

FINAL ARBITRAL AWARD

JULY 12, 2016

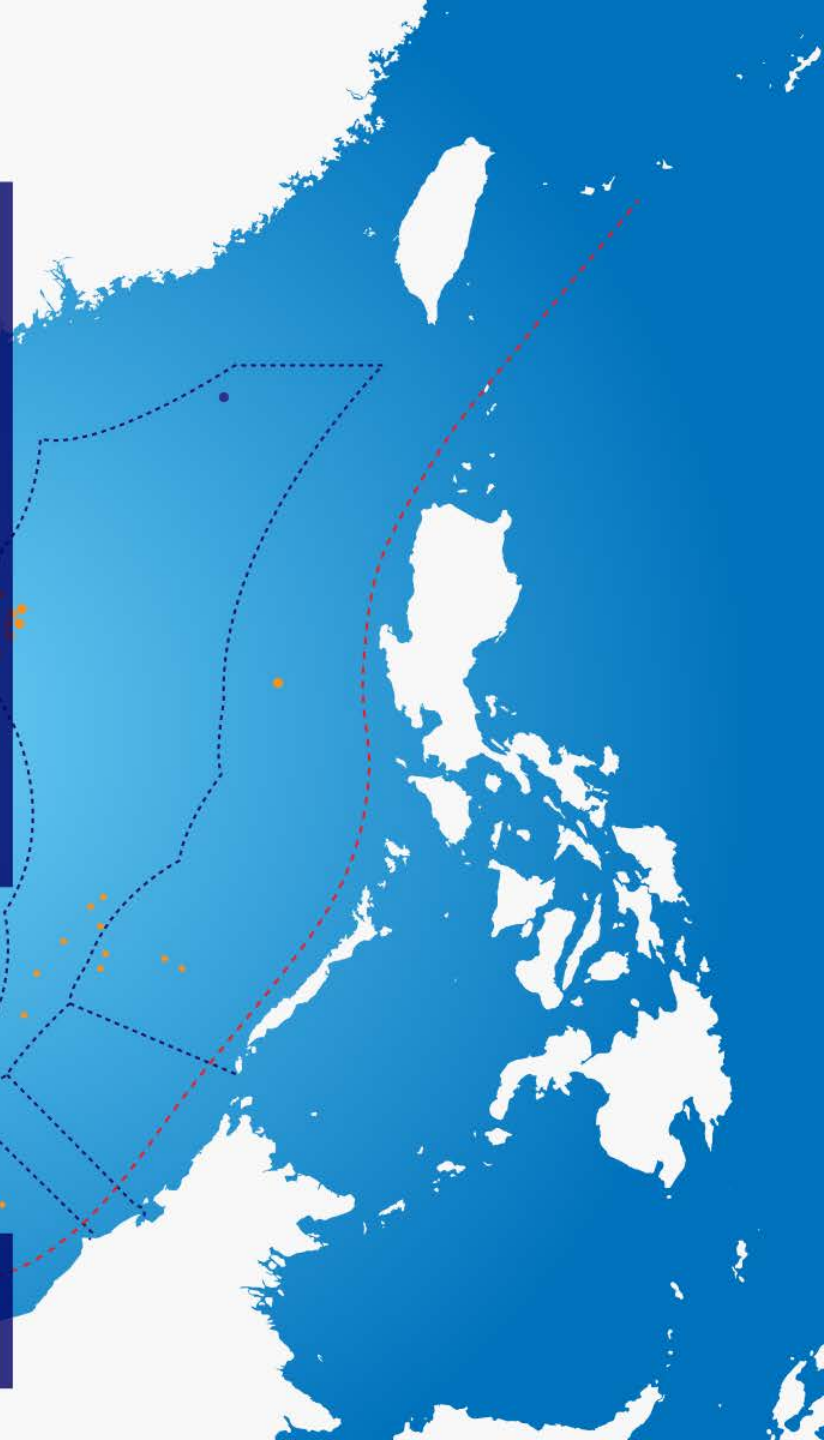
PHILIPPINES V. CHINA

THE SOUTH CHINA SEA

WEST PHILIPPINE SEA DISPUTE

JUSTICE ANTONIO T. CARPIO

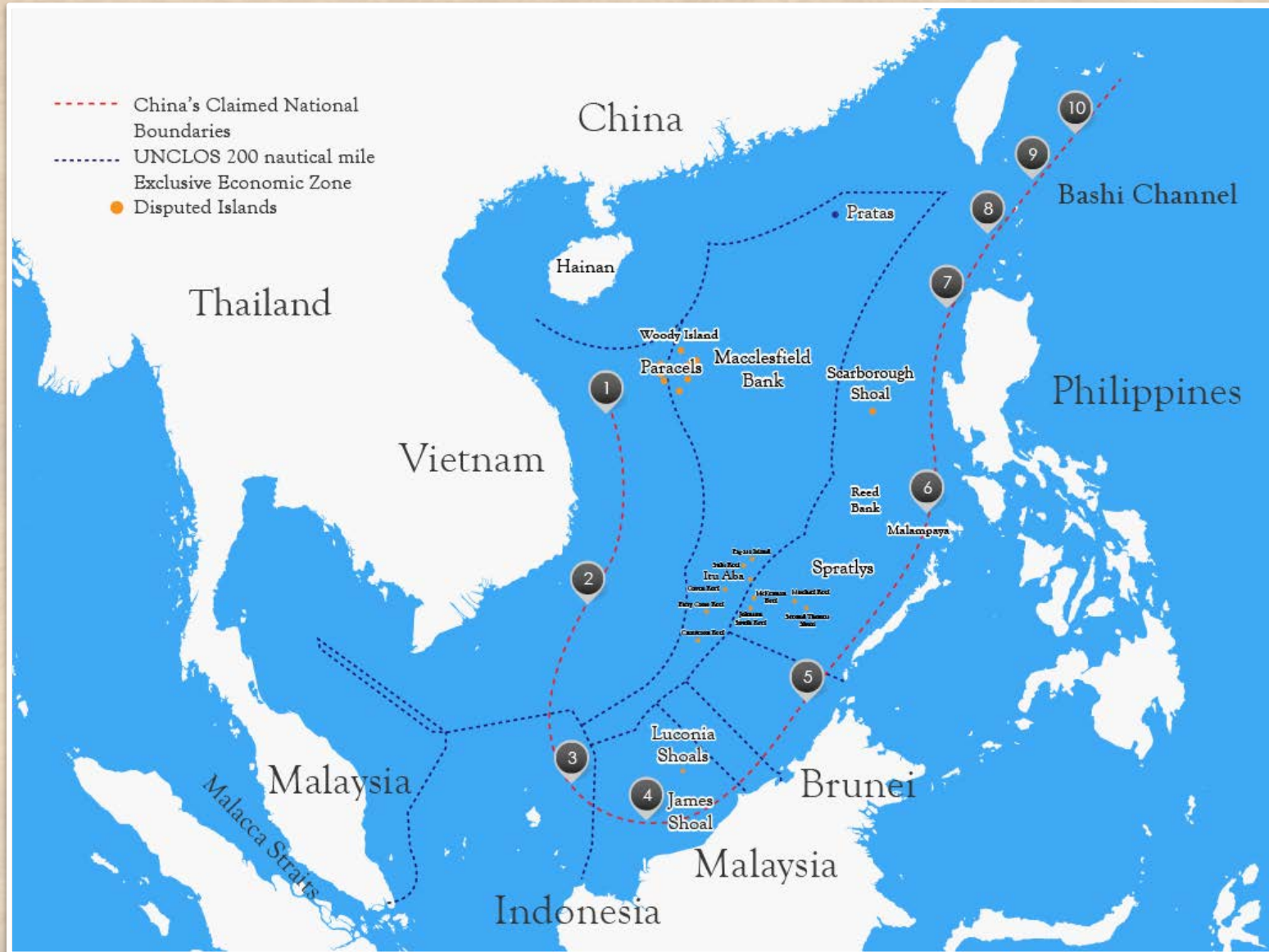
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Six Major Issues Resolved by the Tribunal

1. China's Claim to Historic Rights under the Nine-Dashed Lines
2. Status of Geologic Features in Spratlys to Generate 200-NM EEZ
3. Status of Geologic Features in Spratlys whether Low-Tide or High-Tide Elevations
4. Status of Scarborough Shoal and Right to Traditional Fishing
5. Harm to Marine Environment
6. Unlawful Actions of China

China's Nine-Dashed Lines



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

- The nine-dashed lines are illegal under UNCLOS and cannot be the basis for claiming maritime zones;
- All historic rights in the EEZ were extinguished upon effectivity of UNCLOS;
- No evidence that China historically exercised exclusive control over the waters and resources of the South China Sea;
- The Tribunal upheld the Philippine position on this issue.

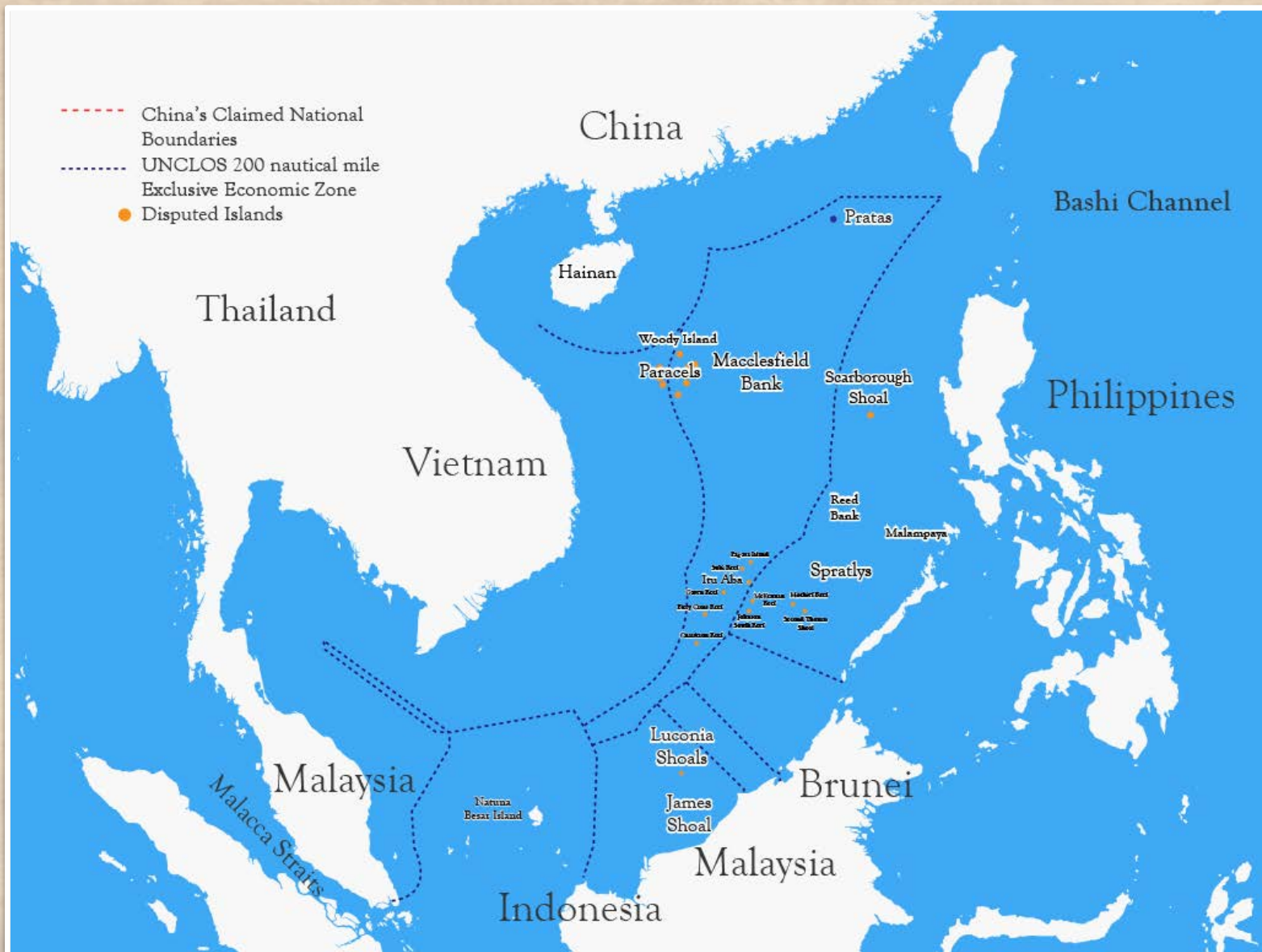
High Seas and EEZs in South China Sea



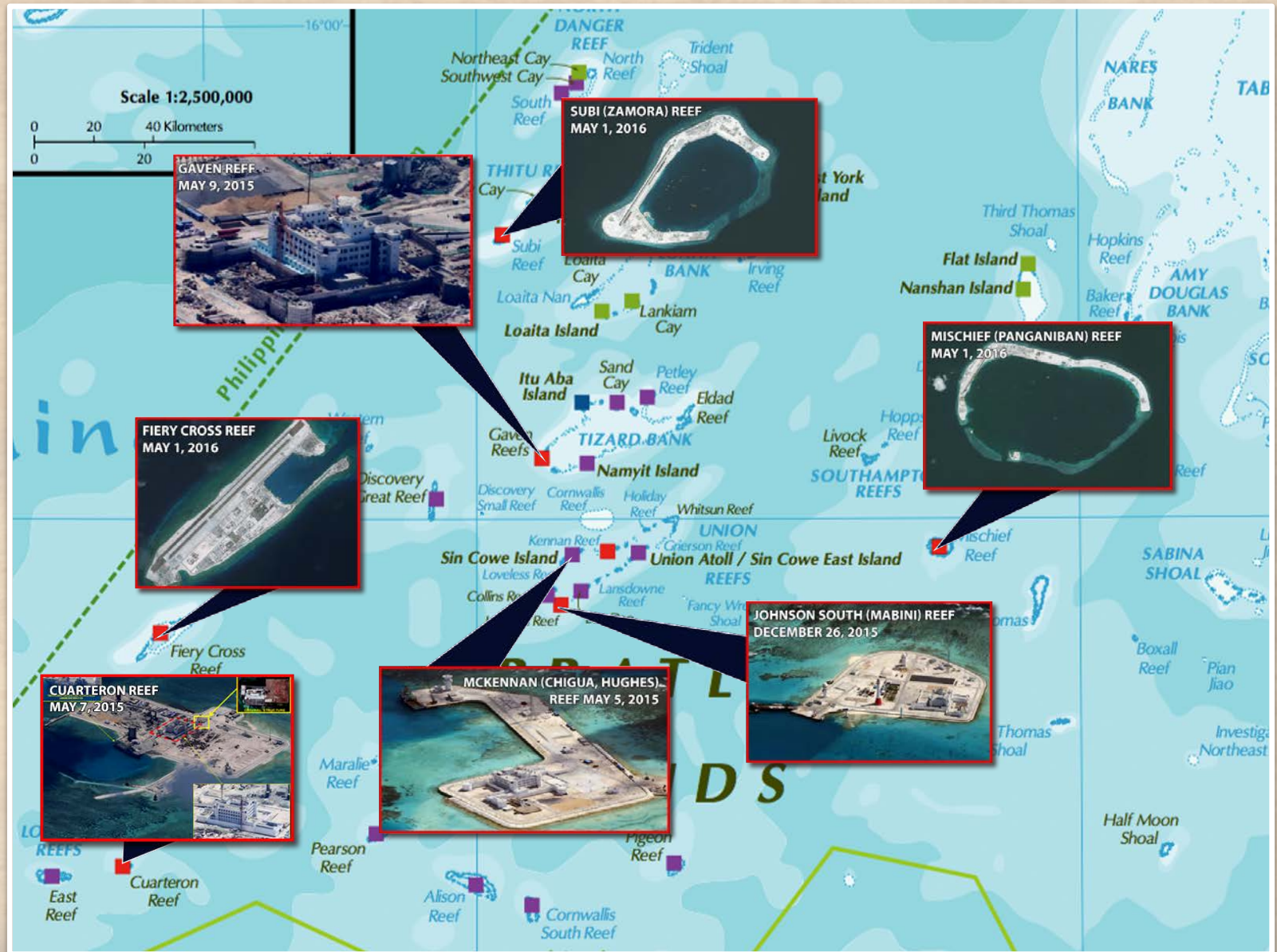
Status of Geologic Features in Spratlys to Generate 200-NM EEZ

- 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;
- 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.
- The Tribunal upheld the Philippine position on this issue.

South China Sea Islands



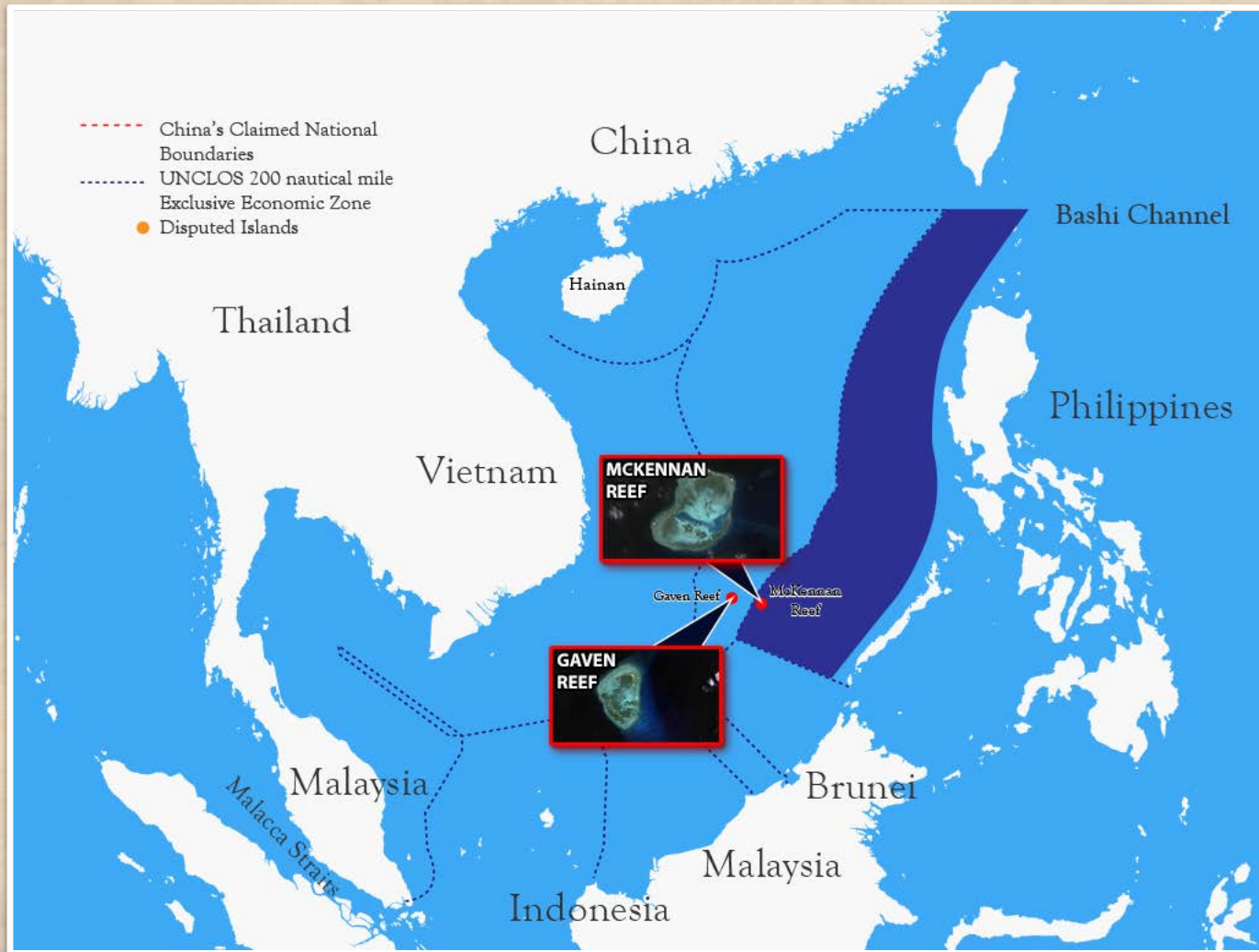
Seven Geologic Features Occupied by China in Spratlys



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's structures on these reefs are illegal;
- 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.

Gaven Reef and McKennan Reef

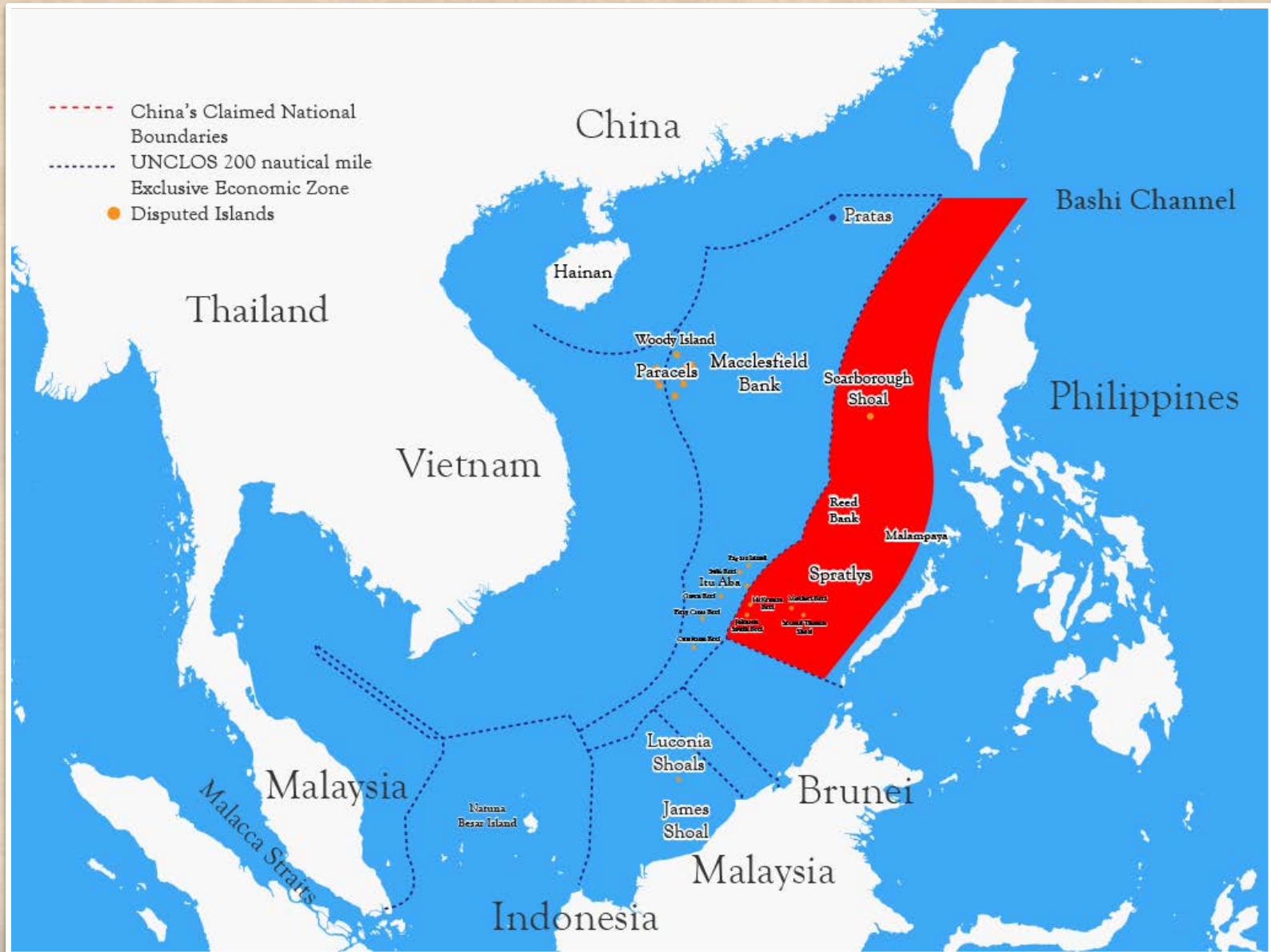


McKennan Reef is a high-tide feature controlled by China within the Philippine EEZ in the Spratlys. As a high-tide feature, McKenna Reef is entitled to a 12-NM territorial sea. The other high-tide feature controlled by China in the Spratlys and within the Philippine EEZ is Johnson South Reef.

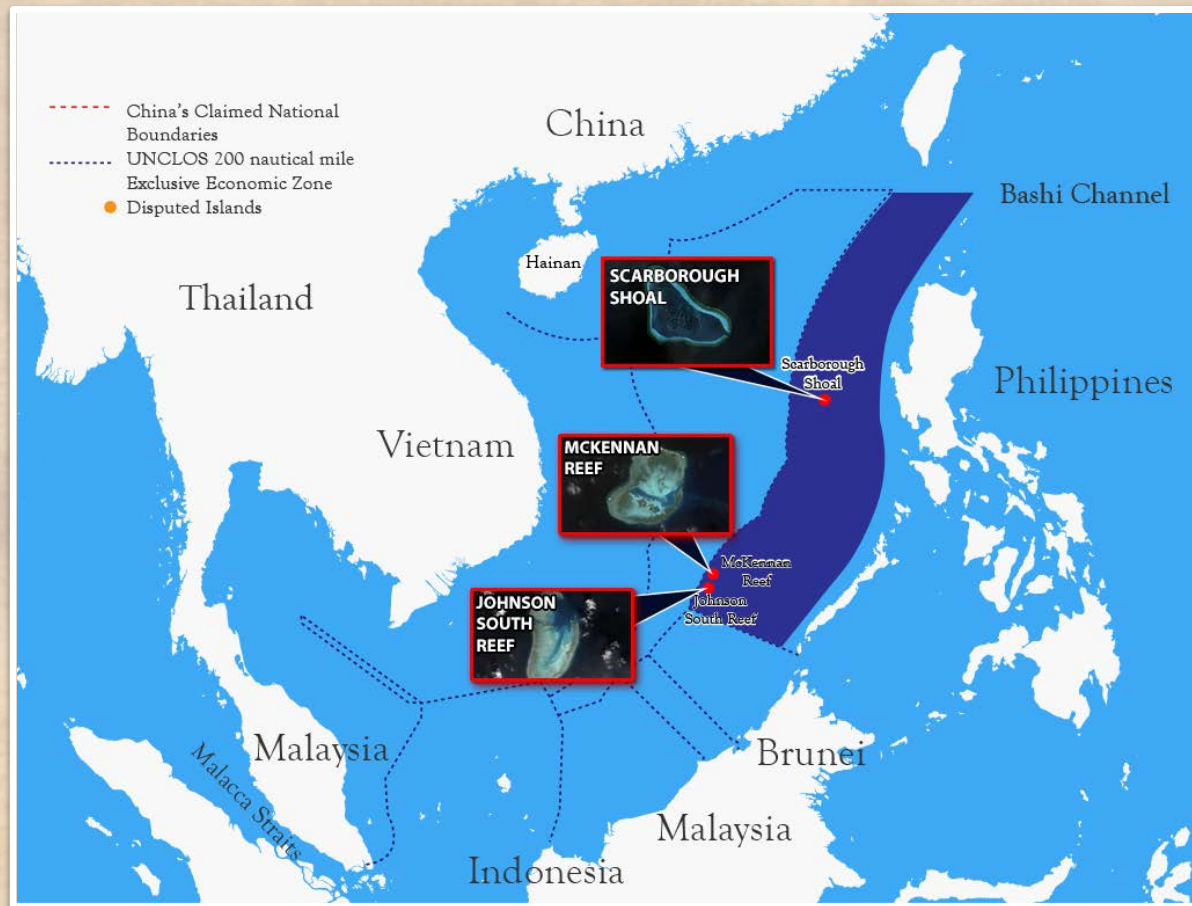
Status of Scarborough Shoal; Right to Traditional Fishing

- 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 Larger than its Total Land Area

The Philippine EEZ in the SCS has an area of 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 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 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.

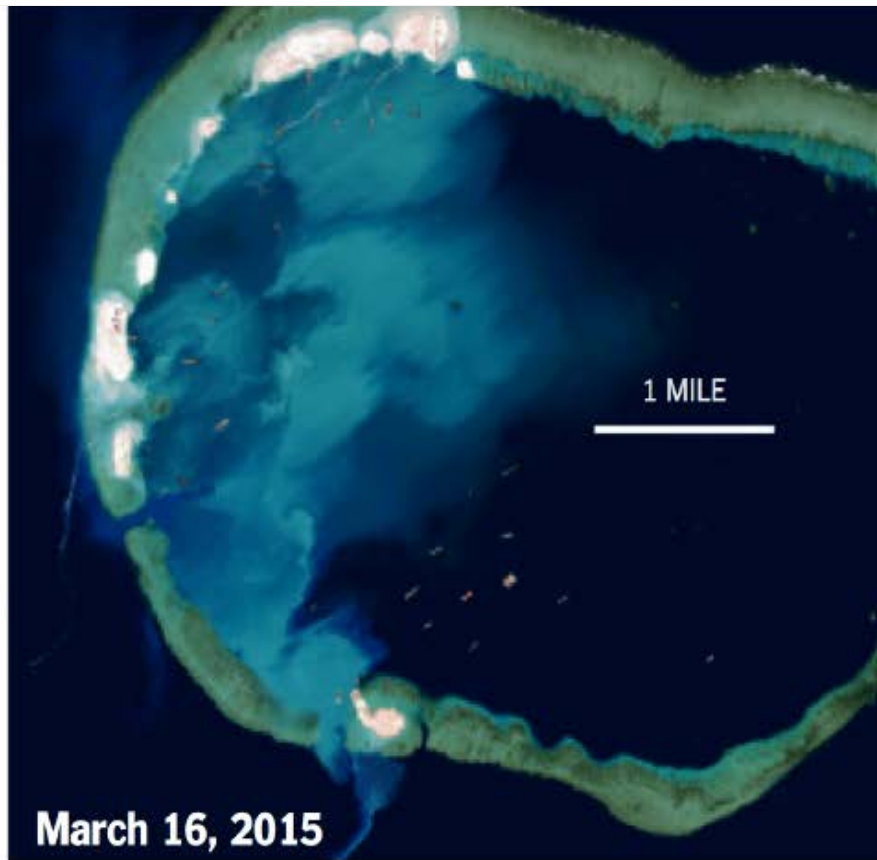
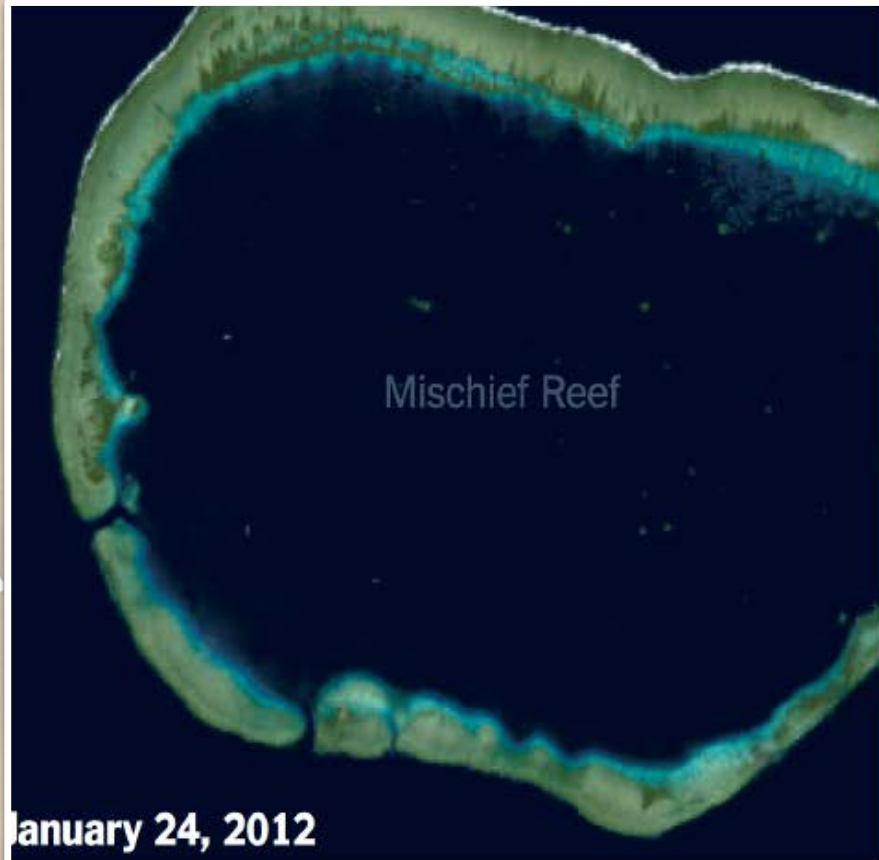
Harm to the Marine Environment

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 turtles, corals and giant clams.

The Tribunal upheld the Philippine position on this issue. This is the first time that an international tribunal ruled on harm to the coral reef ecosystem.

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



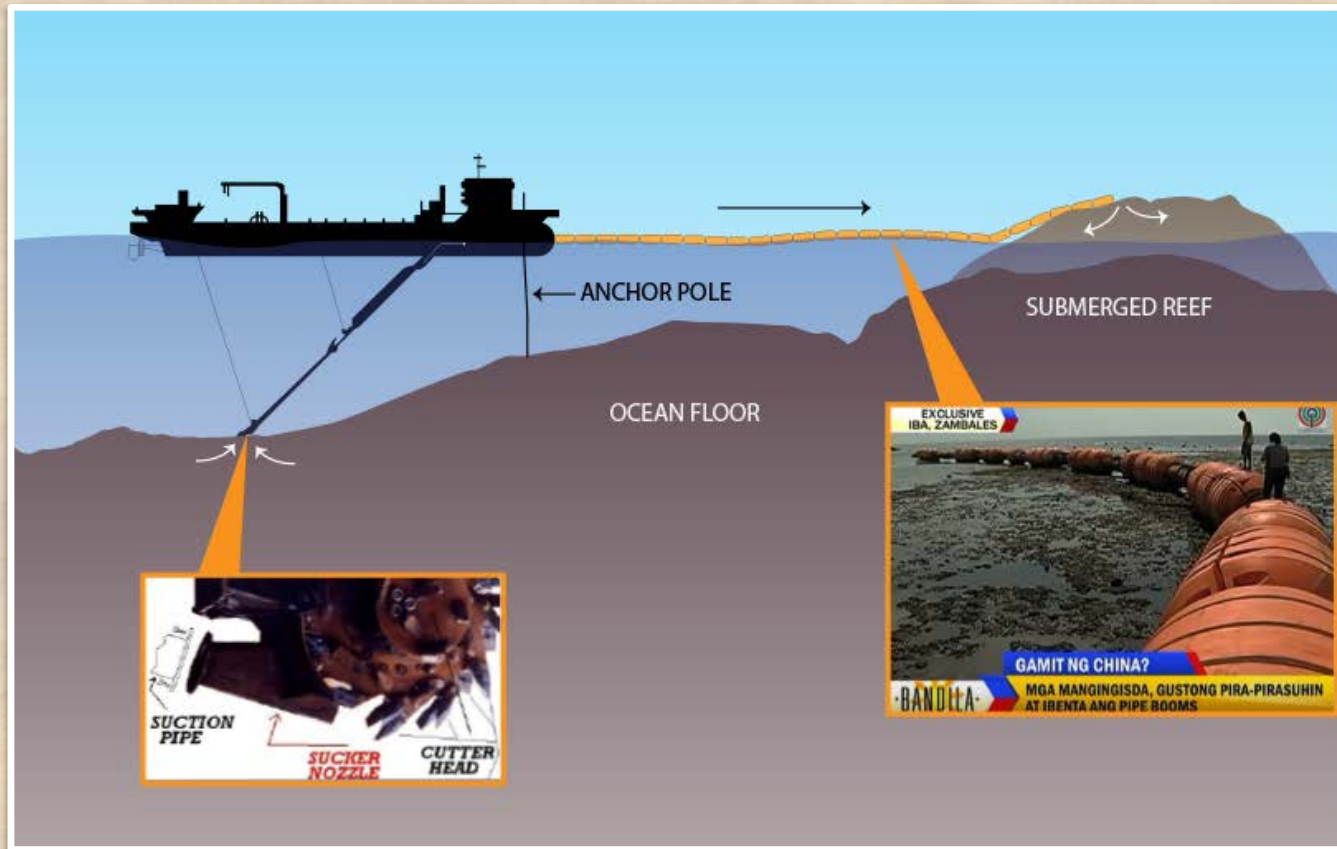
Mischief (Panganiban) Reef May 1, 2016



Source: <http://time.com/>

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.

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.

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>

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;
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.

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.

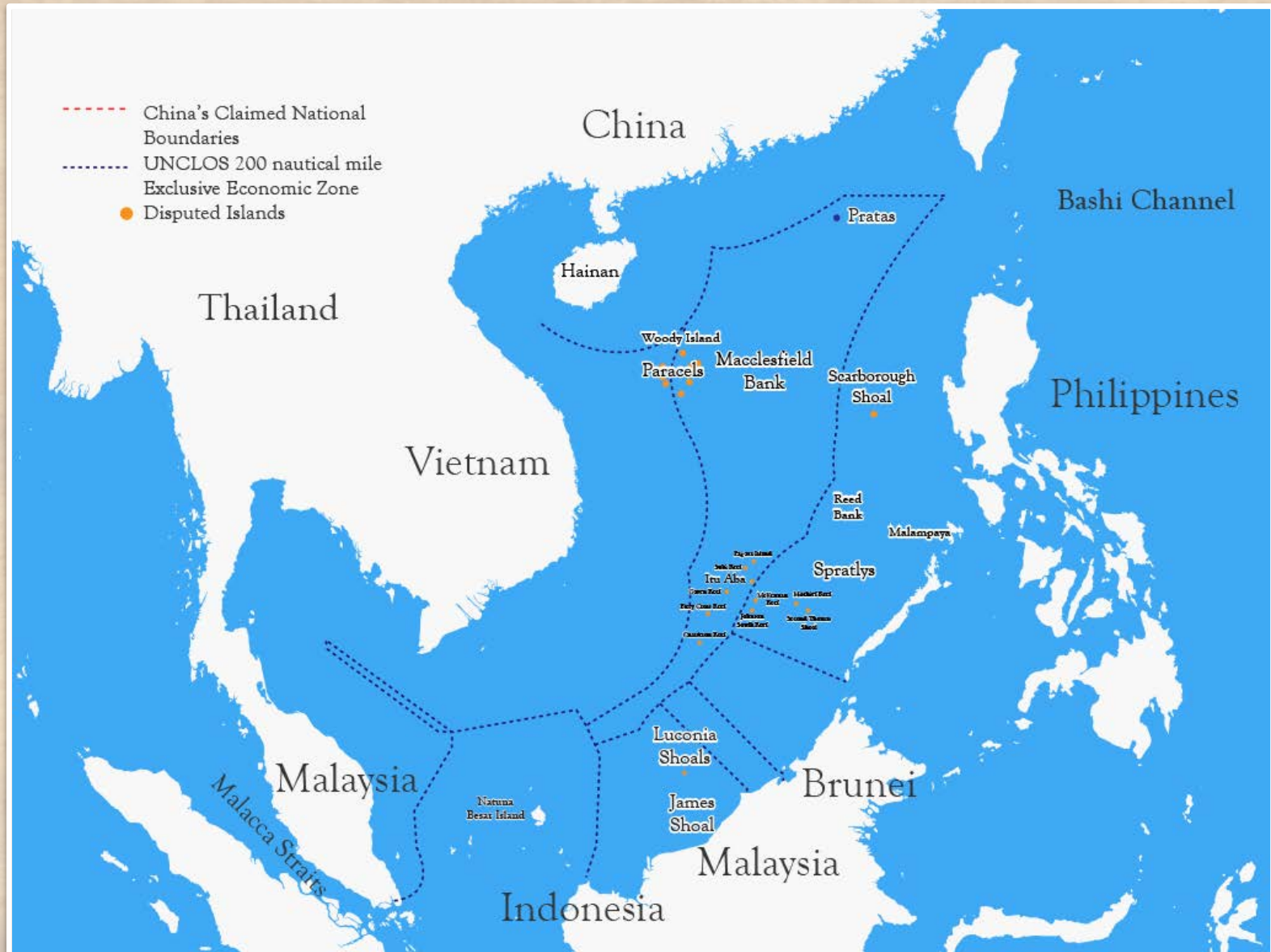
The Philippines asked the Tribunal to direct China to respect in the future the rights and freedoms of the Philippines under UNCLOS.

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.

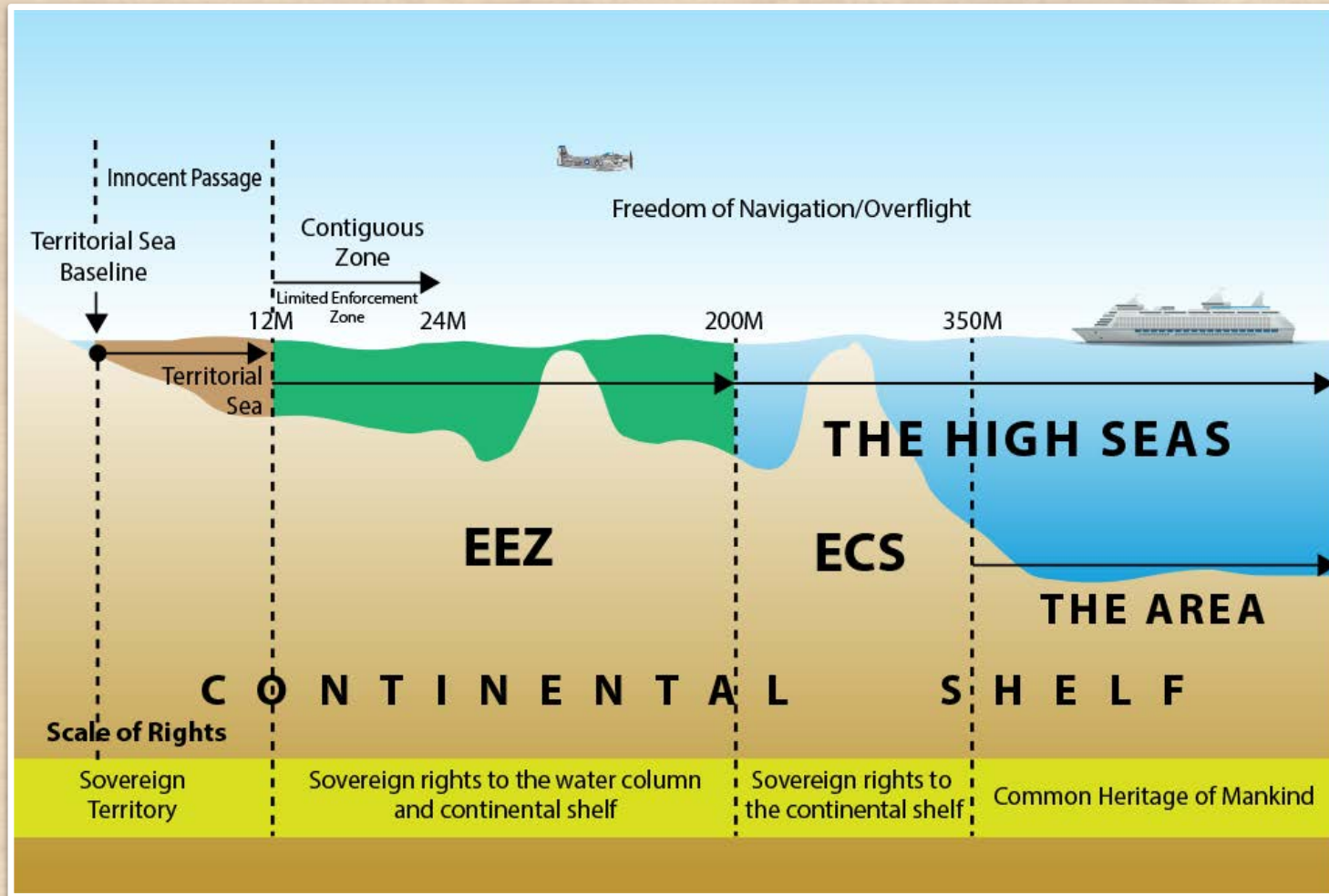
Next Steps – Enforcement of the Ruling

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.

High Seas and EEZs in 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.

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.

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 (SIMPP) 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.

Spratlys International Marine Peace Park





End