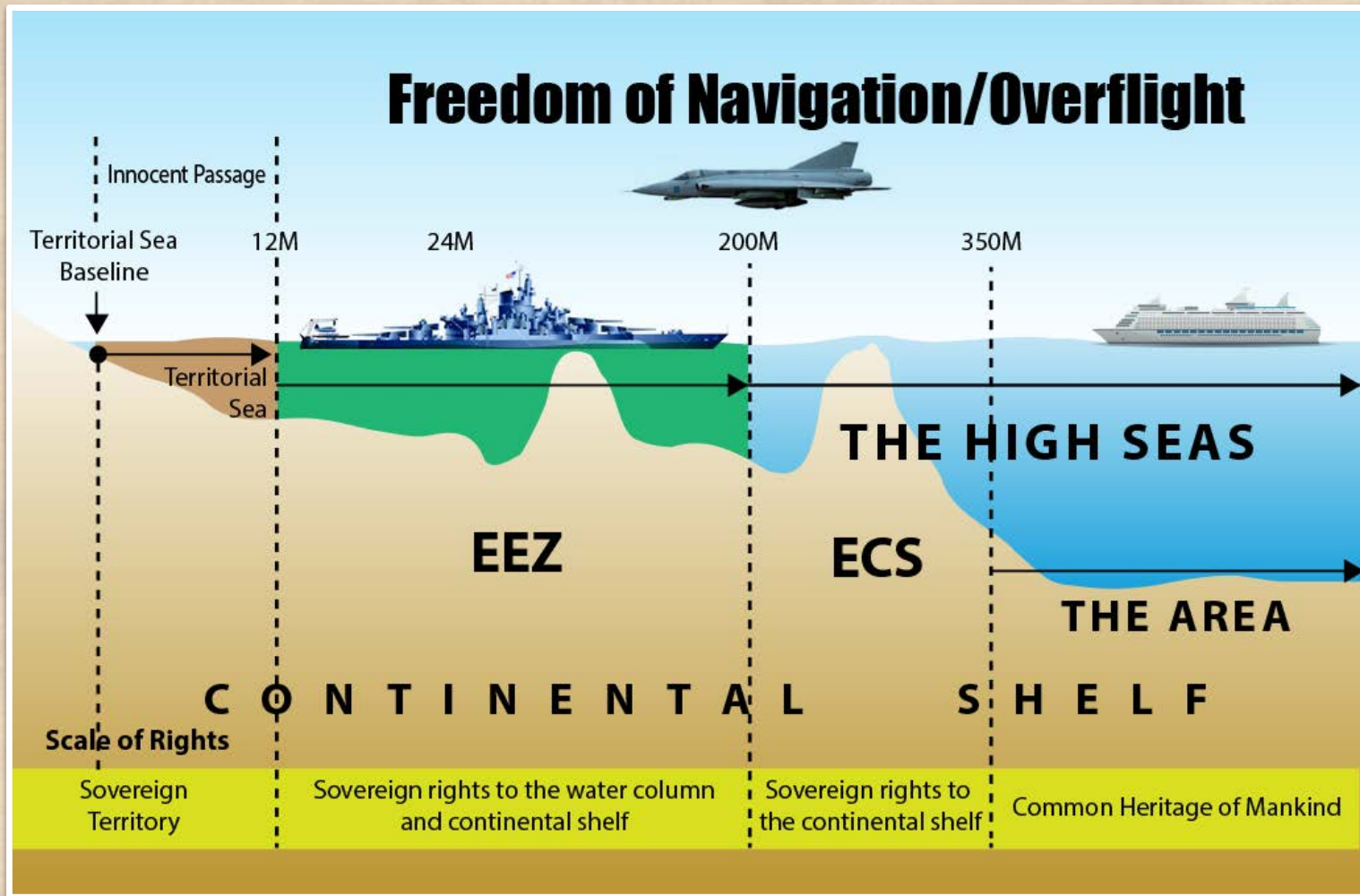
The Philippines, Vietnam, Malaysia and Indonesia protested China’s claim under this 9-dashed lines map.

China's Nine-Dashed Lines



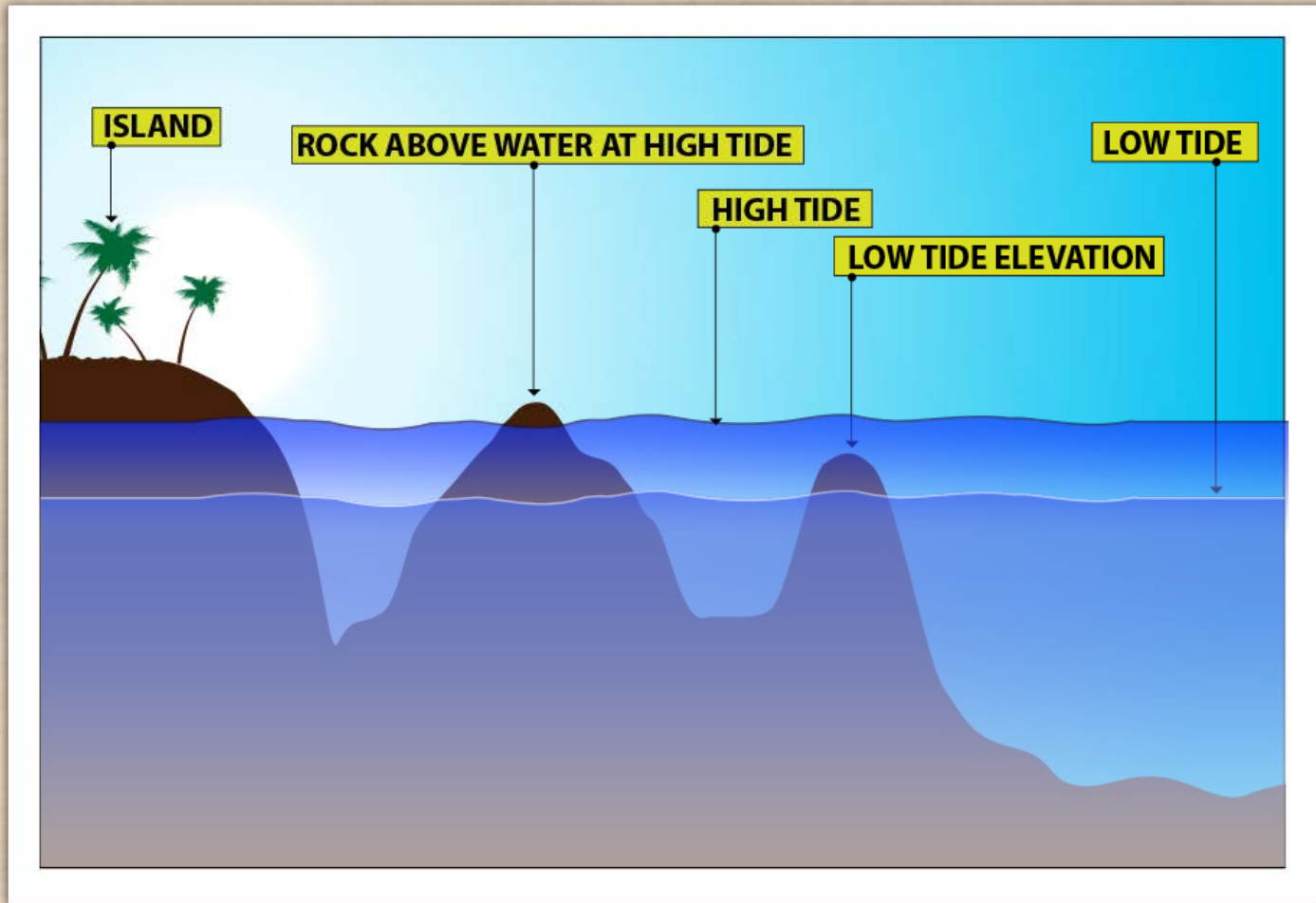
Under the 9-dashed lines, China claims the Reed Bank, James Shoal, waters within the EEZ of Vietnam, and prohibits foreign fishing vessels from fishing in the high seas of the South China Sea without permission from China. In short, China claims all the resources within the 9-dashed lines.

Maritime Zones under UNCLOS



An island above water at high tide is entitled to a 12 NM territorial sea. If such island is capable of human habitation or economic life of its own, it is entitled to a 200 NM EEZ. If there is a natural prolongation of its extended continental shelf, it is entitled to an ECS up to where the natural prolongation ends, but not exceeding 150 NM from the outer limits of its EEZ. **The maximum maritime zone a coastal state can claim is 150 NM from the outer limits of its 200 NM EEZ** (or 100 NM from the 2500 meter isobath, a limitation which does not apply to coastal states in the South China Sea based on the geology and geomorphology of the South China Sea). China is claiming maritime zones more than 150 NM from the outer limits of its EEZ.

Low Tide Elevation vs. Rock/Island



A low-tide elevation is not entitled to a territorial sea or any maritime zone. A rock above water at high tide is entitled to a 12 NM territorial sea. An island capable of human habitation or economic life of its own is entitled to a 12 NM territorial sea and a 200 NM EEZ, and if there is a natural prolongation of its extended continental shelf, it is entitled to an ECS up to the end of such natural prolongation but not exceeding 150 NM from the outer limits of its EEZ (or 100 NM from the 2500 meter isobath, if applicable).

China Seized Mischief Reef in February 1995



China Seized Scarborough Shoal in 2012



Just as in 1995 when China seized Mischief Reef, the Philippines had no military capability to defend or retake Scarborough Shoal in 2012 when China seized the shoal. The Philippines decided to bring the dispute to a forum where warships, warplanes and nuclear bombs do not count - to an UNCLOS arbitral Tribunal which would resolve the dispute solely based on the Law of the Sea. Robert Kaplan, in his book *Asia's Cauldron*, called this resort to international law the “ultimate demonstration of weakness.”

Six Major Issues Raised in the Arbitration & Resolved by the Annex VII UNCLOS Tribunal

1. China's Claim to Historic Rights under the Nine-Dashed Lines Is Contrary to UNCLOS and Cannot Be the Basis of any Maritime Entitlement (territorial sea, exclusive economic zone and extended continental shelf);
2. No Geologic Feature in the Spratlys Generates a 200-NM EEZ that Overlaps with Palawan's EEZ;
3. The Tribunal Has Jurisdiction to Rule on Maritime Issues – the Maritime Entitlement and Status (whether Low-Tide or High-Tide Elevations) of Geologic Features Are Not Sovereignty Issues; Maritime Entitlement is Separate from Sea Boundary Delimitation;
4. Scarborough Shoal Is a Rock Entitled only to 12-NM Territorial Sea; Filipino Fishermen Have Traditional Fishing Rights in Territorial Sea of Scarborough Shoal;
5. China Caused Severe Harm to the Marine Environment;
6. China Committed Unlawful Acts against the Philippines within the Philippine EEZ.

Ruling on China's Claim to Historic Rights Under the Nine-Dashed Lines

- The nine-dashed lines have no legal effect, and cannot claim any maritime zone, under UNCLOS: In short, “there was no legal basis for China to claim historic rights to resources within the sea areas falling within the ‘nine-dash line’.”
- China's maritime zones, just like other coastal states, cannot extend beyond the limits prescribed under UNCLOS. Maritime entitlements must be claimed only from land.
- All historic rights in the EEZ, ECS and high seas were extinguished upon effectivity of UNCLOS: “[A]ny historic rights that China may have had to the living and non-living resources within the ‘nine-dash line’ were superseded, as a matter of law and as between the Philippines and China, by the limits of the maritime zones provided for by the Convention.”
- “[T]here was no evidence that China had historically exercised exclusive control over the waters [of the South China Sea] or their resources.”

The Tribunal upheld the Philippine position on this issue.

High Seas and EEZs in South China Sea



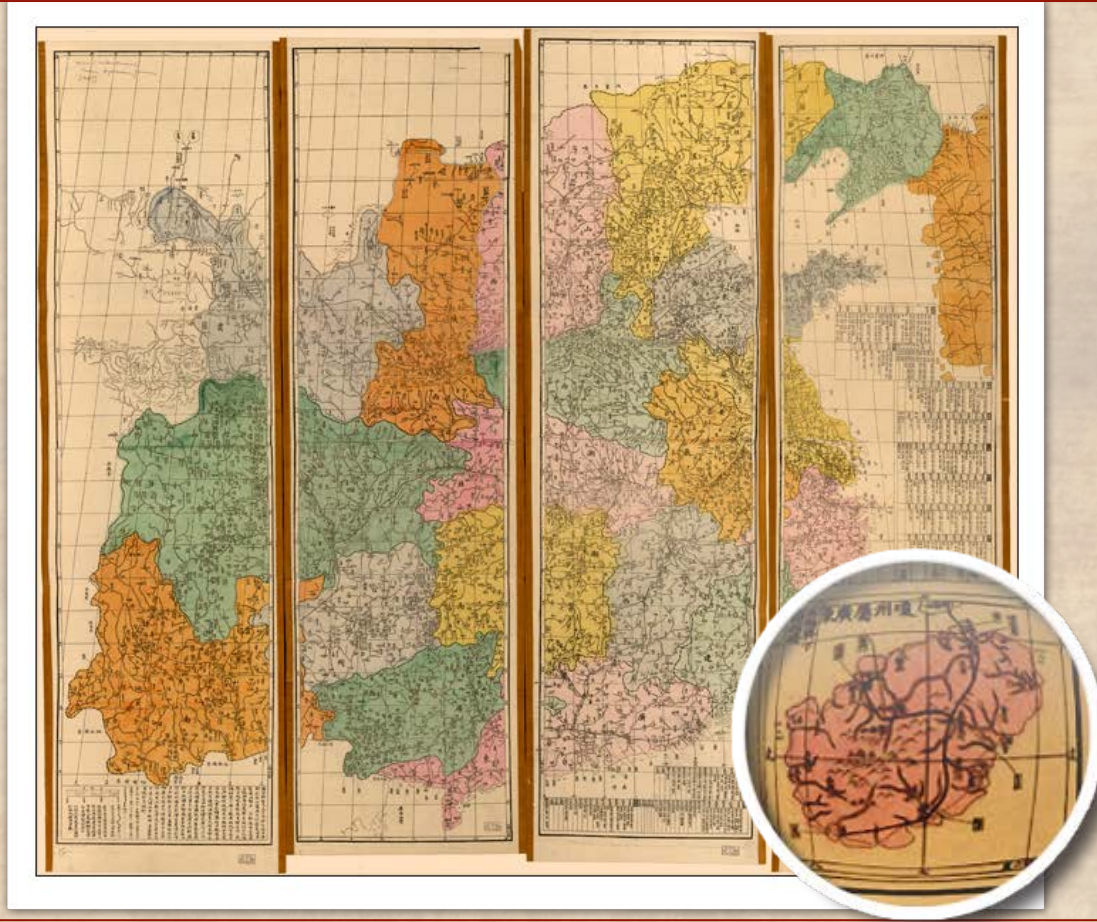
“[T]he Tribunal concludes that China’s claim to historic rights to the living and non-living resources within the ‘nine-dash line’ is incompatible with the Convention to the extent that it exceeds the limits of China’s maritime zones as provided for by the Convention.” (Para 261, Award of 12 July 2016)

1136 AD “Hua Yi Tu”



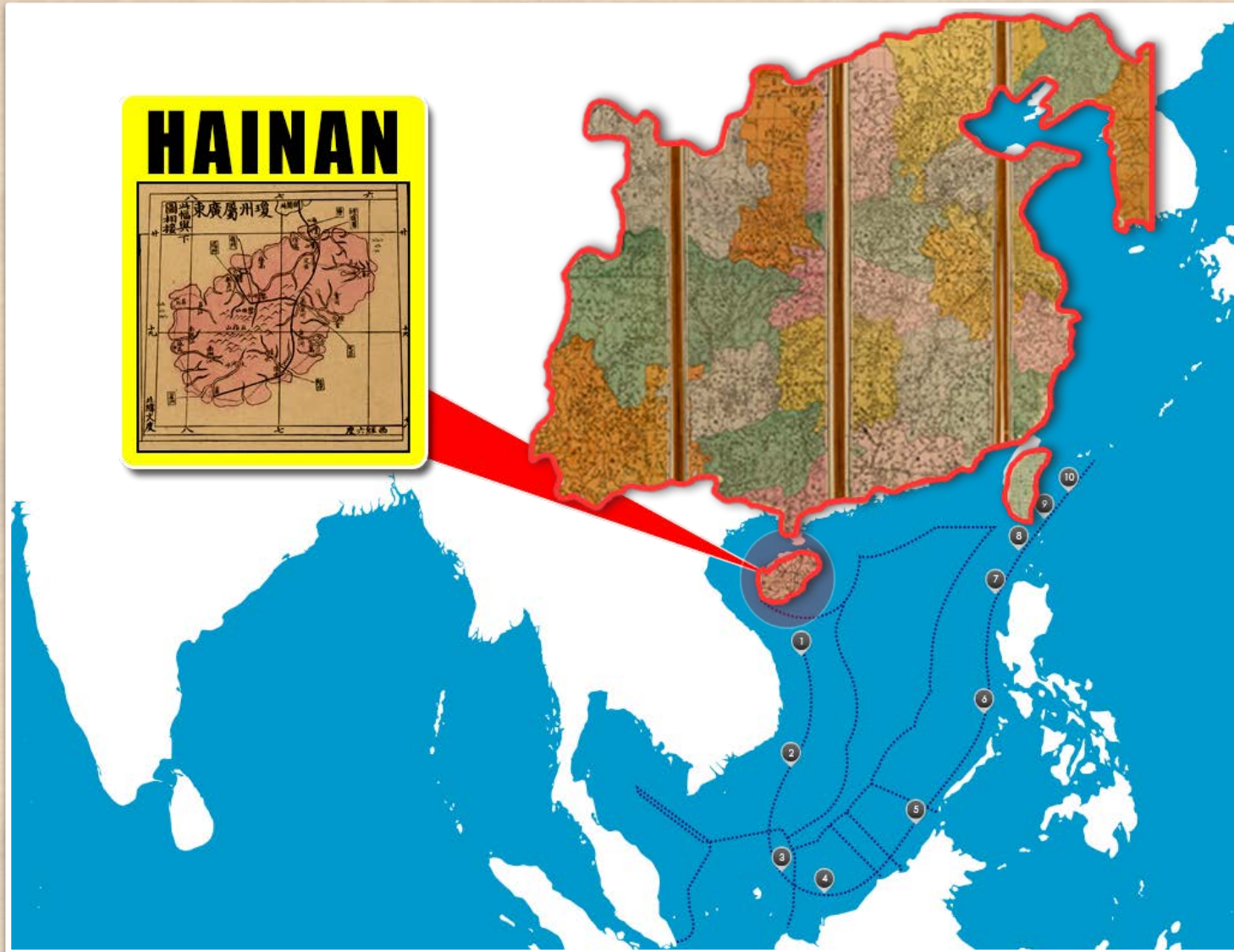
“The Philippines submits that Chinese historic maps dating back to 1136, including those purporting to depict the entirety of the Empire of China, consistently show China’s territory extending no further south than Hainan.” (Para 195, Award of 12 July 2016)

1896 “Huang Chao Zhi Sheng Yu Di Quan Tu” or The Qing Empire’s Complete Map of All Provinces



During the Chinese dynasties, Hainan Island was a part of Guangdong Province. Hainan became a separate province only in 1988. The Qing Dynasty saw one of the largest expansions of Chinese territory throughout the Chinese dynasties. The Qing dynasty ceded Formosa to Japan in 1895 following the Qing's defeat in the First Sino-Japanese War (1894-1895).

China's Southernmost Territory Through the Dynasties - Hainan (1894)



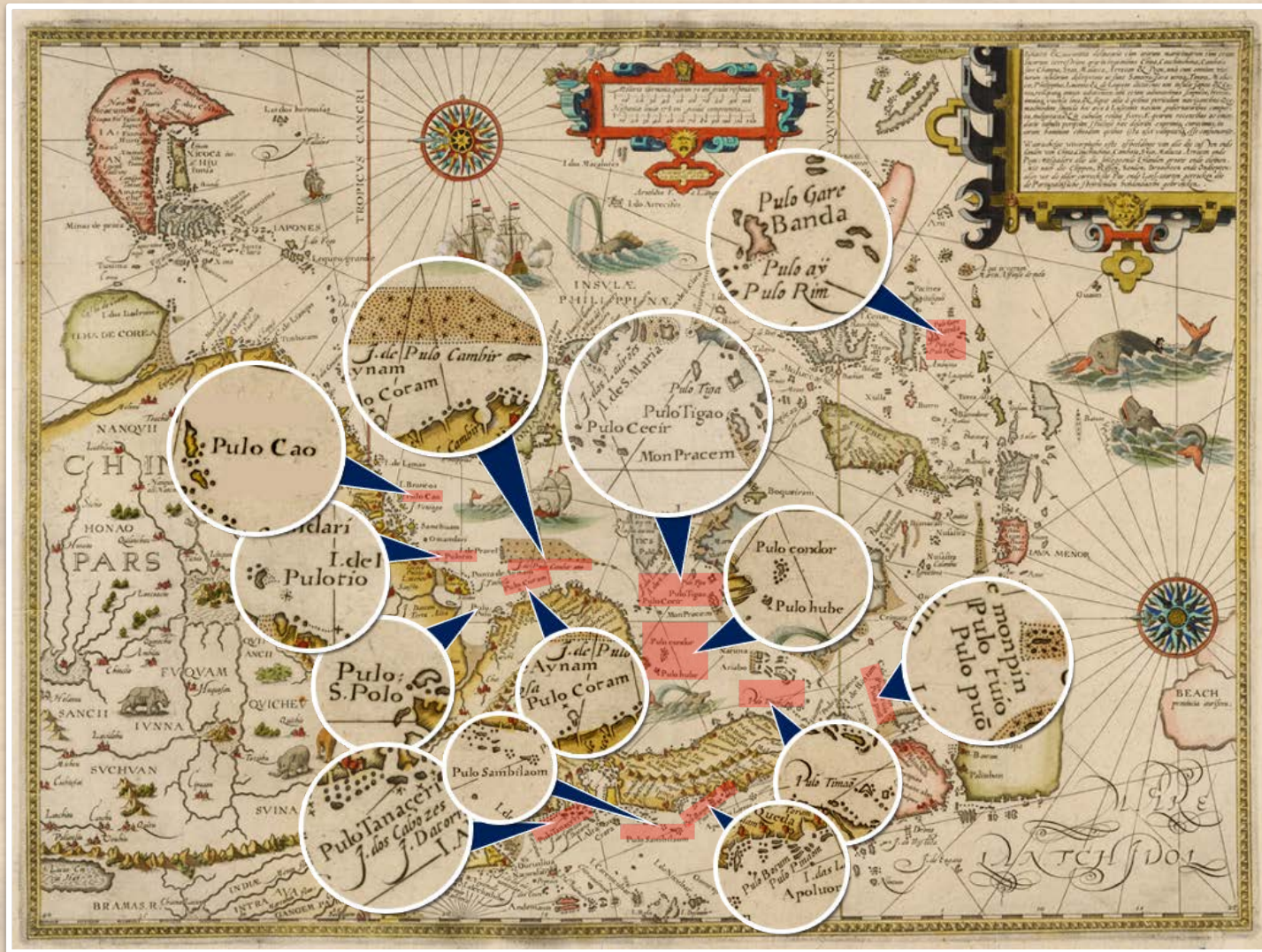
1595 Ortelius Map - Champa Kingdom and Champa Sea

“For centuries the South China Sea was known by navigators throughout Asia as the Champa Sea, named for a great empire that controlled all of central Vietnam xxx.” - *National Geographic*, June 18, 2014

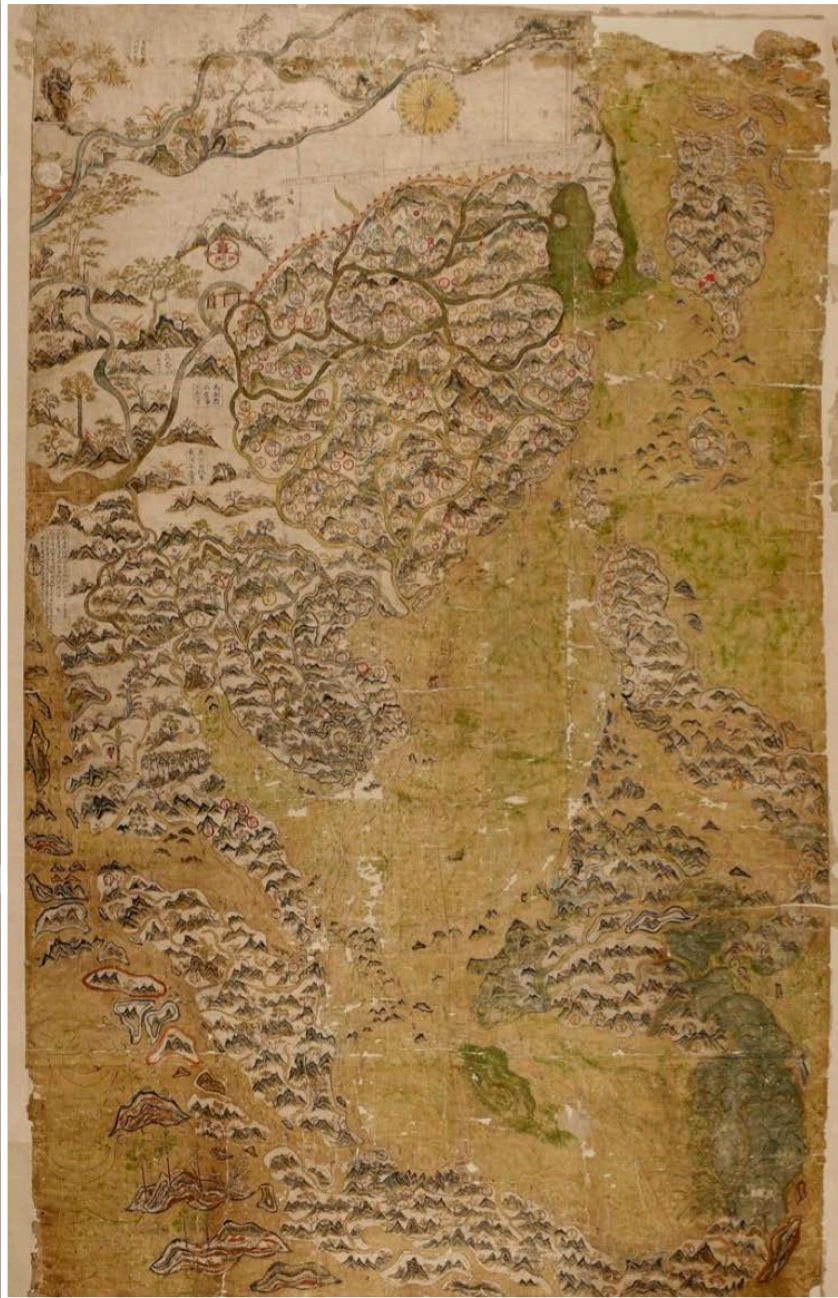


Before Portuguese navigators coined the name South China Sea, the sea was known as the **Champa Sea**, after the Cham people who established a great kingdom in central Vietnam from the late 2nd to the 17th century. The Chams had sailboats with outriggers, just like the sailboats of the Austronesians. The ancestors of the Chams spoke a Malayo-Polynesian language that is derived from the Austronesian language, just like the Tagalog language. The word “cham” comes from the flower of the champaka tree. This flower is the symbol of the Cham Kingdom. The Chams are believed to have migrated from Borneo to central Vietnam.

Islands in the Champa Sea Had Austronesian Names



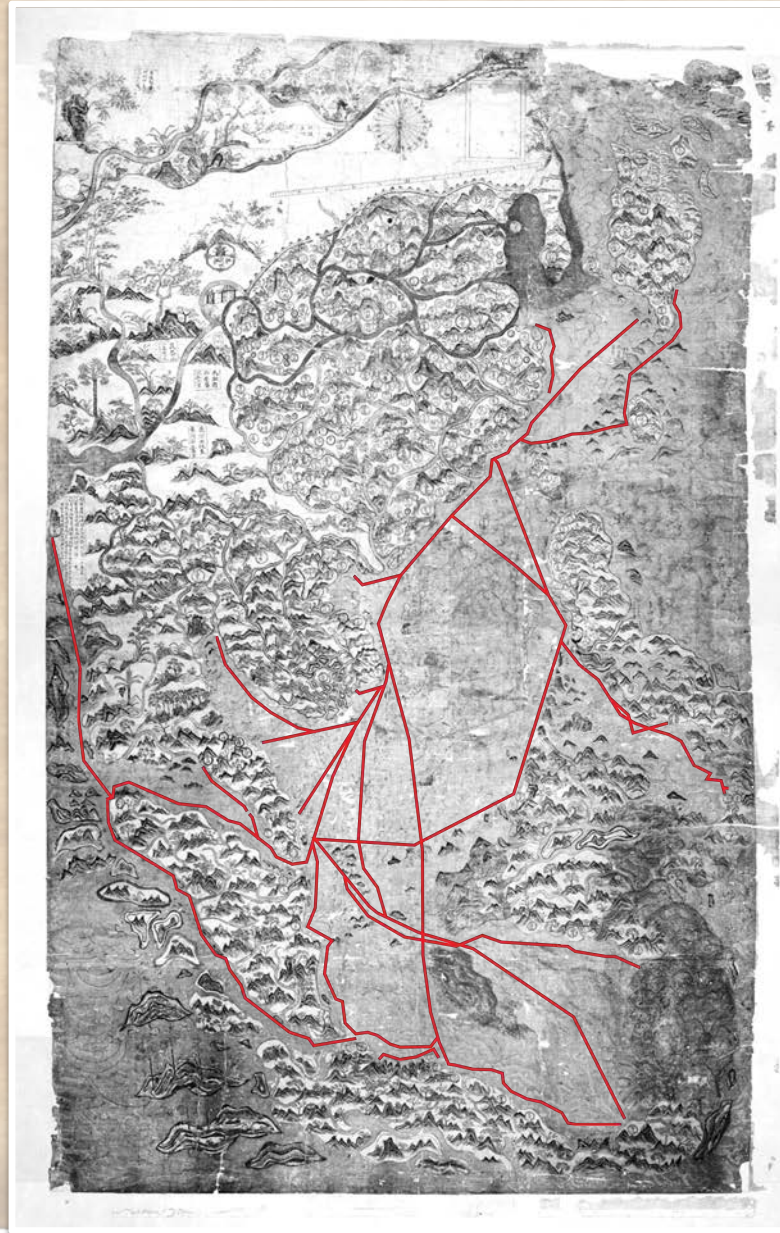
1596 Linschoten Map: “Pulo” in Tagalog means an “island, isolated place.” <https://www.tagalog-dictionary.com/search?word=pulo>. This map was made during the Ming Dynasty (1368-1644).



Published sometime between 1606 and 1624 during the Ming Dynasty, this map is called the **Selden Map of China** because it was bequeathed by John Selden to the Bodleian Library of the University of Oxford in 1659. The maker of the map is an unknown Chinese. The map shows China, South Asia, Southeast Asia, and East Asia. The South China Sea is conspicuously at the center of the map. **The map shows China with Hainan as its southernmost territory.** This digital reproduction is from the Bodleian Library of the University of Oxford (<http://seldenmap.bodleian.ox.ac.uk/map>).

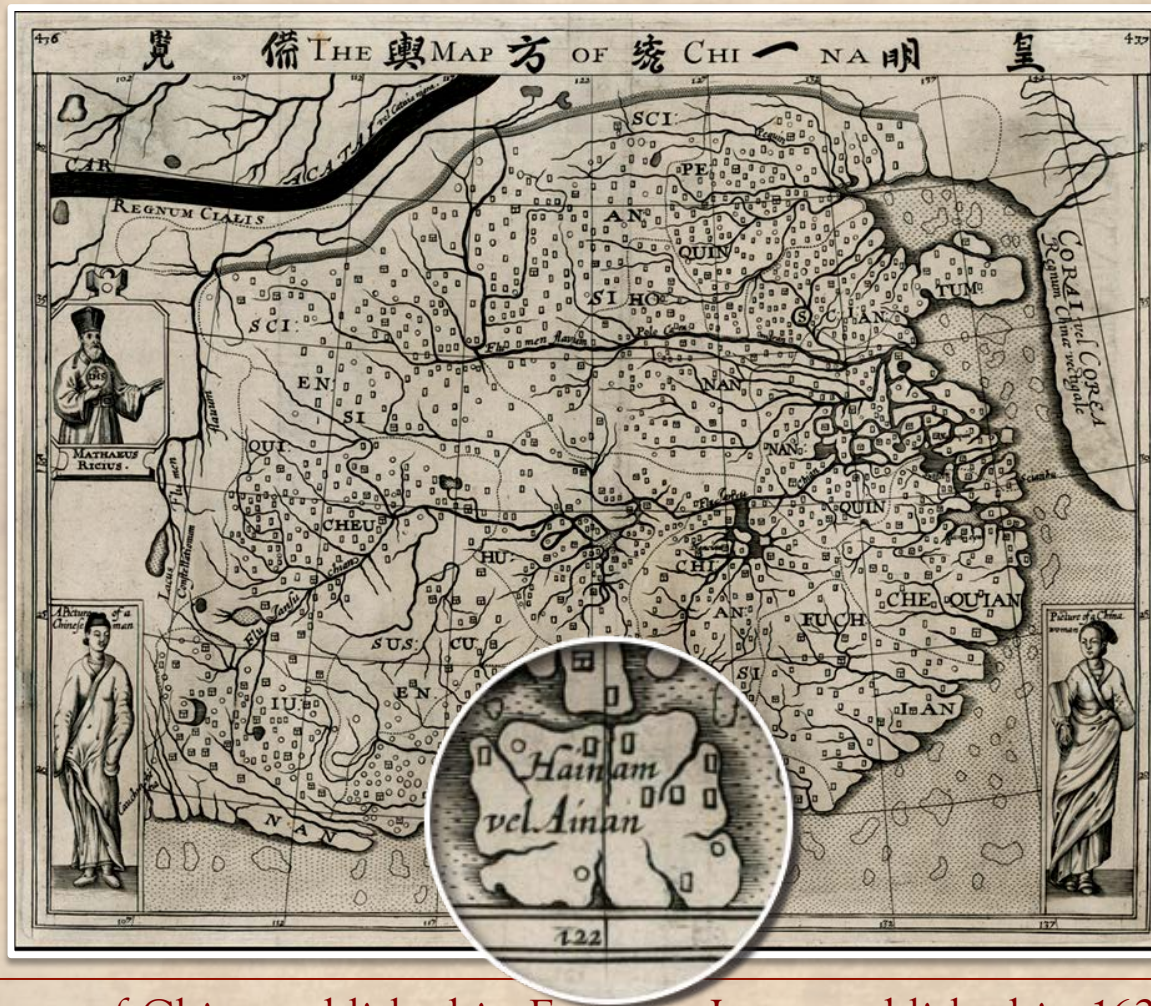
John Selden wrote *Mare Clausum* or the Closed Sea in response to Hugo Grotius' *Mare Liberum* or the Free Sea.

1606-1624 “Selden Map of China” Trade Routes*



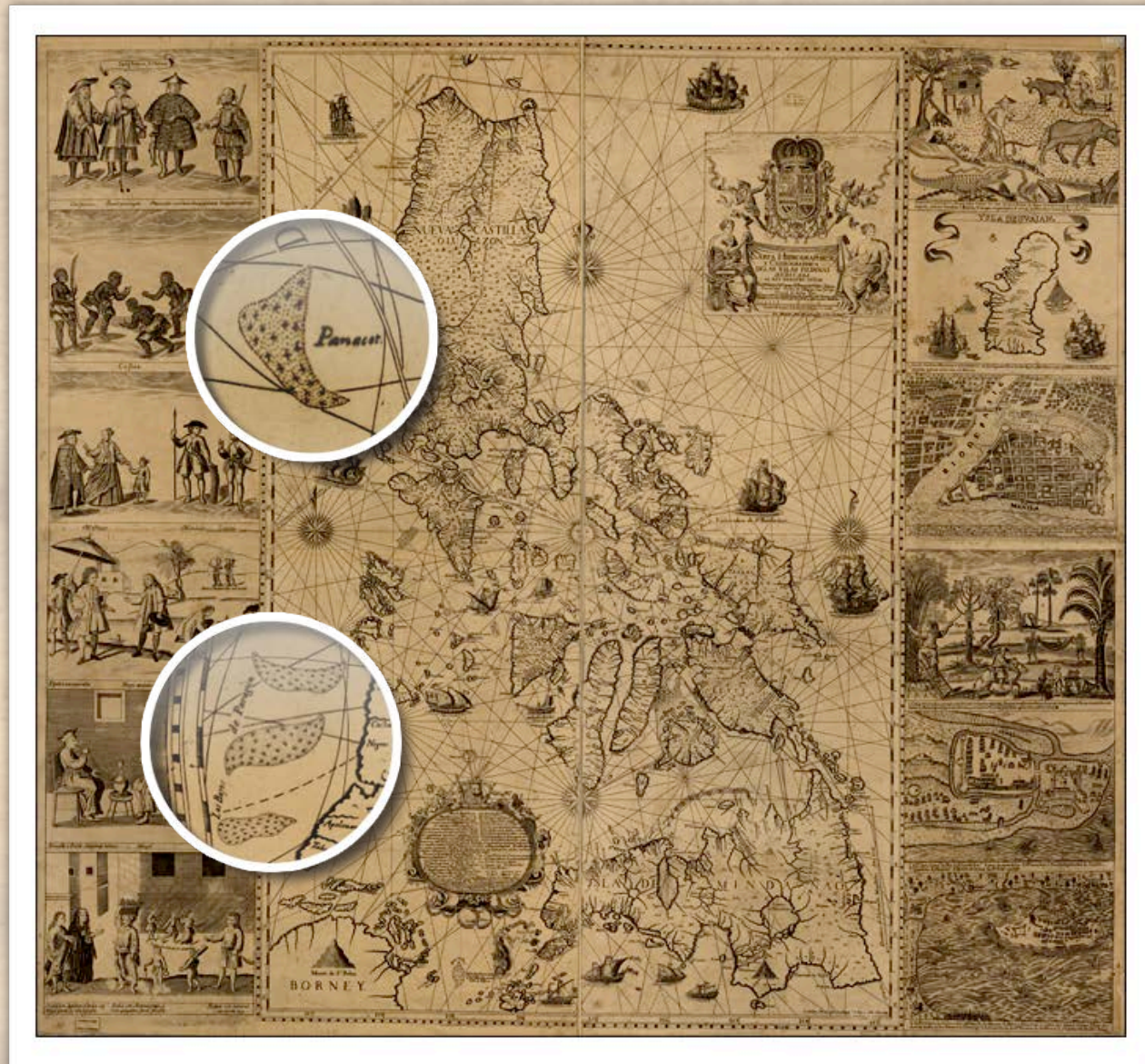
Robert Batchelor (2013),
*The Selden Map Rediscovered:
A Chinese Map of East Asian
Shipping Routes, c.1619,*
Imago Mundi, 65:1, 37-63

1625 Purchas Map of China



This is the first map of China published in Europe. It was published in 1625 in London by Samuel Purchas based on an original Chinese woodblock map given to Purchas at the time he was translating Hugo Grotius' *Mare Liberum*.

1734 Murillo Velarde Map



1690 Coronelli Map of Southeast Asia



This 1690 map, entitled *Isole dell'Indie*, shows the Spratlys as part of the Philippines. This map was created by the Venetian Vincenzo Coronelli, a Franciscan monk. The map was published in Venice in 1690. Coronelli, famous for his atlases and globes, became the Father General of the Franciscan Order. The Franciscans arrived in the Philippines in 1578.

Expansion of Southernmost Territory of China Started in 1932

- In 1932, the French occupied the uninhabited Paracels. China sent a *Note Verbale* to the French Government on September 29, 1932 protesting the French occupation of the Paracels. In its *Note Verbale*, the Chinese Government **officially declared:**

*“Note of 29 September 1932 from the Legation of
the Chinese Republic in France to the Ministry of
Foreign Affairs, Paris*

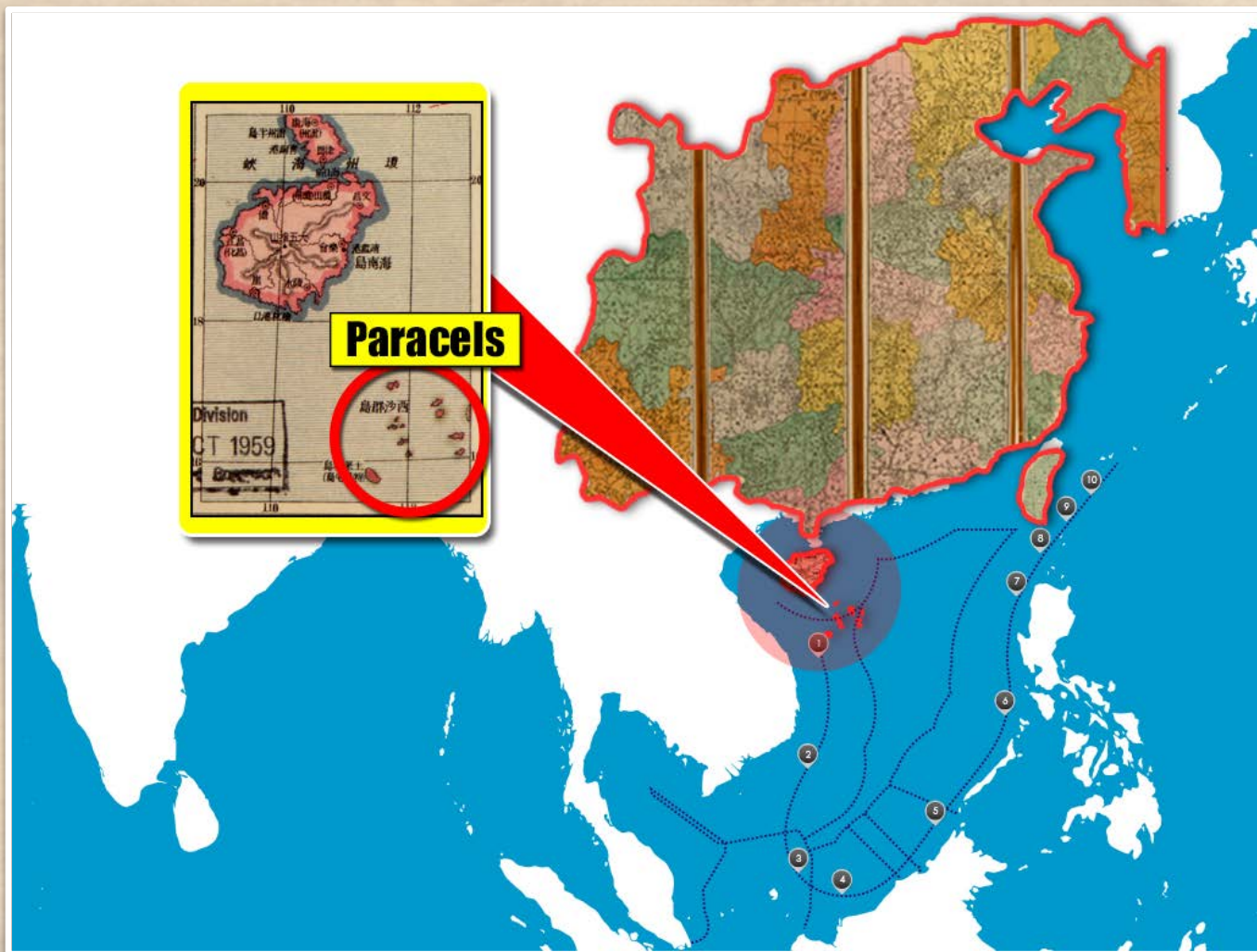
On the instructions of its Government, the Legation of the Chinese Republic in France has the honor to transmit its Government’s reply to the Foreign Ministry’s Note of 4 January 1932 on the subject of the Paracel Islands.”

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“xxx The eastern group is called the Amphitrites and the western group the Crescent. **These groups lie 145 nautical miles from Hainan Island, and form the southernmost part of Chinese territory.**” (Emphasis supplied)

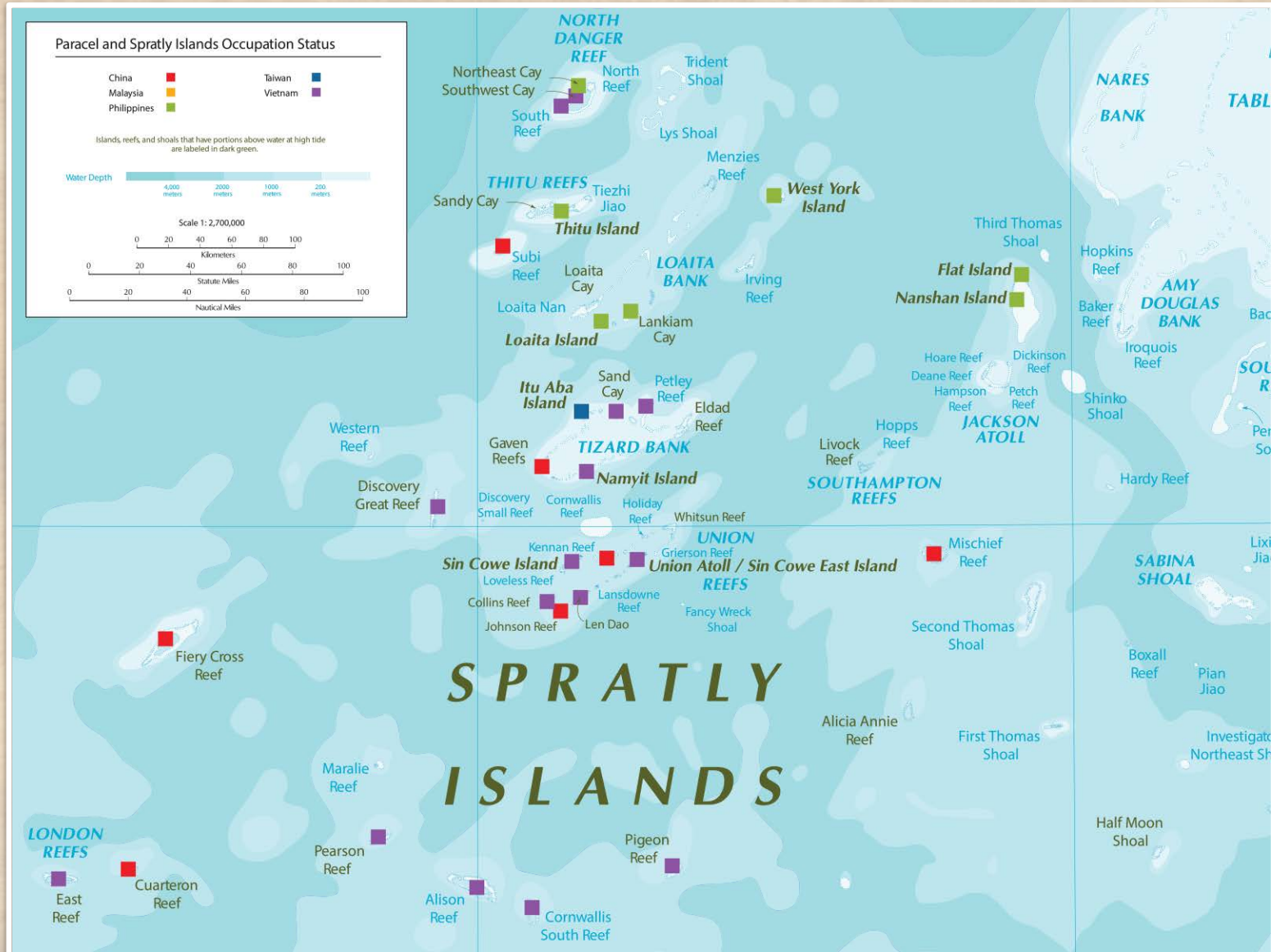
XXX [Source: *Sovereignty over the Paracel and Spratly Islands*, Monique Chemelier-Gendreau, **Annex 10**, Kluwer Law International, 2000]

“Southernmost Part of Chinese Territory” – the Paracels



The Paracels - “These groups lie 145 nautical miles from Hainan Island, and form the southernmost part of Chinese territory.” *China’s Note Verbale to France of 29 September 1932*

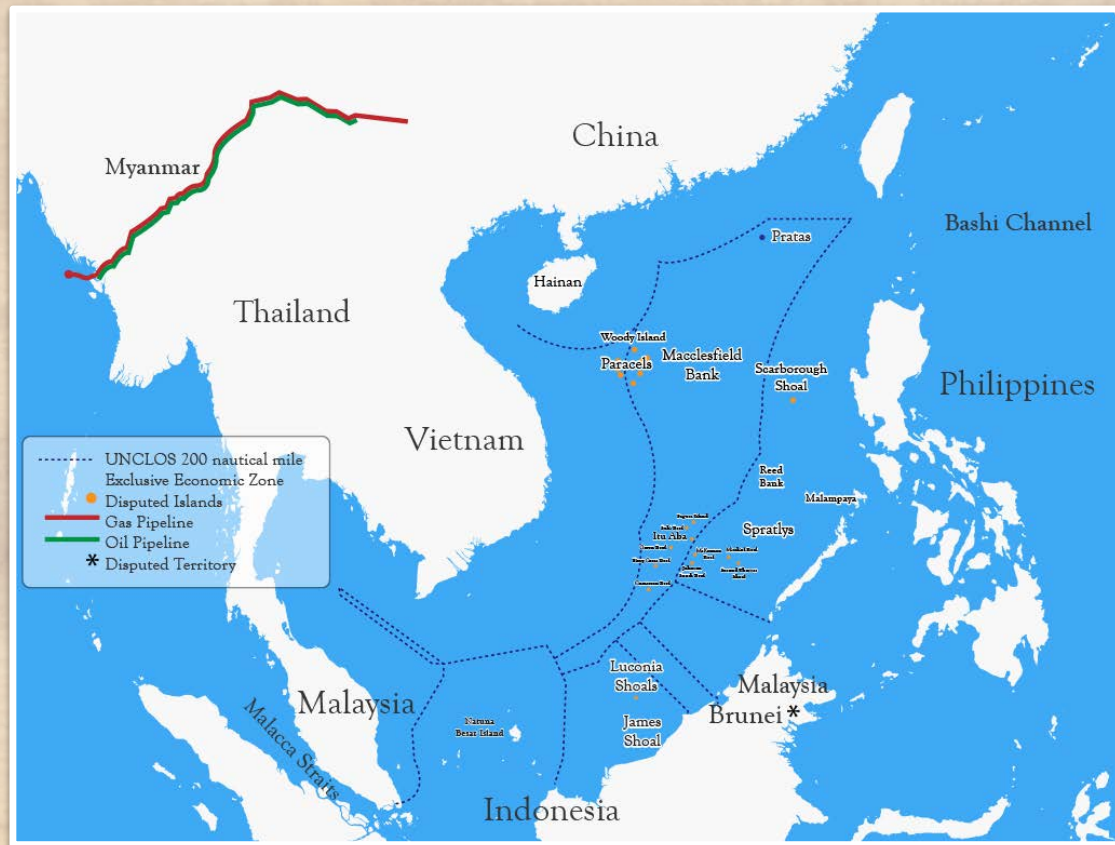
Status of Geologic Features in Spratlys



Ruling on Status of Geologic Features in Spratlys to Generate 200-NM EEZ

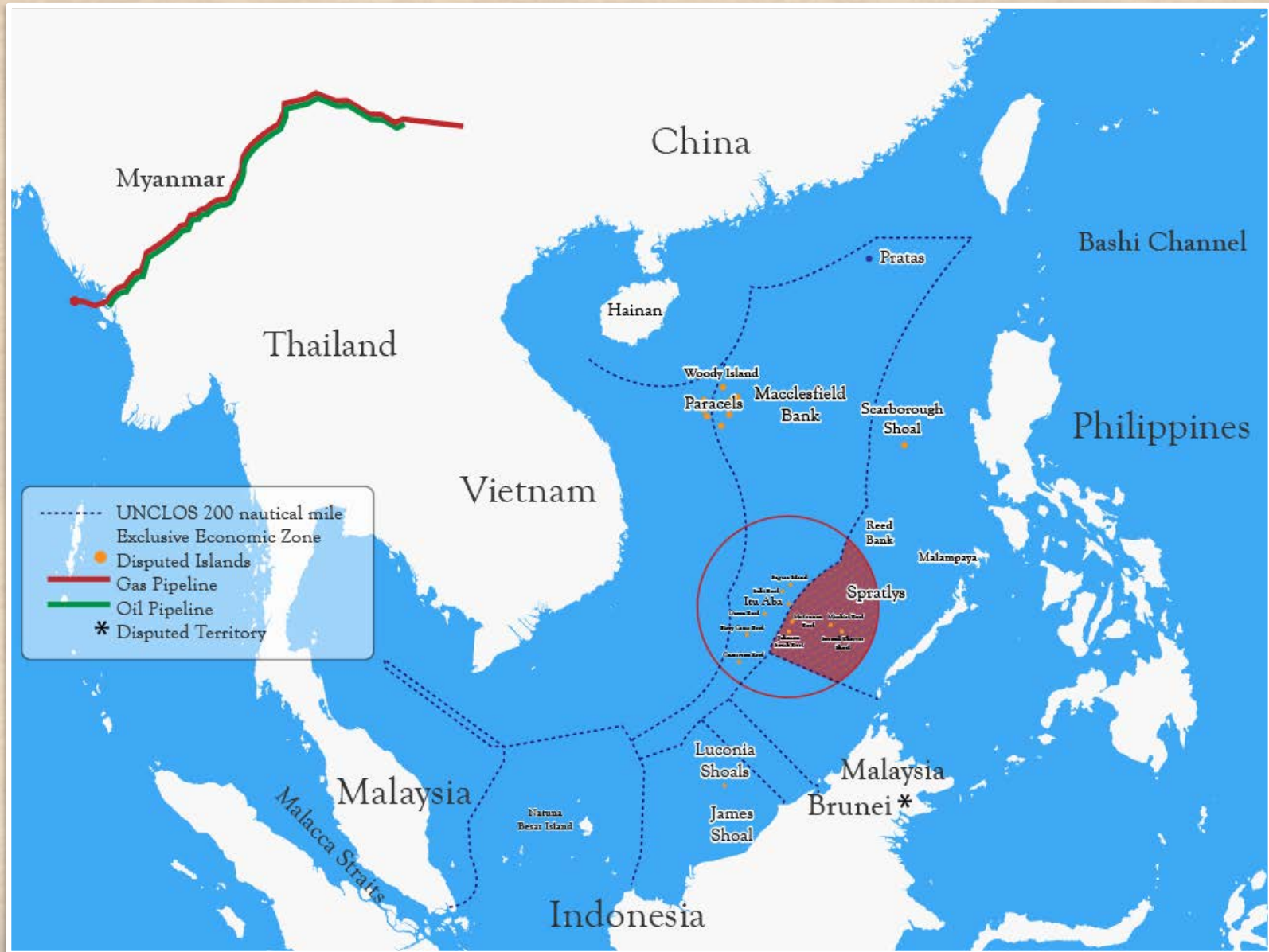
- None of the geologic features (rocks and islands) in the Spratlys is capable of “human habitation or economic life of [its] own” so as to be entitled to a 200-NM EEZ.
- Since there is no other EEZ that overlaps with Palawan’s EEZ, the Tribunal has jurisdiction to rule on the maritime issues in the Spratlys.
- The Spratlys cannot be taken as a single unit to determine capability to sustain human habitation or economic life;
- To be entitled to a 200-NM EEZ, the geologic feature must have the “*objective capacity, in its natural condition, to sustain either a stable community of people or economic activity that is not dependent on outside resources or purely extractive in nature.*”
- Itu Aba, the largest geologic feature in the Spratlys, does not satisfy this requirement. Thus, Itu Aba is entitled only to a 12-NM territorial sea.
- The Tribunal upheld the Philippine position on this issue.

South China Sea Islands



The Tribunal stated: “If the historical record of a feature indicates that nothing resembling a stable community has ever developed there, the most reasonable conclusion would be that the natural conditions are simply too difficult for such a community to form and that the feature is not capable of sustaining such habitation.” (Para 549, Award of 12 July 2016). Since none of the Spratly islands generates an EEZ, the disputed waters in the Spratlys refer only to the territorial seas around the geologic features above water at high tide. These disputed waters in the Spratlys comprise not more than 1.5 percent of the 3.5 million square kilometers of maritime space in the South China Sea.

Itu Aba's 200-NM EEZ and Reed Bank

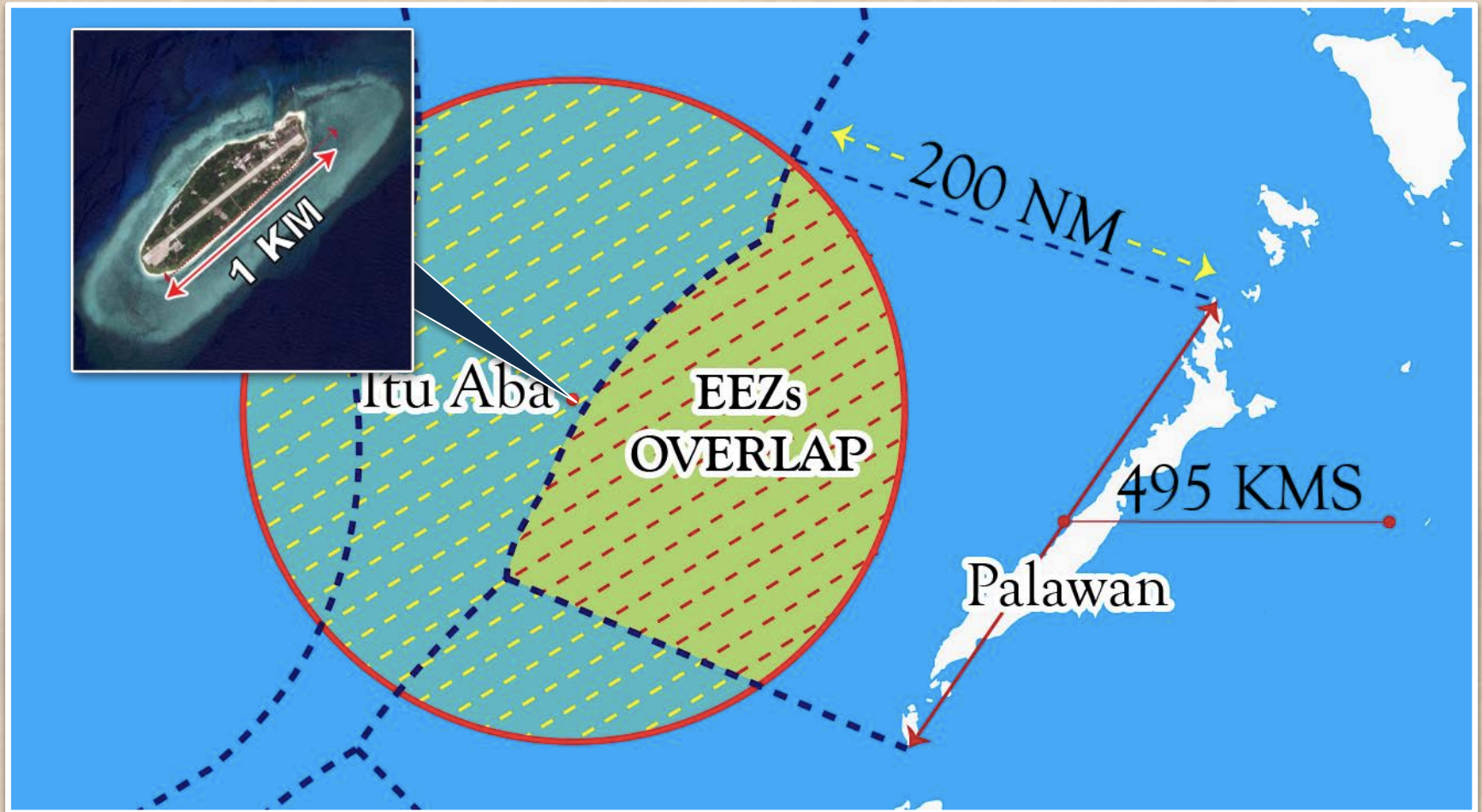


Serrana Bank, Colombia



In *Nicaragua v. Colombia* (ICJ Ruling, November 2012), Colombia's Serrana Bank, an island with an area of 43 hectares, was given only a 12 NM territorial sea. Colombia's claim that Serrana Bank, which has a potable fresh water well, is capable of sustaining human habitation or economic life of its own, was rejected by the tribunal.

Palawan-Itu Aba EEZ Overlap



Palawan has an area of 1,464,900 hectares, and a 650 KM coast facing the West Philippine Sea, while Itu Aba has an area of 43 hectares and a 1.4 KM coast. The relevant coast for Palawan is about 495 KM, while the relevant coast for Itu Aba is about 1 KM, or a ratio of 1:495 in favor of Palawan. The relevant coast of Palawan should include Balabac Island and other nearby islands, following *Nicaragua v. Colombia*.

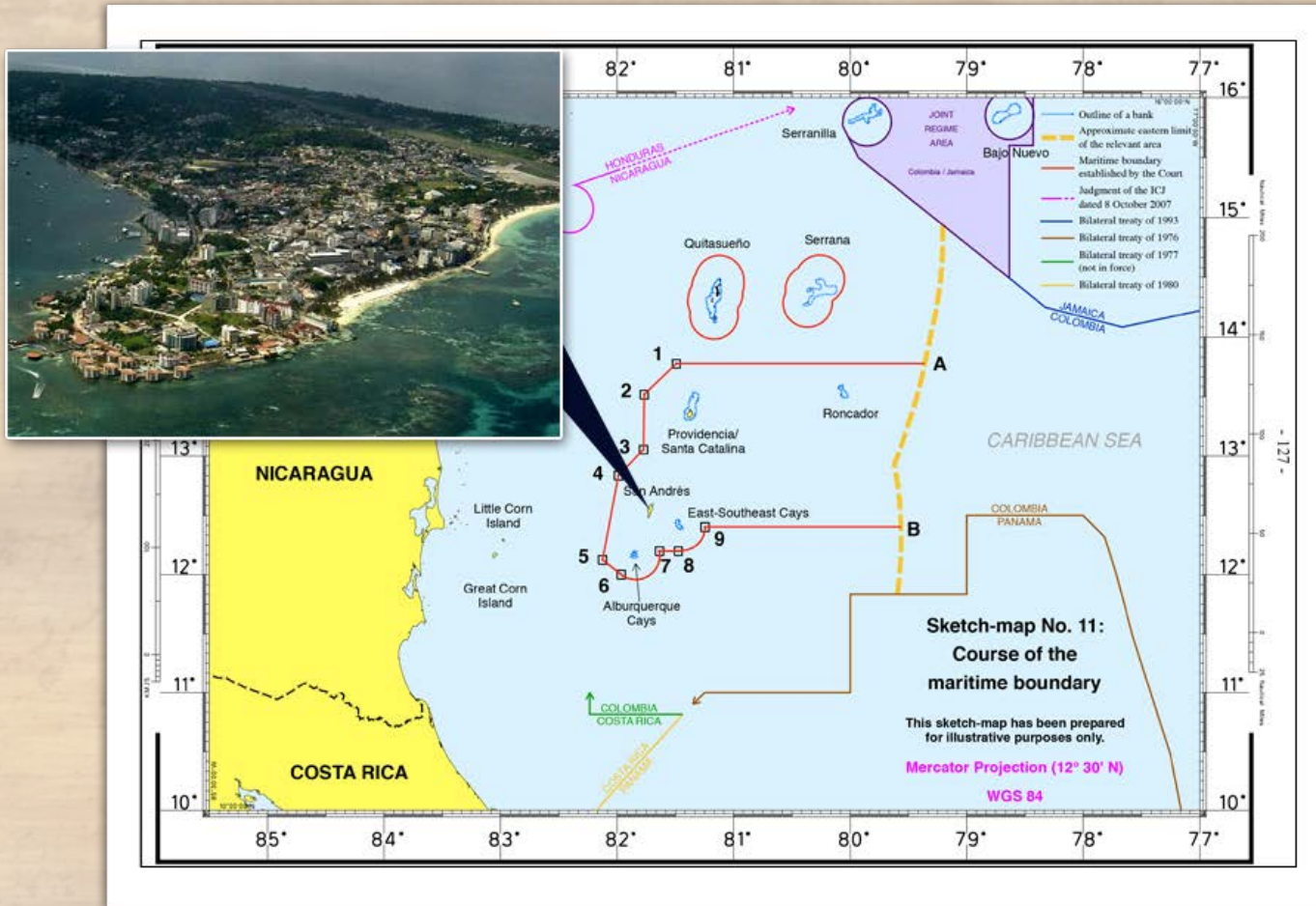
The Overriding Criterion in Resolving Overlapping EEZs

The overriding criterion is the length of the opposing relevant coastlines in the overlapping maritime zones. In *Nicaragua v. Colombia* (ICJ Ruling, November 2012), a ratio of 1:8.2 (for every 1 KM coastline of Colombia, 8.2 KM coastline for Nicaragua) was ruled as a **substantial disparity**, leaving Colombia no EEZ facing Nicaragua.

In the case of Palawan and Itu Aba, the ratio of the relevant coastlines is 1:495 in favor of Palawan. This is not only substantial disparity, but also total disparity. **Itu Aba cannot be given any EEZ facing Palawan.**

Nicaragua v. Colombia (ICJ, November 2012)

Sketch-Map Annexed to Decision



The lengths of the relevant coasts are 531 km for Nicaragua and 65 km for Colombia's islands (San Andres, Providencia, Sta. Catalina, Albuquerque Cays, East-South Cays, Roncador and Serrana), a ratio of approximately 1:8.2 in favor of Nicaragua. San Andres Island has a land area of 2,600 hectares and a population 67,912 (2007). Nicaragua and Colombia agreed that San Andres Island is capable of sustaining human habitation or economic life of its own. San Andres Island is 56.5 times larger than Itu Aba

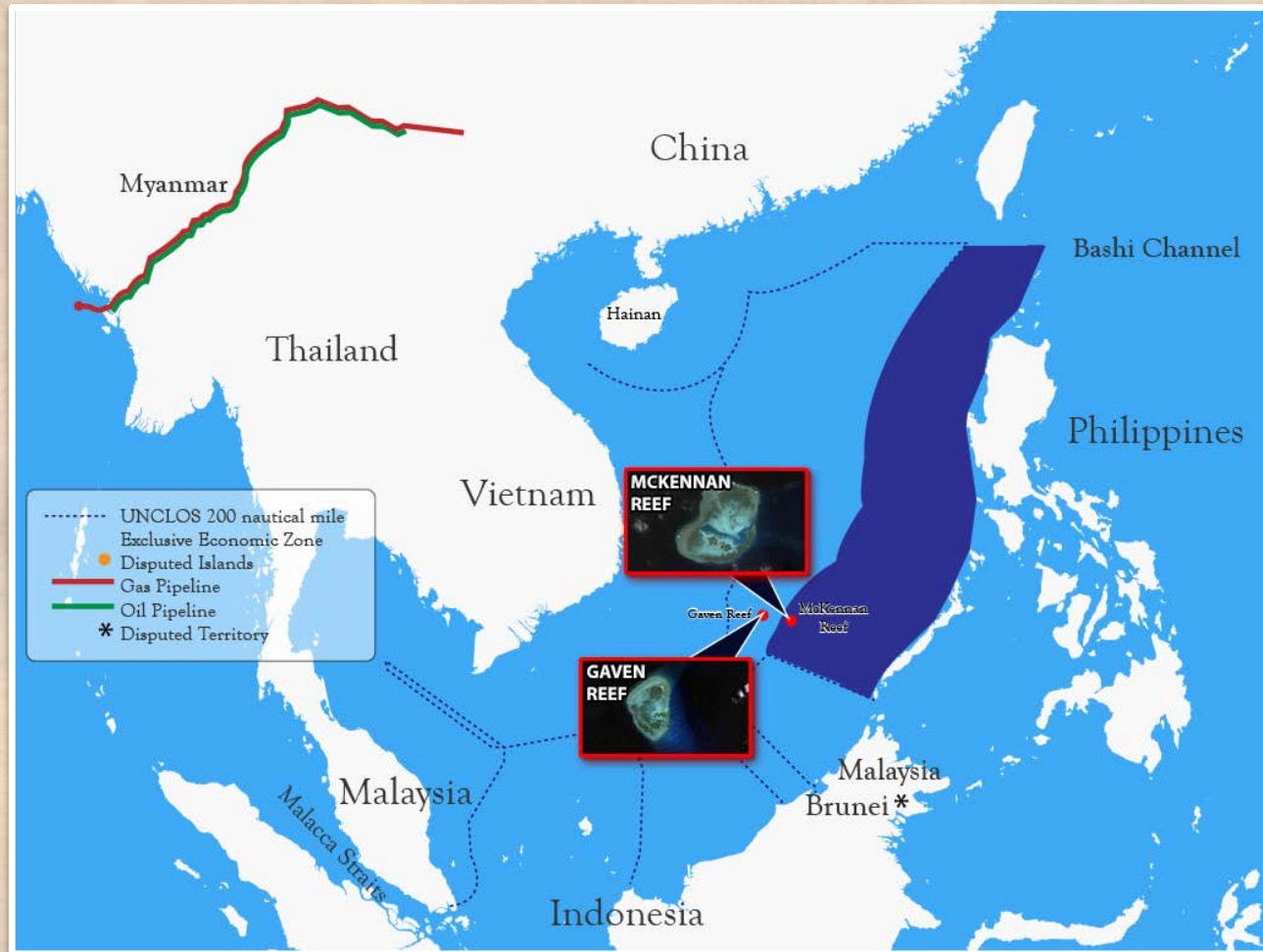
Seven Geologic Features Occupied by China in Spratlys



Ruling on Status of Geologic Features in Spratlys - Whether Low-Tide or High-Tide Elevations

- Of the seven (7) reefs China occupies in the Spratlys, five (5) are high-tide elevations (above water at high tide), namely: Fiery Cross Reef, Johnson South Reef, Gaven Reef, Cuarteron Reef and McKennan Reef; these reefs are entitled to 12-NM territorial sea.
- The two (2) other reefs - Mischief Reef and Subi Reef - are low-tide elevations not entitled to a territorial sea; they form part of the Philippines' submerged continental shelf; only the Philippines can erect structures or artificial islands on these reefs; China cannot appropriate these low-tide elevations situated within the Philippine EEZ; China's structures on these reefs are illegal; Ayungin Shoal is also a low-tide elevation.
- Reed Bank is entirely submerged and, like low-tide elevations, forms part of the Philippine EEZ as it is within 200-NM from the Philippine baselines.
- The Tribunal upheld the Philippine position on this issue except for Gaven Reef and McKennan Reef, which the Philippines argued are only low-tide elevations but the Tribunal ruled they are high-tide elevations entitled to 12-NM territorial sea.

Gaven Reef and McKennan Reef



McKennan Reef is a high-tide feature controlled by China within the Philippine EEZ in the Spratlys. As a high-tide feature, McKennan Reef is entitled to a 12-NM territorial sea. The other high-tide feature controlled by China in the Spratlys and within the Philippine EEZ is Johnson South Reef.

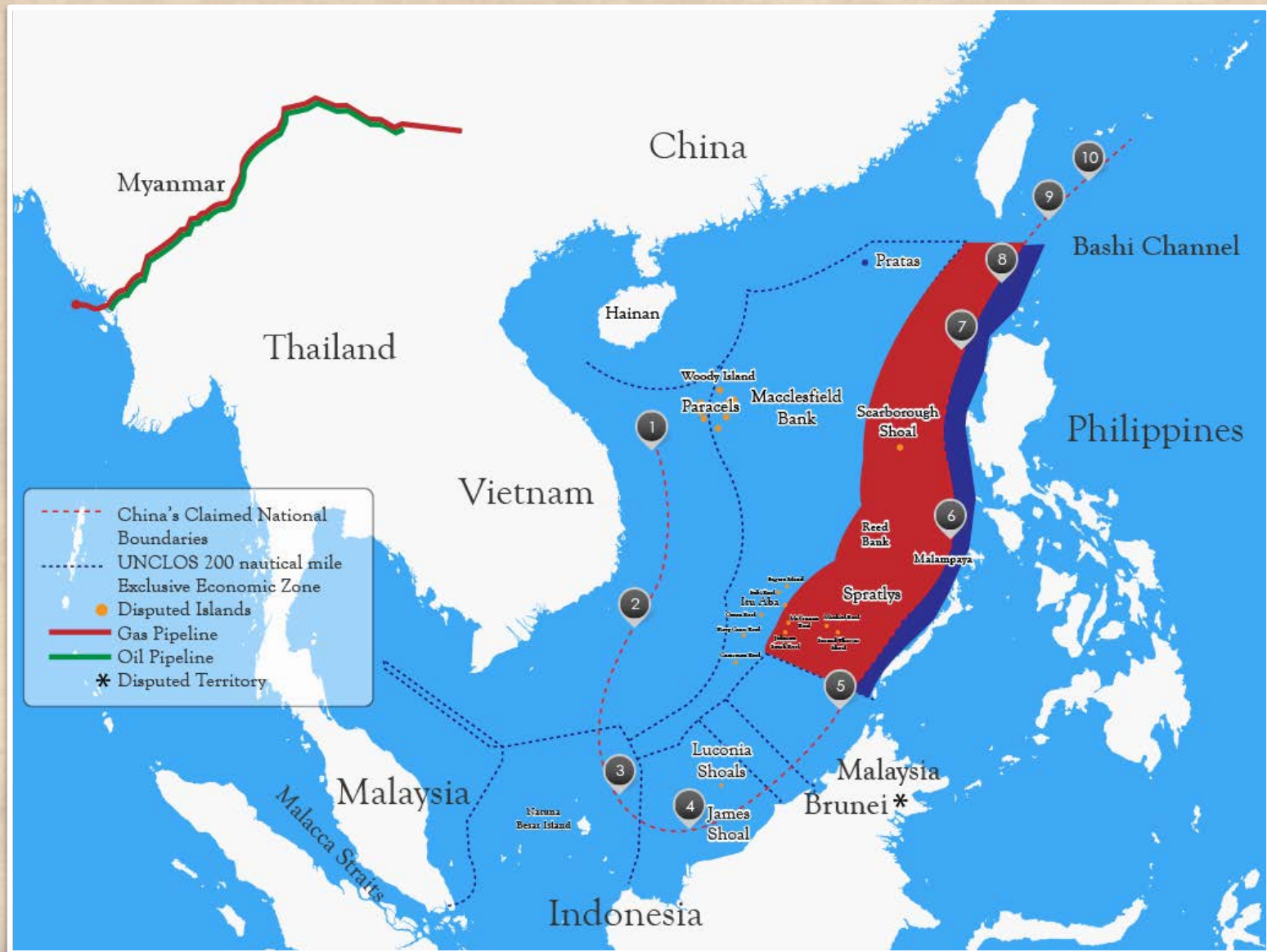
Scarborough Shoal - High-Tide Elevation Incapable of Human Habitation



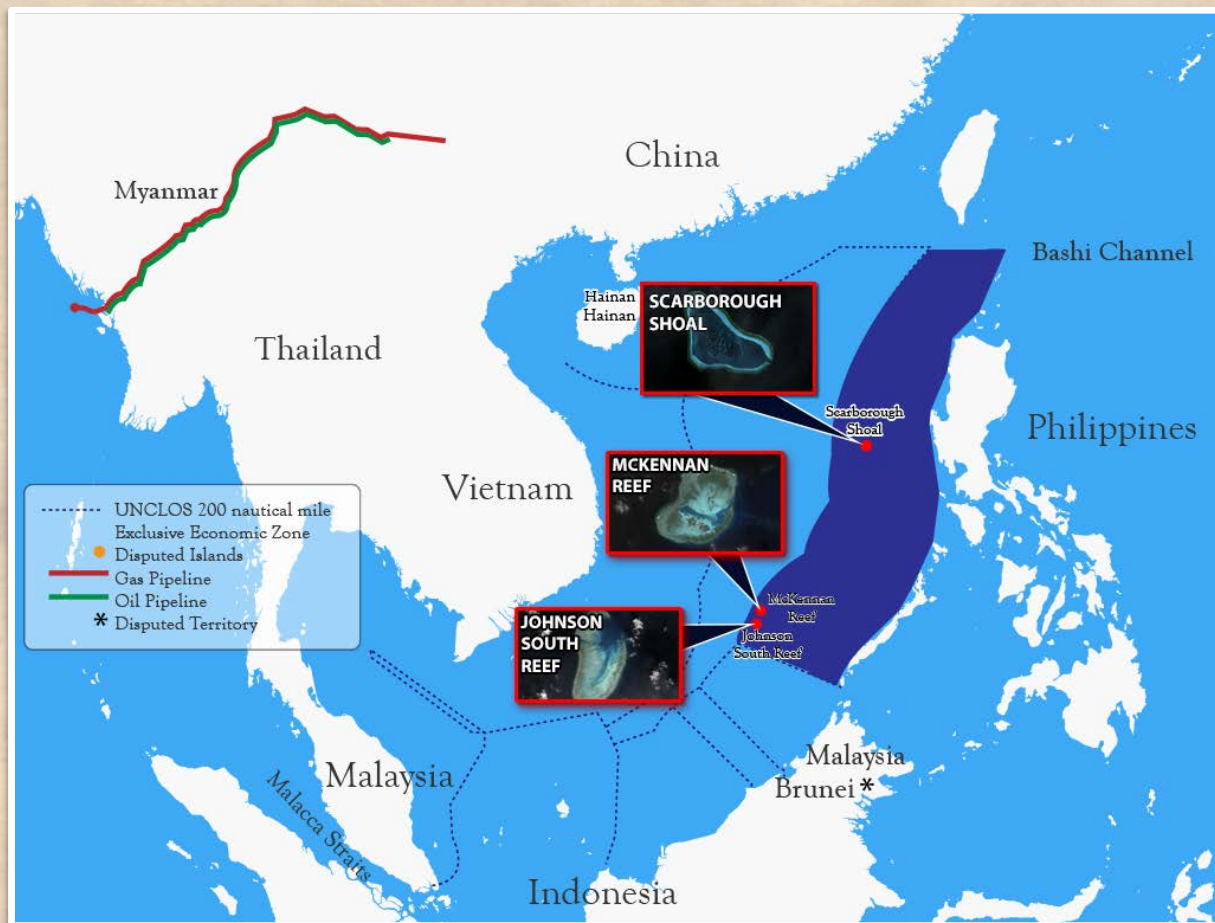
Ruling on Status of Scarborough Shoal; Right to Traditional Fishing

- Scarborough Shoal is a high-tide elevation entitled to 12-NM territorial sea but not to a 200-NM EEZ since obviously it is not capable of human habitation.
- The territorial sea of Scarborough Shoal is a traditional fishing ground of Filipino and Chinese fishermen, as well as fishermen from other countries; China cannot prevent Filipino fishermen from fishing in Scarborough Shoal.
- The Tribunal upheld the Philippine position on this issue.

Disputed EEZ Area before the Ruling of Tribunal



Disputed Area after the Ruling of Tribunal



The Tribunal ruled that McKennan Reef is above water at high tide. McKennan Reef and Johnson South Reef are the only Chinese-occupied high-tide features within the Philippine EEZ in the Spratlys. Scarborough Shoal, McKennan Reef and Johnson South Reef are thus the only disputed land features occupied by China within the entire Philippine EEZ. The Tribunal ruled that these three land features generate only a 12-NM territorial sea, with no EEZ.

The Philippines' EEZ in the South China Sea Is Larger than its Total Land Area

The Philippine EEZ in the SCS has an area of about 381,000 square kilometers. Deducting the 4,650 square kilometers total territorial seas of Johnson South Reef, McKennan Reef and Scarborough Shoal, the Philippines has an EEZ of about 376,350 square kilometers in the SCS free from any Chinese claim.

This maritime area is larger than the total land area of the Philippines of approximately 300,000 square kilometers. All the living and non-living resources in this maritime area – the fish, oil, gas and other minerals – belong exclusively to the Philippines.

Ruling on Harm to the Marine Environment

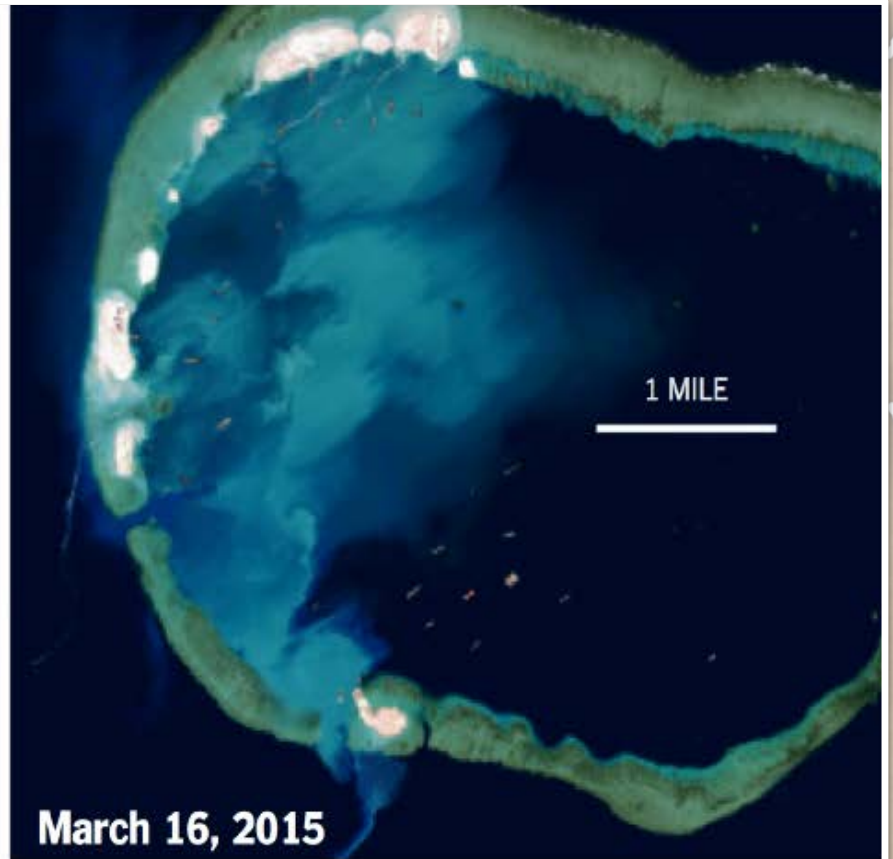
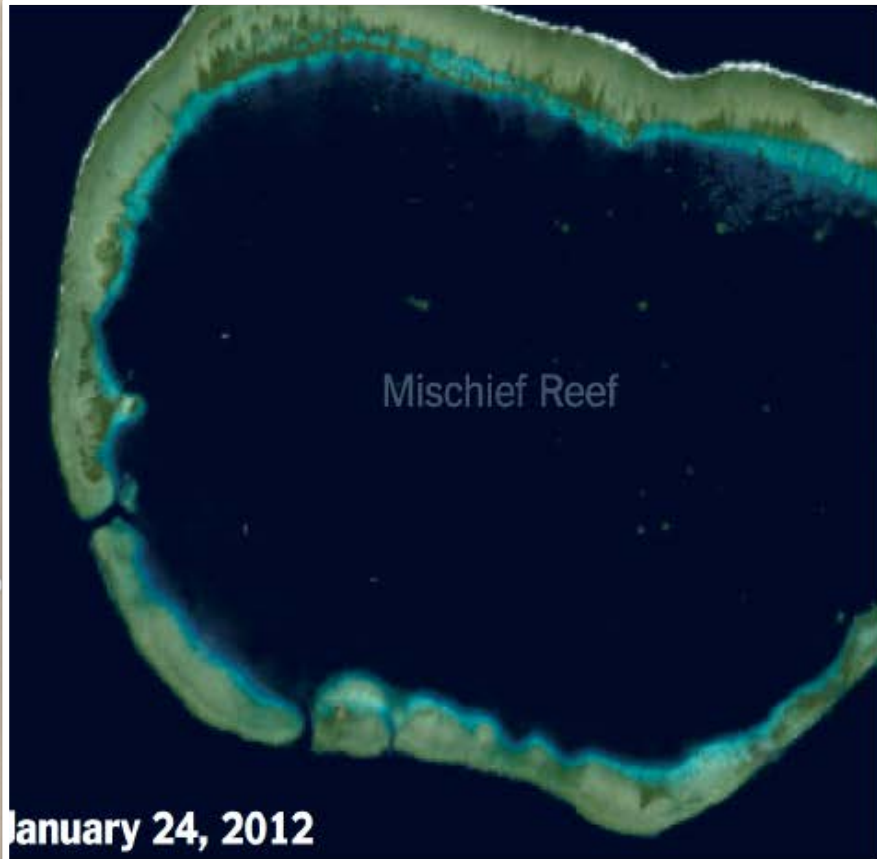
China violated its obligation under UNCLOS to “protect and preserve the marine environment” when China:

1. Dredged and built islands on seven (7) reefs;
2. Failed to prevent its fishermen from harvesting endangered species like sea turtles, corals and giant clams in the Spratlys and Scarborough Shoal.

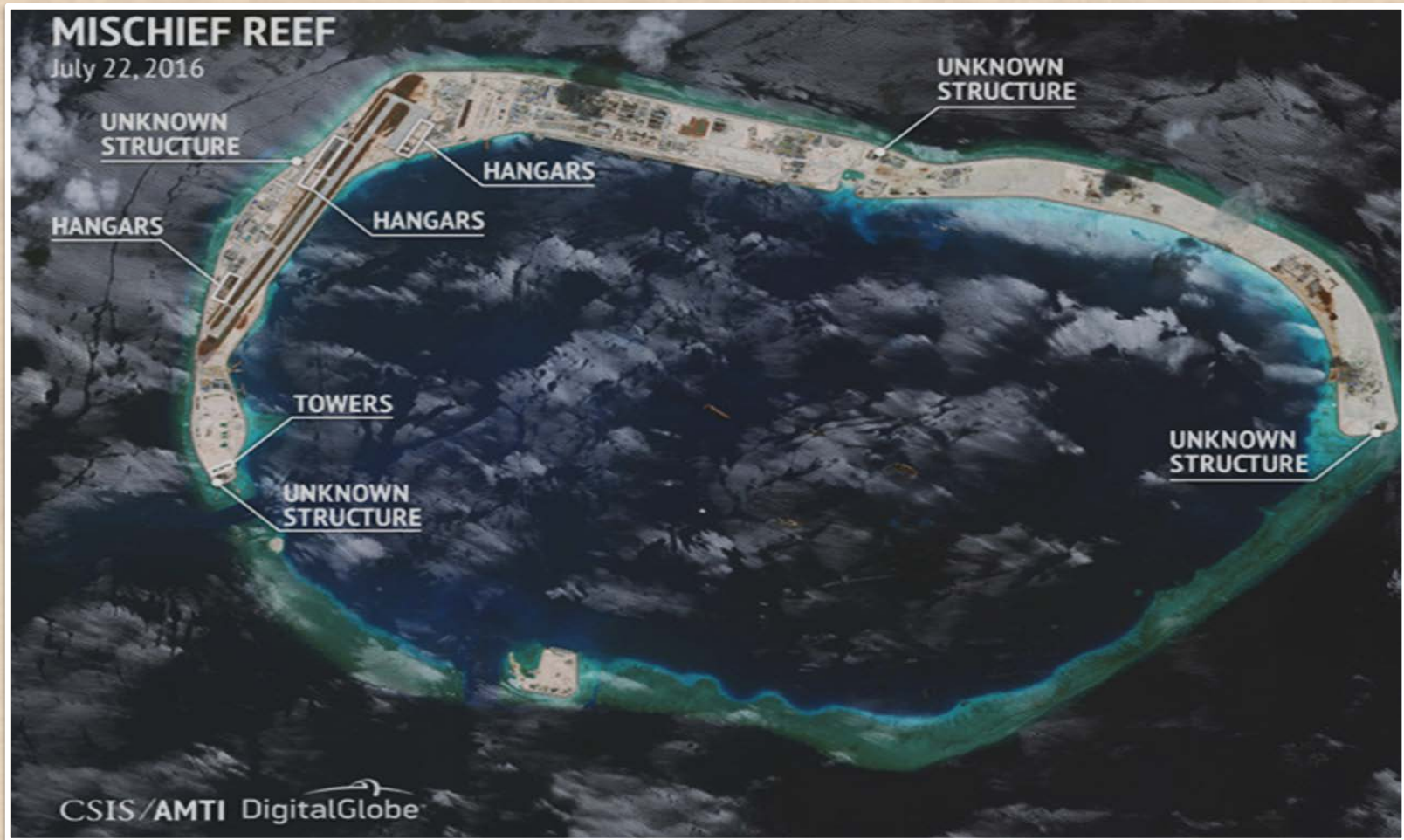
The Tribunal ruled that China “caused permanent and irreparable harm to the coral reef ecosystem.”

The Tribunal upheld the Philippine position on this issue. This is the first time that an international tribunal applied the UNCLOS provision on protection and preservation of the marine environment.

Mischief (Panganiban) Reef Before And at Start of Island Building



Mischief (Panganiban) Reef July 22, 2016



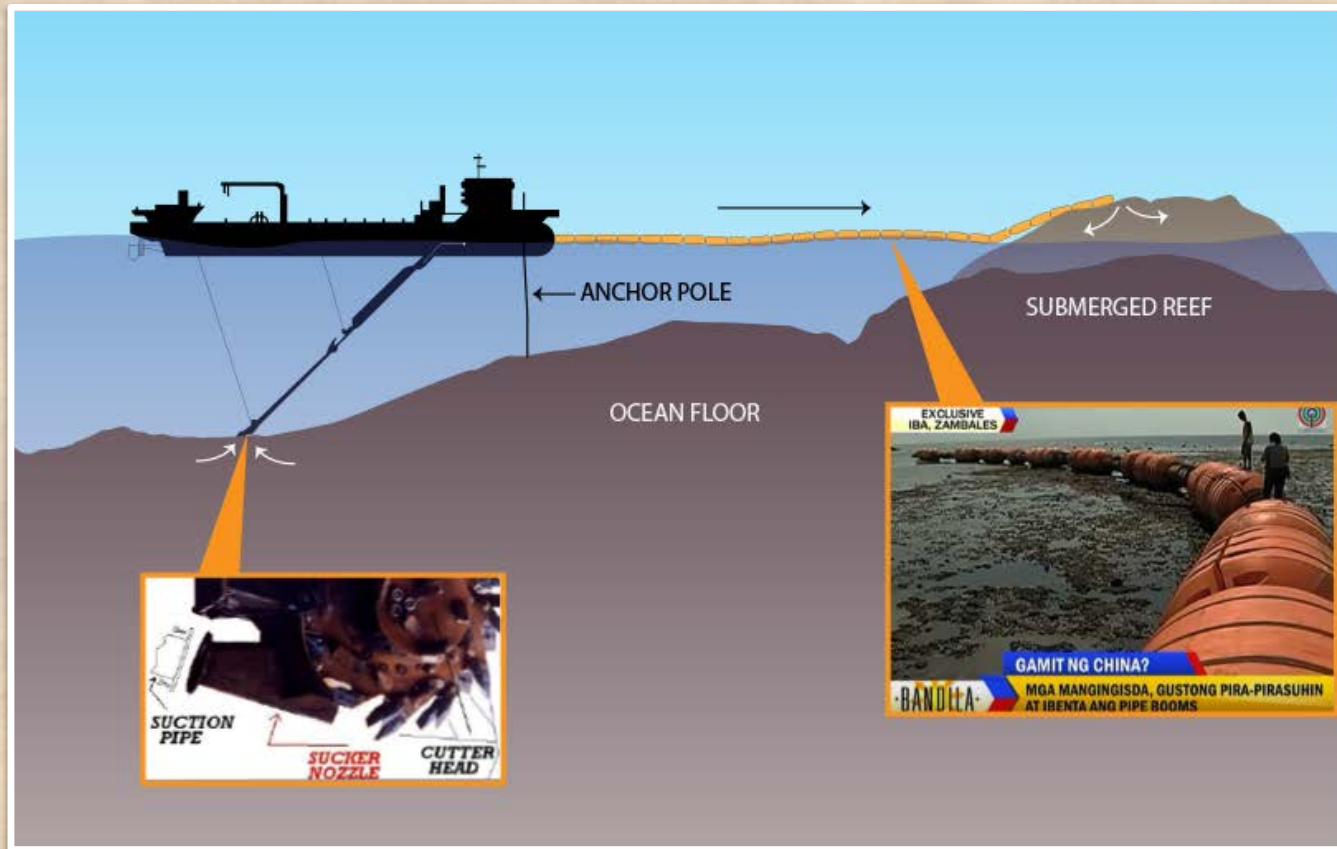
Mischief Reef is a circular atoll with a diameter of 7.4 KM, and its lagoon has an area of 3,600 hectares. The average depth inside the lagoon is 26 meters. As of November 2015, China has created an artificial island of 590 hectares. Mischief Reef is 125 NM from Palawan and 596 NM from Hainan. Some Chinese analysts call Mischief Reef China's Pearl Harbor in the South China Sea.

Chinese Reef Killer Dredges 4,500 Cubic Meters of Sand per Hour



The *Tiang Jing Hao* (Heavenly Whale) dredger, a 127 meter-long seagoing cutter suction dredger designed by the German engineering company Vosta LMG. At 6,017 gross tons, this dredger is the largest in Asia. China has dozens of dredgers in the Spratlys.

How China Dredged in the Spratlys



Coral reef and hard sediment on the seabed are pulverized by the rotating cutter. Pulverized materials are sucked into the ship. Pulverized materials are transported by pressure through a floating pipe. Pulverized materials are deposited on the rim of the reef.

Marine Life in Reefs

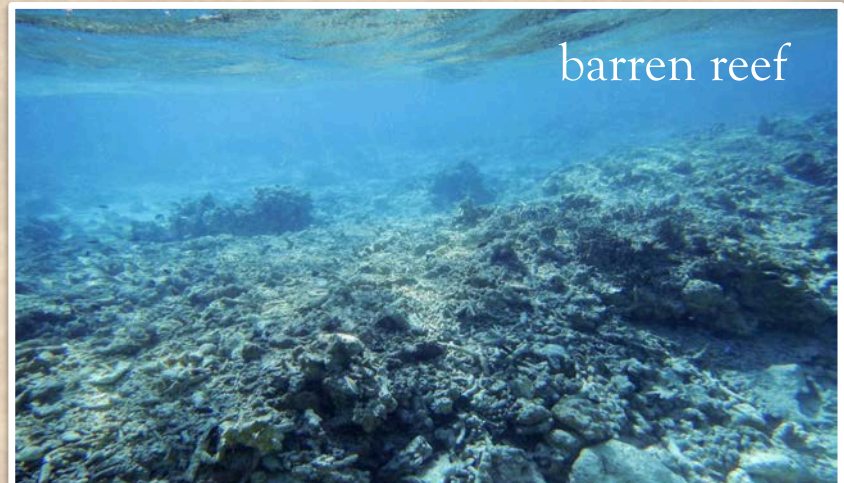


“In economic terms, coral reefs are the single most valuable ecosystem on Earth, according to a paper published in 2012 by ecologist Rudolf de Groot at Wageningen University and Research Centre, in the Netherlands. A hectare (about 2.5 acres) of reef has a potential value of approximately \$350,000 a year.” <http://news.nationalgeographic.com/2016/08/wildlife-giant-clam-poaching-south-china-sea-destruction/>

Tanmen Fishing Boat Scraping Coral Reef to Harvest Giant Clams



Tanmen clam harvesters have destroyed by far more coral reefs than China's dredging to build artificial islands.



<http://thediplomat.com/2016/01/satellite-images-show-ecocide-in-the-south-china-sea/>;

<http://news.nationalgeographic.com/2016/08/wildlife-giant-clam-poaching-south-china-sea-destruction/>

Tanmen Fishermen's Harvest of Giant Clams



Screenshots from Chinese Internet sites showing reef chopping to find giant clam shells; hauling of shells on Tanmen fishing boats; and piles of giant clam shells to be sold.

Severe Harm to the Fragile Marine Ecosystem

Dr. John McManus, the world-renowned marine scientist who studied the Spratlys in the 1990s, went back to the Spratlys last February 2016. He surveyed several reefs, including those exploited by clam dredgers from Tanmen, Hainan. Dr. McManus said:

“The damage was much worse than even I expected it to be. I swam over one whole kilometer of reef before I saw a single living invertebrate. It was really massive, massive destruction.”*

* <http://www.csmonitor.com/World/Asia-Pacific/2016/0720/In-South-China-Sea-case-ruling-on-environment-hailed-as-precedent>

Ruling on Unlawful Chinese Actions

China violated the exclusive right of the Philippines to its EEZ by:

1. Interfering with the fishing activities of Filipino fishermen within the Philippine EEZ, including imposing fishing moratorium within the Philippine EEZ;
2. Interfering with the petroleum activities of Filipino vessels within the Philippine EEZ;
3. Failing to prevent Chinese fishermen from fishing within Philippine EEZ;
4. Constructing artificial islands and structures (Mischief Reef and Subi Reef) within the Philippine EEZ and continental shelf.

The Tribunal upheld the Philippine position on these issues.

China Claimed Reed Bank in 2010



In February 2010, the Philippines awarded a Service Contract to Sterling Energy (predecessor of Forum Energy) for Block SC 72 in the Reed Bank. China protested, sending a *Note Verbale* to the Philippines on 22 February 2010, "express[ing] its strong objection and indignation," and asserting "indisputable sovereignty, sovereign rights and jurisdiction over the Nansha Islands (Spratlys) and its adjacent waters." China demanded that the Philippines "withdraw the Service Contract immediately." China sent another *Note Verbale* on 13 May 2010 again demanding that the Philippines "immediately withdraw the decision to award the Service Contract" to Sterling Energy. Block SC 72 is 85 NM from Palawan, well within the Philippines' EEZ, and 595 NM from Hainan. The entire Reed Bank is a fully submerged area even at low-tide.

China Reiterated its Claim to Reed Bank in 2011



In 2011, the Philippines invited bids for the exploration of Area 3 and Area 4 in the Reed Bank, well within the Philippines' EEZ. On 4 July 2011, China protested and sent a *Note Verbale* to the Philippines, stating: "The Chinese government urges the Philippine side to immediately withdraw the bidding offer in Areas 3 and 4, refrain from any action that **infringes on China's sovereignty and sovereign rights.**"

Chinese Coast Guard Vessels Harassed A Philippine Survey Ship in Reed Bank in 2011



In March 2011, two Chinese coast guard vessels, the CMS-71 and CMS-75, prevented a Philippine-commissioned ship, the MV *Veritas Voyager*, from undertaking oil and gas survey in the Reed Bank, which is entirely within the Philippines' EEZ. The 9-dashed lines cut through Malampaya, the Philippines' largest operating gas field which supplies 40% of the energy requirement of Luzon. Malampaya will run out of gas in 10-12 years.

Other Issues Resolved by the Tribunal

1. China violated its obligation not to aggravate the dispute during the arbitration when (a) China dredged the reefs and built the islands, and (b) destroyed the evidence of the natural condition of the geologic features in the Spratlys.
2. China violated its obligation to observe maritime safety when Chinese coast guard vessels crossed the path of Philippine fishing vessels at high speed.

The Tribunal upheld the Philippine position on these issues.

Other Issues the Philippines Did Not Win

The Tribunal refused to rule on the stand-off between Philippine marines and Chinese coast guard vessels in Ayungin Shoal, stating that this issue involves “military activities” outside the jurisdiction of the Tribunal.

The Philippines asked the Tribunal to direct China to respect in the future the rights and freedoms of the Philippines under UNCLOS.

The Tribunal also declined to rule on this issue since bad faith is not presumed in the performance of duties under UNCLOS, which already mandates that the parties to the dispute shall comply with the arbitral award.

Next Steps – Enforcement of Ruling

Article 11, Annex VII, UNCLOS. “The award shall be **final and without appeal**, unless the parties to the dispute have agreed in advance to an appellate procedure. **It shall be complied with by the parties to the dispute.**”

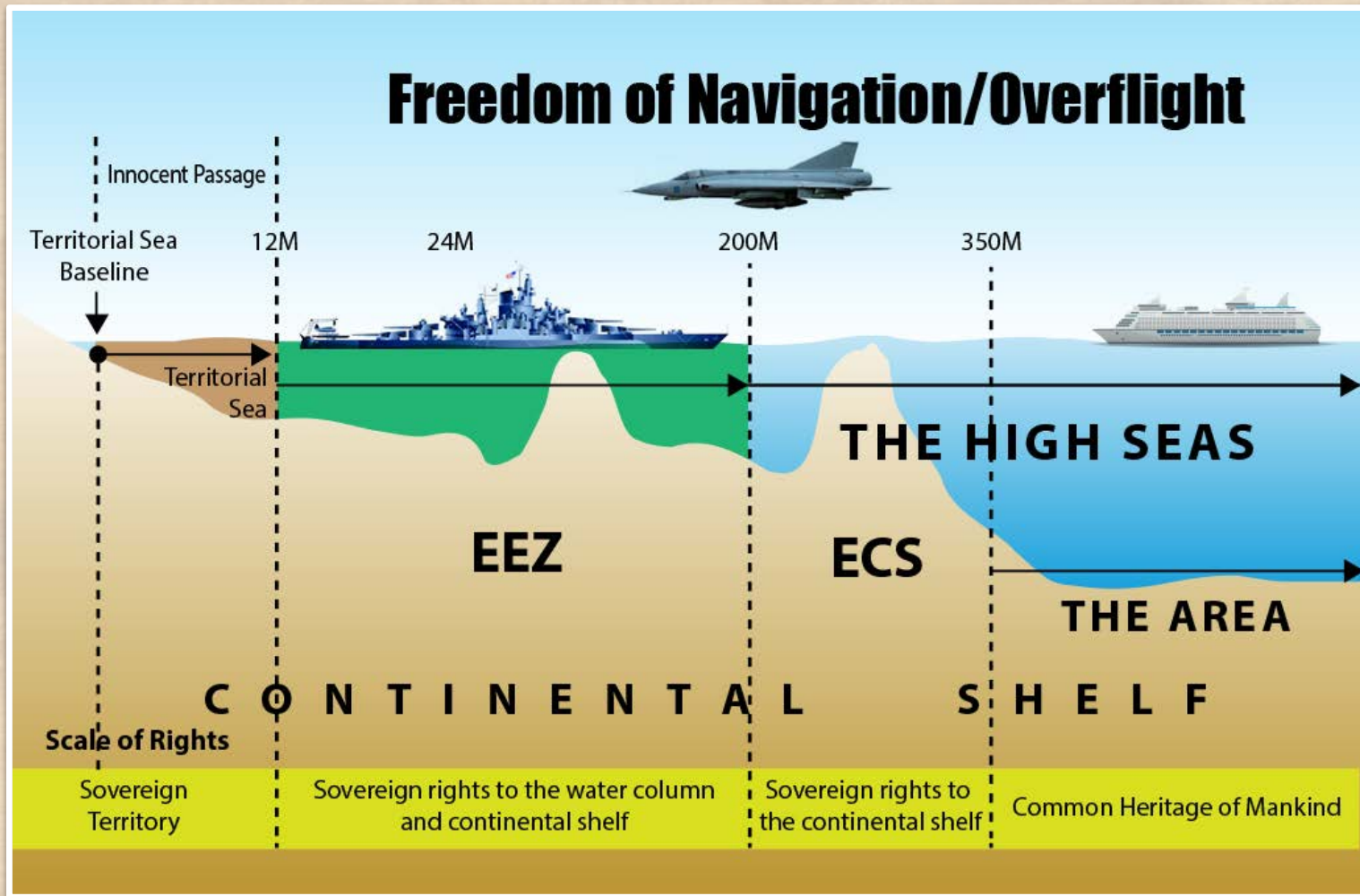
Article 300, UNCLOS. “State parties shall **fulfill in good faith** the obligations assumed under this Convention xxx.”

Thus, China and the Philippines, which have both ratified UNCLOS, have the obligation to comply in good faith with the award.

Two Aspects in Enforcement of Ruling

1. Enforcement of the ruling by the world's naval powers with respect to freedom of navigation and overflight for military vessels and aircraft in the high seas and EEZs of the South China Sea.
2. Enforcement of the ruling by the Philippines with respect to its exclusive right to exploit the resources of its EEZ in the South China Sea.

Maritime Zones under UNCLOS



An island above water at high tide is entitled to a 12 NM territorial sea. If such island is capable of human habitation or economic life of its own, it is entitled to a 200 NM EEZ. If there is a natural prolongation of its extended continental shelf, it is entitled to an ECS up to where the natural prolongation ends, but not exceeding 150 NM from the outer limits of its EEZ. **The maximum maritime zone a coastal state can claim is 150 NM from the outer limits of its 200 NM EEZ** (or 100 NM from the 2500 meter isobath, a limitation which does not apply to coastal states in the South China Sea based on the geology and geomorphology of the South China Sea). China is claiming maritime zones more than 150 NM from the outer limits of its EEZ.

World's Naval Powers Will Sail and Fly in the High Seas and EEZs of SCS

1. The United States says its military forces will continue to operate in the disputed South China Sea in accordance with international law. The US Chief of Naval Operations John Richardson said, "The US Navy will continue to conduct routine and lawful operations around the world, including in the South China Sea, in order to protect the rights, freedoms and lawful uses of sea and airspace guaranteed to all. This will not change."*
2. France is urging the 27-nation EU to coordinate naval patrols in the South China Sea to ensure a "regular and visible" presence in the disputed waters illegally claimed by China xxx. The French government said the protection of freedom of the seas is vital from an economic standpoint. It's also concerned a loss of this right in the South China Sea might lead to similar problems in the Arctic Ocean or Mediterranean Sea, said Defense Minister Jean-Yves Le Drian.**

* <http://www.presstv.ir/Detail/2016/07/20/476110/US-Navy-South-China-Sea>

** <http://en.yibada.com/articles/147065/20160731/france-urges-european-union-join-patrolling-south-china-sea.htm>

High Seas and EEZs in South China Sea



Enforcement of Exclusive Right to the EEZ

1. Philippine response if China installs a gas platform in the Reed Bank;
2. Recovery of damages from China for severe harm to the marine environment in the Spratlys;
3. Suspension of China's exploration permits for the seabed until China complies with the ruling;
4. Suspension of China's application for an extended continental shelf in the East China Sea until China complies with the ruling.
5. Anti-access, area denial military strategy (e.g. Vietnam's mobile EXTRA rocket artillery system recently acquired from Israel).

Misconceptions that Great Powers Ignore Rulings of International Tribunals

Dr. Graham Allison, Director of the Harvard Kennedy School's Center for Science and International Affairs, wrote in the 16 July 2016 issue of the *Singapore Straits Times*:

1. *Nicaragua v. United States*: “In the Nicaragua case, when the court (ICJ) found in favor of Nicaragua, **the U.S. refused.**”
2. *Netherlands v. Russia*: Russia “**ignored the tribunal’s order that the crew be released while the dispute was being resolved.**”
3. *Mauritius v. United Kingdom*: “[A]n Arbitral Tribunal ruled for Mauritius and against Britain xxx. **The British government disregarded the ruling xxx.**”

Graham’s article, entitled “*Heresy to say great powers don’t bow to tribunals on the Law of the Sea?*”, was quoted by columnists in the Philippines and abroad.

Nicaragua, Arctic Sunrise and Mauritius Cases

1. *Nicaragua v. United States* (ICJ, 1986)

In 1986, the ICJ ruled that the U.S. violated the territorial integrity of Nicaragua when the U.S. armed the *contra* rebels and mined the territorial waters of Nicaragua, among others. The U.S. had refused to participate in the proceedings and also refused to comply with the ruling, which directed the U.S. and Nicaragua to negotiate the amount of damages the U.S. should pay Nicaragua.

Nicaragua asked the ICJ to proceed with the hearings on the amount of damages, which Nicaragua claimed run into billions of dollars. In 1991, while the proceedings were ongoing, the U.S. and Nicaragua struck a deal: without conceding any liability, the U.S. would provide US\$541 million in economic aid to Nicaragua if Nicaragua would withdraw the pending case with the ICJ.* On 5 June 1991, Nicaragua's National Assembly overwhelmingly repealed the law requiring the U.S. to pay damages to Nicaragua. On 12 September 1991, Nicaragua informed the ICJ that Nicaragua **"Places on record the discontinuance by the Republic of Nicaragua of the proceedings instituted by the Application filed on 9 April 1984."**



U.S. Supplied Red-Eye Shoulder Fired Anti-Tank Missile



Contra Rebels

* "Diplomats and officials quoted in the press indicated that U.S. officials had stressed to Mrs. Chamorro that U.S. aid depended on her willingness to drop the case." *Fitful Place: Human Rights and Reconciliation in Nicaragua under the Chamorro Government*, Cynthia Arnson & David Holiday, 1991, Human Rights Watch, p. 52.

2. *Netherlands v. Russia* (Annex VII Tribunal, UNCLOS, 2013)

On 22 November 2013, the ITLOS, upon a provisional measure requested by the Netherlands, ordered: “The Russian Federation shall immediately release the vessel *Arctic Sunrise* and all persons who have been detained, upon the posting of a bond or other financial security by the Netherlands which shall be in the amount of 3,600,000 euros, to be posted with the Russian Federation in the form of a bank guarantee.” Russia refused to participate in the proceedings and refused to comply with the ITLOS order.

On 18 December 2013, the Russian Parliament amended its amnesty law to include hooliganism, the crime that the *Arctic Sunrise* crew were charged.

Before Christmas day of December 2013, Russian President Putin pardoned the *Arctic Sunrise* crew who were then allowed to leave Russia. The *Arctic Sunrise* vessel was likewise allowed to leave. **Putin stated that the crew and vessel were released under Russian law, and not because of the ITLOS order.**



3. *Mauritius v. United Kingdom* (Annex VII Tribunal, UNCLOS, 2015)

On 18 March 2015, the Tribunal ruled that “in establishing the MPA surrounding the Chagos Archipelago, the United Kingdom breached its obligations under Articles 2(3), 56(2), and 194(4) of the Convention.” These provisions required the U.K. to consult Mauritius, the coastal state, before establishing a marine protected area surrounding the Chagos Archipelago.

On 15 June 2015, MP Patrick Grady of the UK Parliament raised a parliamentary inquiry to the Secretary of State for Foreign and Commonwealth Affairs as to “what steps the Government is taking to comply with the award of the Arbitral Tribunal in the case of Chagos Marine Protected Area Arbitration (*Mauritius v. U.K.*) dated 18 March 2015.”

On 23 June 2015, MP James Duddridge, Under-Secretary for Foreign and Commonwealth Affairs, replied: “**The Government wishes to implement the award in the spirit of greatest possible cooperation**, and has written to the Mauritian government several times since the award, making a proposal to hold consultations about the protection of the marine environment as early as July.” **In short, the UK readily and fully complied with the ruling.**



Chagos Archipelago

Declare the Spratlys an *International Marine Peace Park*

As a win-win solution to the territorial dispute in the Spratlys, (the Tribunal's ruling does not resolve the territorial dispute), all claimant states should suspend for 100 years their territorial claims and declare all the low-tide and high-tide features in the Spratlys, and an area of 3-NM around each feature, an international marine peace park* for the benefit of all coastal states in the South China Sea.

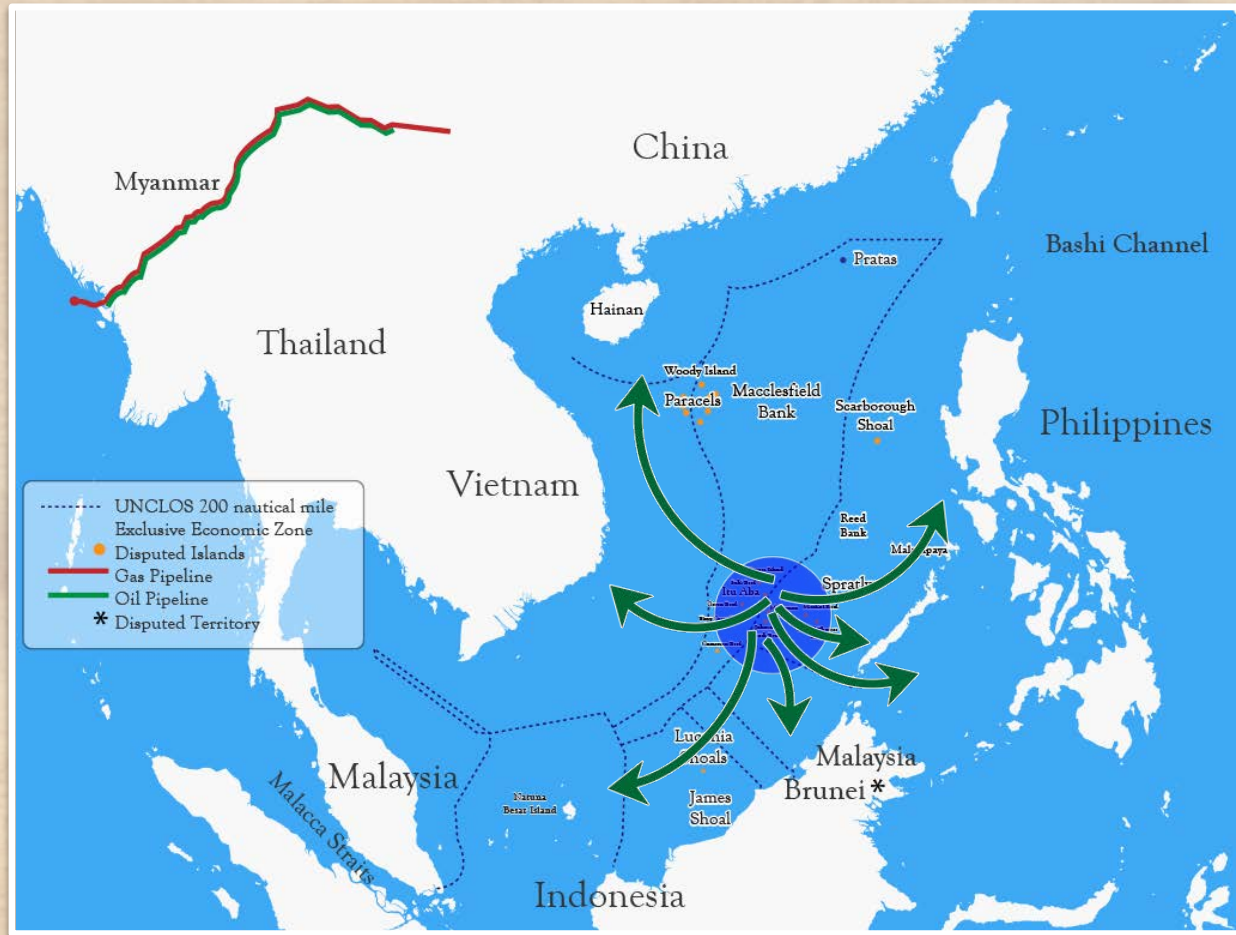
This insures that the Spratlys will remain the South China Sea's nursery where fish spawn. The eggs and larvae of fish that spawn in the Spratlys are carried by currents to the coasts of China, Vietnam, Luzon, Palawan, Malaysia, Brunei, Natuna Islands, as well as the Celebes and Sulu seas.

The claimant states will hold on to whatever islands/structures they now possess. Only coast guard personnel and vessels can be stationed in the Spratlys. The islands/structures can only be used for marine scientific research and eco-tourism.

There is a precedent to this. The 1994 peace agreement between Israel and Jordan created the *Red Sea Marine Peace Park* in the Gulf of Aqaba in the Red Sea.

* First proposed by Dr. John W. McManus in 1994, *The Spratly Islands: A Marine Peace Park?* *Ambio*, Vol. 23, No. 3, May 1994; See also John W. McManus, Kwang-Tsao Shao and Szu-Yin Lin in 2010. <http://www.tandfonline.com/doi/abs/10.1080/00908320.2010.499303?journalCode=uodl20>

Dispersal of Eggs and Larvae of Fish



Of the total world annual fish catch, 12% comes from the SCS, valued at US\$21.8 billion. The SCS has 3,365 species in 263 families of fish. Bordered by 12 countries with two billion people, the SCS is one of the top five most productive fishing zones in the world in terms of total annual fish catch. (*Boom or Bust, the Future of Fish in the South China Sea*, U. Rashid Sumaila & William W.L. Cheung, 2015)

Marine Ecologists from PROC, Taiwan, the Philippines and Vietnam Support a Spratlys Marine Protected Area

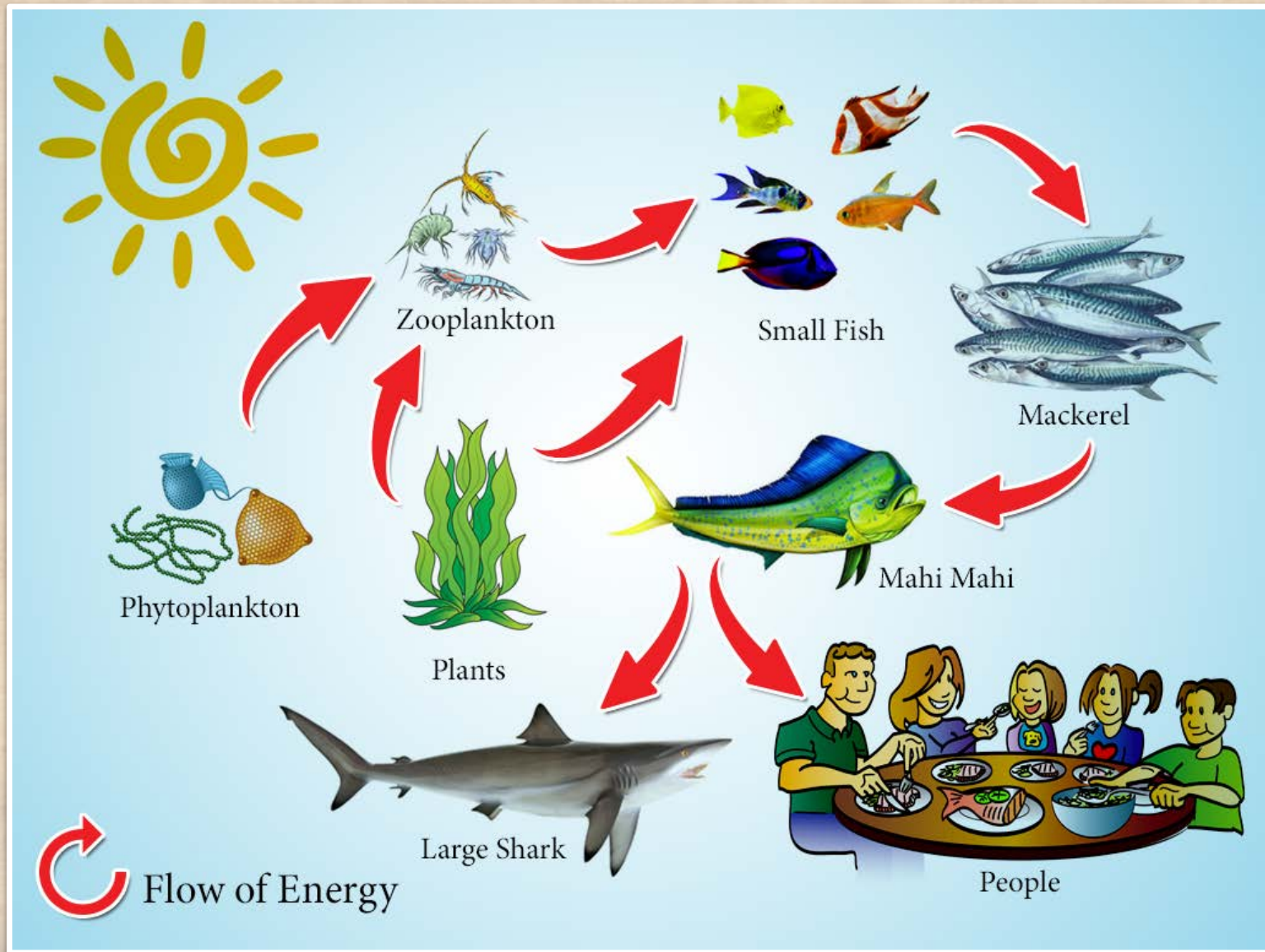
1. “Kwang-Tsao Shao, a marine-biodiversity expert at Taiwan’s Academia Sinica in Taipei, says that at meetings that include his mainland peers, **there is consensus from ecologists on both sides of the strait** that the region should be set aside as a marine protected area.”*
2. Prof. Edgardo Gomez, Philippine national scientist for marine biology, and other marine biologists at the U.P. Marine Science Institute, support a marine protected area in the Spratlys.**
3. Professors Nguyen Chu Hoi and Vu Hai Dang, Vietnamese marine ecologists, support a marine protected area in the Spratlys.***

* <http://www.nature.com/news/south-china-sea-ruling-sparks-conservation-fears-1.20279>

** <http://www.fpi.sais-jhu.edu/#!/Marine-Peace-Park-Plan-Offers-Promise-for-South-China-Sea/c1qvb/563ba7370cf28330832ed0fb>

*** Nguyen Chu Hoi and Vu Hai Dang, *Building a Regional Network and Management Regime of Marine Protected Areas in the South China Sea for Sustainable Development*, 18 J.INT’L WILD LIFE L. & POL’Y (2015).

Fish Food Chain



Major Fisheries Collapse Could Lead to Mass Starvation

“If we don’t do this (establish a Marine Protected Area), we are headed toward a major, major fisheries collapse in a part of the world where [that] will lead to mass starvation,” Prof. John McManus warned on 12 July 2016 in a Washington, D.C. forum organized by the Center for Strategic and International Studies.*

* <http://www.latimes.com/world/asia/la-fg-south-china-sea-environment-20160713-snap-story.html>

Joint Development between China and the Philippines
“However, before these joint explorations are materialized, Wu Shicun emphasized, that the Philippines should first acknowledge Beijing’s dominion over the shoal.”

China, Philippines Consider Joint Fishing Rights In Scarborough Shoal During South China Sea Talks, http://chinachristiandaily.com/2016-08-15/society/china-philippines-consider-joint-fishing-rights-in-scarborough-shoal-during-south-china-sea-talks_2141.html

1. “The concept of **‘setting aside dispute and pursuing joint development’** has the following four elements: **1. The sovereignty of the territories concerned belongs to China.** 2. When conditions are not ripe to bring about a thorough solution to **territorial dispute**, discussion on the issue of sovereignty may be postponed so that the dispute is set aside. **To set aside dispute does not mean giving up sovereignty. It is just to leave the dispute aside for the time being.** 3. The territories under dispute may be developed in a joint way. 4. **The purpose of joint development is to enhance mutual understanding through cooperation and create conditions for the eventual resolution of territorial ownership.**” - Ministry of Foreign Affairs, PROC*

2. Area of “Joint Development” under China’s definition:

- a. Only within the EEZ of the Philippines and EEZs of other coastal states, never within China’s EEZ. In short, “joint development” is not reciprocal.
- b. “Joint development” is not on territory, but on the EEZ - a maritime zone. **A dispute on the EEZ is not a territorial dispute but a maritime dispute.** To accept China’s definition is to admit the Tribunal’s ruling is null and void.

3. Philippines’ definition of “Joint Development” - Constitutional Constraints:

- a. Article 1 on National Territory;
- b. Article XII, Section 2.

* http://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18023.shtml

Constitutional Constraints: 1987 Constitution

1. Article 1 on *National Territory*

The “national territory” includes “the seabed, subsoil xxx and other submarine areas” “over which the Philippines has sovereignty or jurisdiction.” Under UNCLOS, as affirmed by the Tribunal, the Philippines has “sovereign rights and jurisdiction” over its EEZ in the West Philippine Sea.

2. Article XII, Section 2, para. 2, on *National Economy and Patrimony*

“The State shall protect the nation’s marine wealth in its xxx exclusive economic zone, and **reserve its use and enjoyment exclusively to Filipino citizens.**” The Constitution confers on the State jurisdiction over its EEZ.

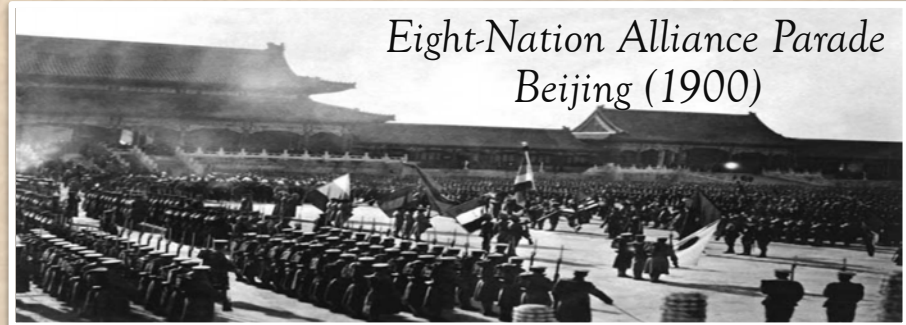
Correcting Historical Misconception

1. China's Century of Humiliation

- The Philippines never humiliated China, and never occupied a square inch of Chinese territory; Filipinos were fighting the Americans in 1900 at the same time that the Boxers were fighting the Eight Nation Alliance which included the U.S.
- The Philippines was also colonized and oppressed for over three and one-half centuries by Western Powers;
- The Rape of Nanjing in December 1937 was followed by the destruction of Manila in February 1945 as the second most devastated city in World War II.



*Eight-Nation Alliance Parade
Beijing (1900)*



*The Philippine-American War
(1899-1902)*

Correcting Historical Misconception

2. Invoking the 1823 *Monroe Doctrine* to Justify the Nine-Dashed Lines

- The U.S. never claimed the Caribbean Sea or its resources;
- In 1823, there was no United Nations, no International Court of Justice and no UNCLOS.



Correcting Geopolitical Misconception

3. Framing of Issue by China as *U.S. Containment of China*

- Naval Powers: Freedom of Navigation and Over-flight



- ASEAN Coastal states: Right to Resources in the EEZ.



China's Three Warfares* in SCS

Since the use of nuclear weapons is self-defeating, and the use of even limited armed force can escalate into the use of nuclear weapons, China is resorting to the “three warfares” to control the South China Sea economically and militarily without fighting:

1. *Public Opinion Warfare* - Repeatedly assert a historical narrative so the world will accept it as true even if the narrative has no historical basis;
 2. *Legal Warfare* - Assert a legal basis for the historical claim to justify the claim as an exception to the prevailing legal norms;
 3. *Psychological Warfare* - Display overwhelming military might, like the installation of several air and naval bases in the disputed waters, to intimidate the adversary into submission.
- *China: The Three Warfares*, prepared by Professor Stearn Halper for Andy Marshall, Director, Office of Net Assessment, Office of the Secretary of Defense, Washington, D.C., May 2013.



V. OVERVIEW AND ANALYSIS OF THE THREE WARFARES

PART 1: DEFINITION OF THE THREE WARFARES

1.1 Outline and Origins of the Concept

In 2003 the Chinese Communist Party (CCP), Central Committee, and the Central Military Commission (CMC)¹⁵ approved the concept of the Three Warfares – a PLA information warfare concept aimed at preconditioning key areas of the competition in its favor.¹⁶ The concept is detailed in Chapter 2, Section 18 of the ‘Chinese People’s Liberation Army Political Work Regulations’. The US Department of Defense has defined the Three Warfares as the following ¹⁷:

¹⁵ The CMS is the “supreme leading organ of the armed forces of the People’s Republic of China. It directs and commands the national armed forces. “<http://english.people.com.cn/data/organs/militarycommission.html>

¹⁶ Timothy A. Walton. ‘China Three Warfares’. *Delex Special Report*. January 18, 2012. P.A.

¹⁷ Office of the Secretary of Defense. *Annual Report to Congress – Military and Security Developments Involving the PRC 2011*. P.26.

First Warfare: Historic Right to South China Sea

China's claim:

“Chinese activities in the South China Sea date back to over 2,000 years ago. China was the first country to discover, name, explore and exploit the resources of the South China Sea Islands and the first to continuously exercise sovereign powers over them.” (China's Position Paper of 7 December 2014)

The Tribunal ruled:

“The Tribunal sees **no evidence** that, prior to the Convention, **China ever established a historic right** to the exclusive use of the living and non-living resources of the waters of the South China Sea, whatever use it may have made of the Spratly Islands themselves.” (Para 631, Award of 12 July 2016)

Second Warfare: Legal Exception to UNCLOS

China's claim:

China's historic right to the South China Sea waters predates UNCLOS and therefore cannot be governed by UNCLOS. In short, China's historic right is an **exception** to UNCLOS.

The Tribunal ruled:

All historic rights in the EEZ were extinguished upon effectivity of UNCLOS. “[T]he Tribunal concludes that China's claim to historic rights to the living and non-living resources within the ‘nine-dash line’ is incompatible with the Convention. xxx [A]ny historic rights that China may have had to the living and non-living resources within the ‘nine-dash line’ were superseded, as a matter of law and as between the Philippines and China, by the limits of the maritime zones provided for by the Convention.”

Justifying “Exceptionalism”

If China “cannot accept a UN framework for discussion, let’s find another formula, a creative one, where everybody would sit around the table and put forth their views,” Jose Ramos Horta, Nobel Peace Prize Winner and former President of East Timor. **“China is a major regional power with historical grievances,”** he said.*

* <http://www.bloomberg.com/news/articles/2014-06-30/china-could-solve-maritime-dispute-outside-un-nobel-winner-says>

Third Warfare: Huge Naval and Air Bases Will Intimidate other Claimant States

China's action:

China's three huge naval and air bases in the Spratlys project overwhelming power. This will intimidate other claimant states into submission, allowing China to enforce the 9-dashed lines as its national boundaries.

The Tribunal ruled:

- a. The 9-dashed lines have no legal basis, and thus there are high seas and EEZs in the SCS. China's air and naval bases built on low-tide elevations have no territorial sea or territorial airspace. The world's naval powers will sail and fly in the high seas and EEZs, enforcing this part of the ruling.
- b. The Philippines has exclusive sovereign rights to its EEZ. The Philippines will have to lead in fighting this battle. This battle involves marshaling support from other claimant states, using world opinion to convince the Chinese people to comply with international law, convincing UNCLOS coastal states it is to their best interest to protect a coastal state's right to its EEZ, lawfare, and A2/AD military strategy.



End

