

THE SOUTH CHINA SEA/ WEST PHILIPPINE SEA DISPUTE

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

Ramifications of Dispute

Half of the world's seaborne trade passes through the South China Sea, valued at US\$5.3 trillion annually.*

The South China Sea dispute has the potential to overturn the United Nations Convention on the Law of the Sea (UNCLOS),** the constitution for the oceans and seas of our planet.

For the Philippines, what is at stake is 80% of its exclusive economic zone (EEZ) and 100% of its extended continental shelf (ECS) in the South China Sea - either the Philippines keeps them, or loses them to China.

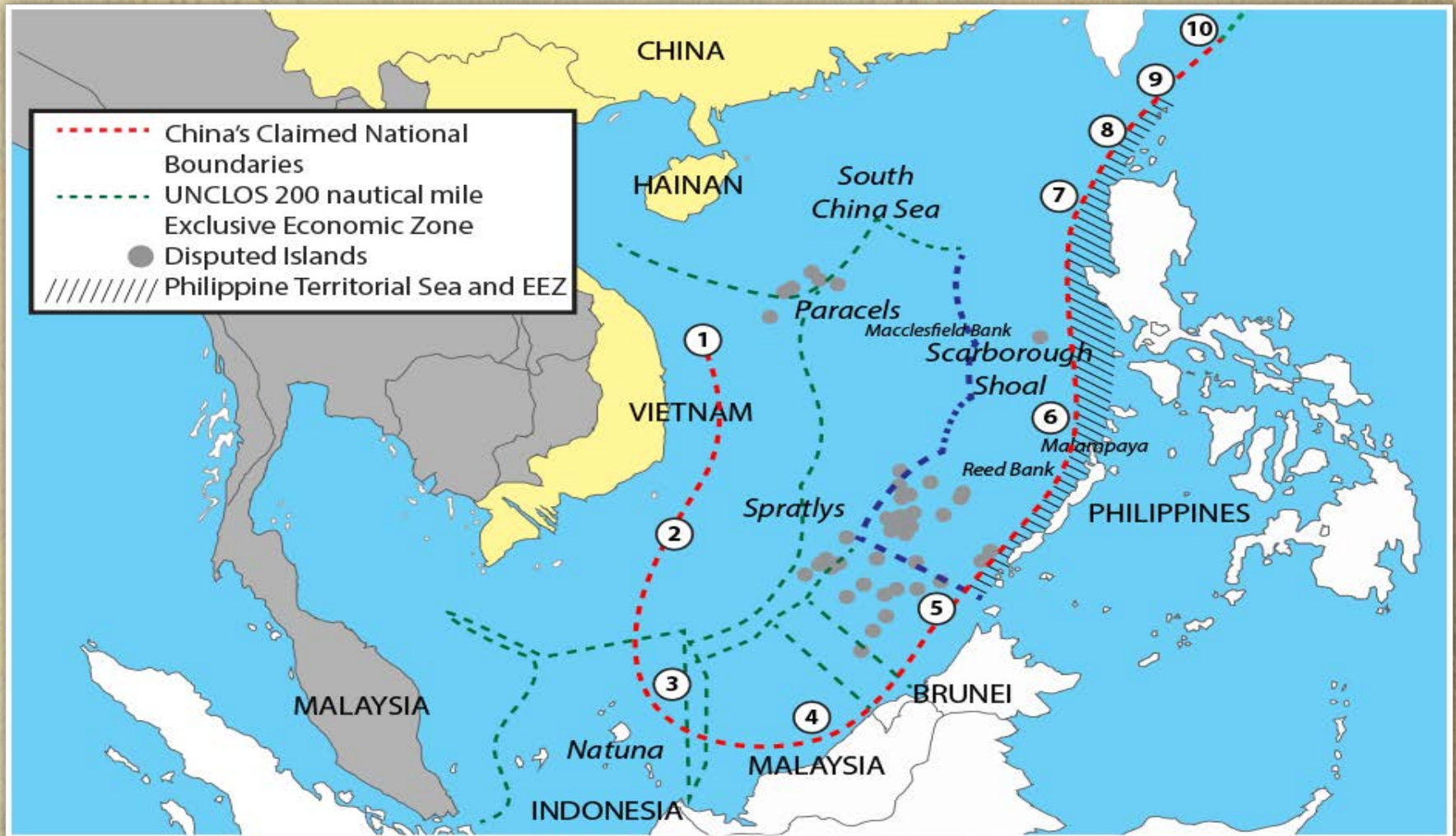
*US\$1.2 trillion bound for U.S.

**One-hundred sixty-seven countries, plus the European Union, are parties to UNCLOS. Party-states to UNCLOS comprise 86% of the total 193 UN member-states.

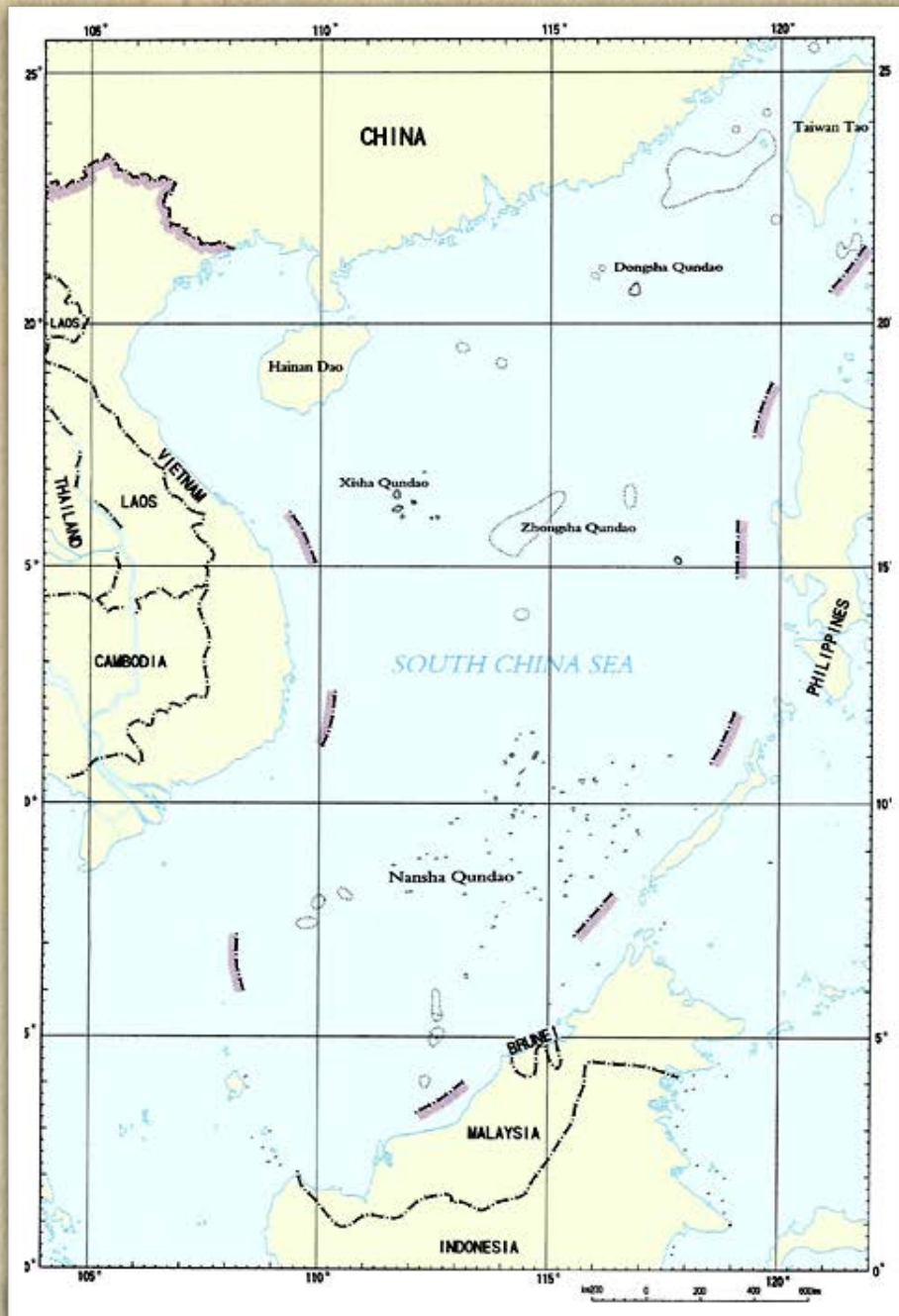
Root Cause of South China Sea Dispute

The root cause of the South China Sea dispute is China's 9-dashed lines claim, which gobbles up large areas of the EEZs of the Philippines, Vietnam, Malaysia, Brunei and Indonesia.

China's "National Boundaries" Gobble Up EEZs of Coastal States



China's 9-dashed lines claim encloses 85.7% of the entire South China Sea. This is equivalent to 3 million square kilometers out of the 3.5 million square kilometers surface area of the South China Sea.



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.

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

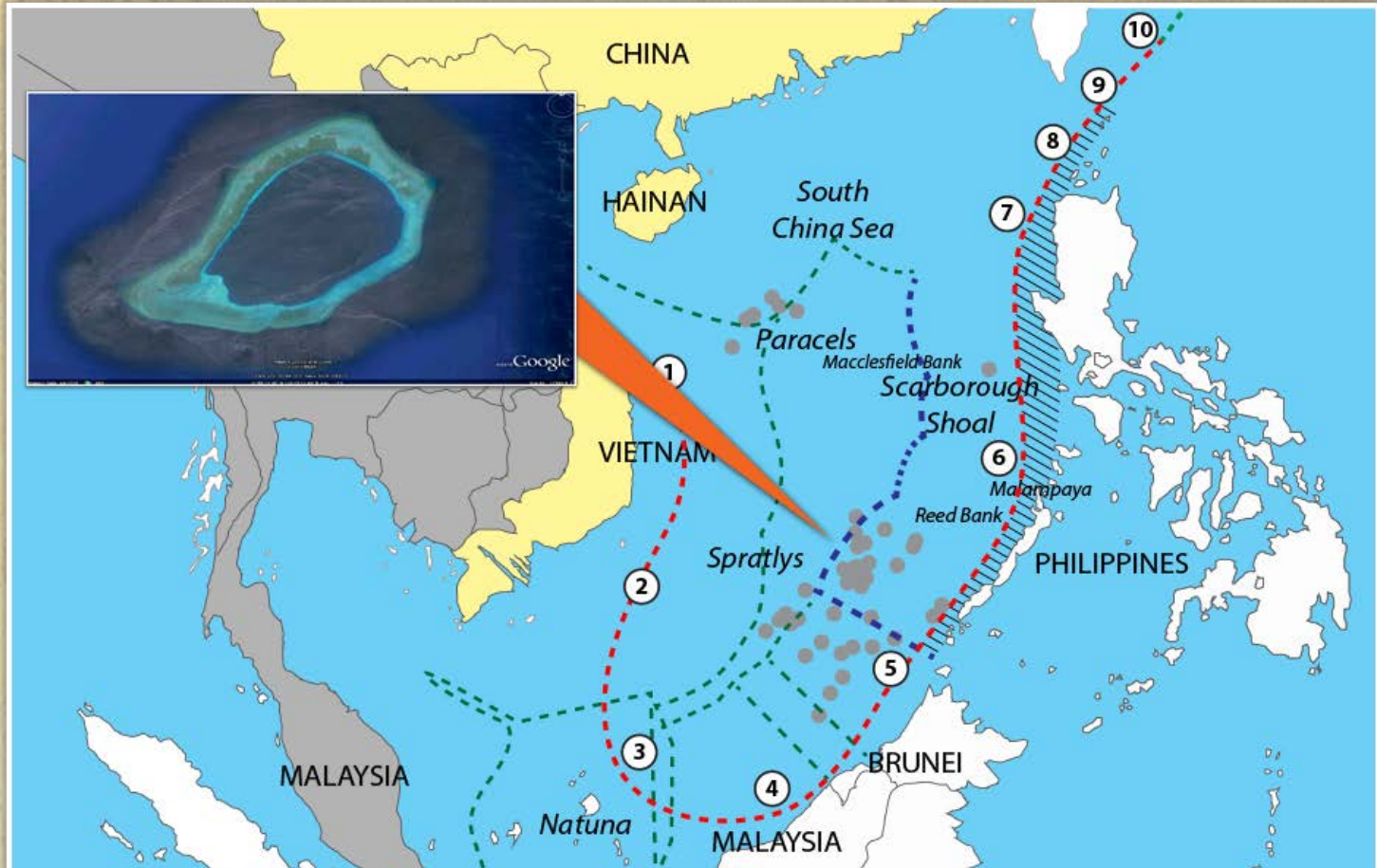
China's 2009 *Note Verbale* Explaining The 9-dashed Lines Map

“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*

The terms “adjacent” and “relevant” waters are not UNCLOS terms. China refuses to explain the meaning of “adjacent” or “relevant” waters. Do these terms mean that China claims all the waters and resources enclosed by the 9-dashed lines?

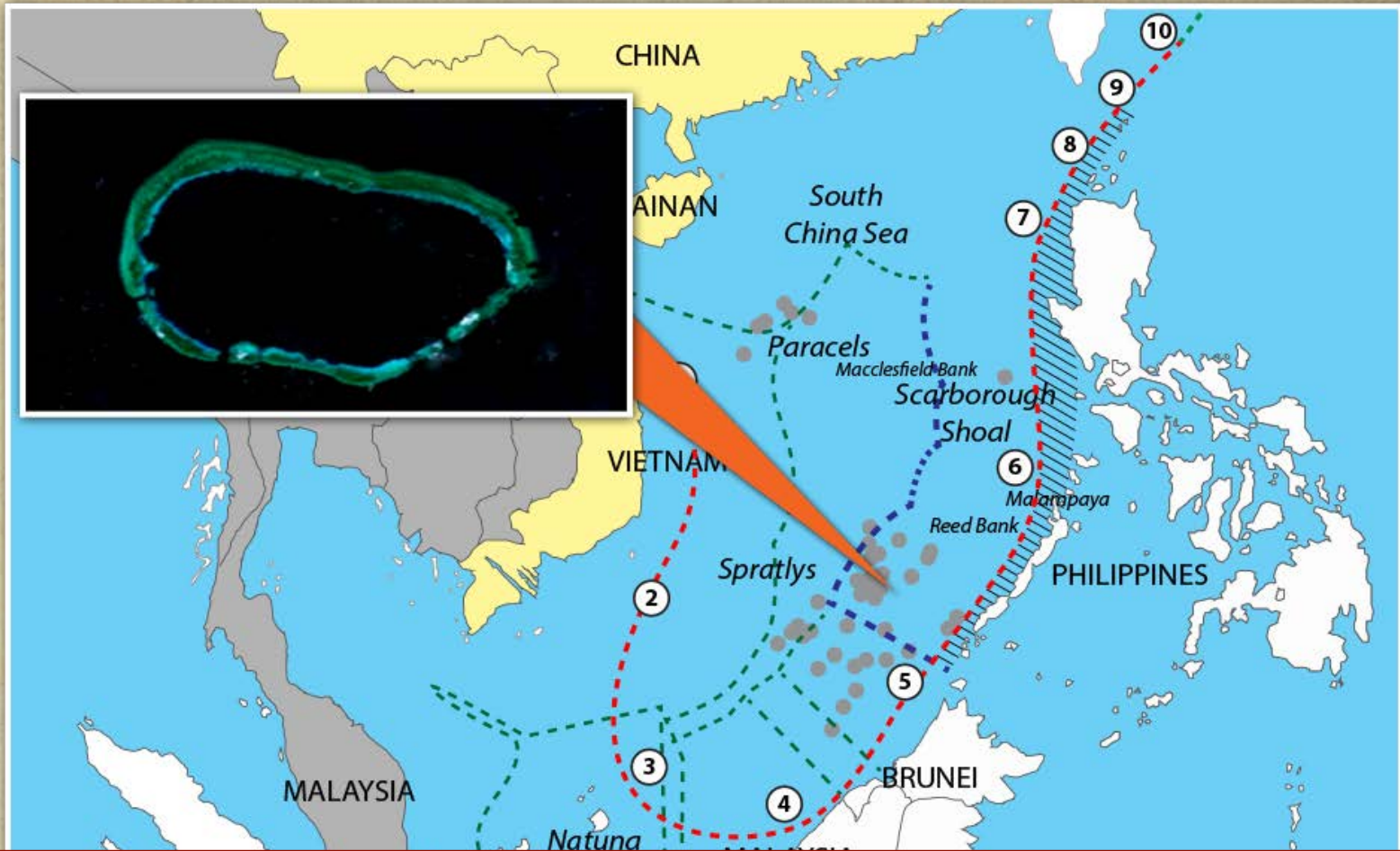
We shall examine China's acts, regulations, declarations, and practices in the South China Sea to understand how China interprets and applies the terms “adjacent” and “relevant” waters.

China Seized Subi Reef in 1988



In 1988, China seized Subi Reef from the Philippines by erecting a radar structure and military facilities on the reef. Subi Reef is a Low-Tide Elevation (LTE) outside of the Philippines' EEZ but within its extended continental shelf. Subi Reef is just outside the 12 NM territorial sea of the Philippine-occupied Pagasa (Thitu) Island. Under UNCLOS, only the Philippines can erect structures or create an artificial island on Subi Reef. The waters of Subi Reef are part of the high seas of the South China Sea.

China Seized Mischief (Panganiban) Reef in 1995



In 1995, China seized Mischief Reef from the Philippines. Mischief Reef, located 125 NM from Palawan, is a Low-Tide Elevation (LTE) within the Philippines' EEZ. As an LTE beyond the territorial sea of any state, it is part of the submerged continental shelf of the adjacent coastal state, which is the Philippines. Under UNCLOS, only the Philippines can exploit its natural resources or erect structures on it.

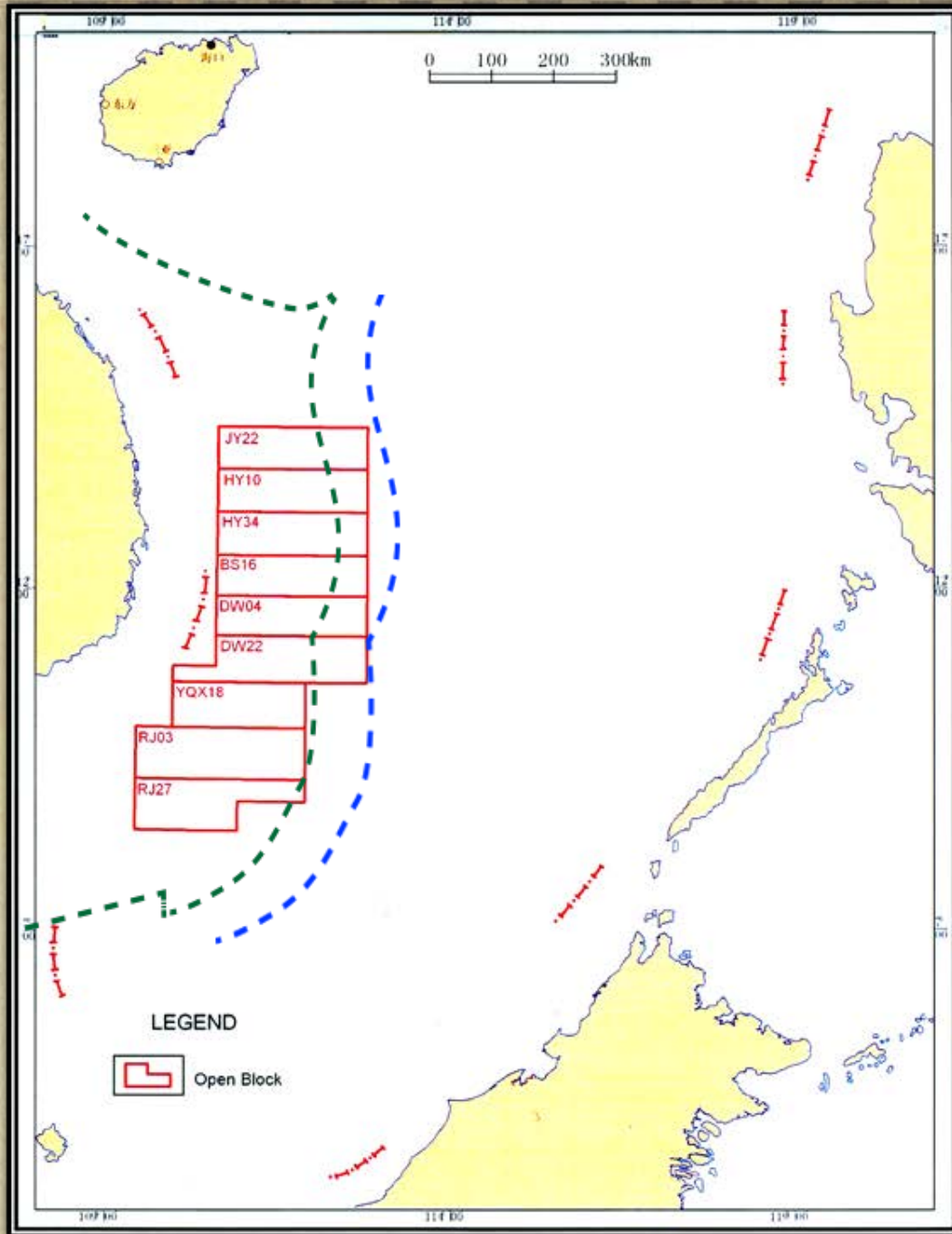
China Claimed Reed Bank in 2011



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.**"



Since 2011, Chinese coast guard vessels have prevented Philippine-commissioned ships from undertaking oil and gas surveys 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.



China Auctioned off Areas within Vietnam's EEZ & ECS

In 2012, China invited an international bidding for the exploration of areas within the EEZ of Vietnam.

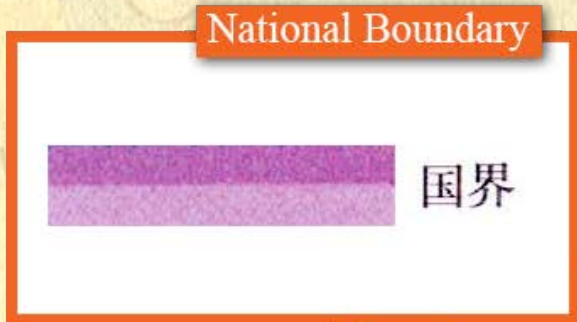
China published this map, naming it “Location for part of open blocks in waters under jurisdiction of the People’s Republic of China available for foreign cooperation in the year of 2012.”

China's 2013 Map with 10-dashed Lines As "National Boundaries"

In 2013, China released a new map of China, adding a 10th dash on the eastern side of Taiwan. In its 2013 map, China claims the 10-dashed lines are its "national boundaries," without again explaining the legal basis or giving the fixed coordinates for the dashes. The 2013 China map was published by SinoMaps Press, under the jurisdiction of China's State Bureau of Surveying and Mapping. This means the 2013 Map is an official Chinese government map.

In its *Note Verbale* of June 7, 2013 to China, the Philippines stated it "strongly objects to the indication that the nine-dash lines are China's national boundaries in the West Philippine Sea/South China Sea."

China Claims 10-dashed Lines in 2013 Map Are China's "National Boundaries"



James Shoal - China's "Southernmost" Border



Since at least 2012, China has been periodically laying sovereignty steel markers on the seabed of James Shoal. China claims James Shoal as its southernmost border. James Shoal is **fully submerged at 22 meters below the water surface**, and is situated **more than 950 NM from Hainan Island and more than 400 NM from Itu Aba**. Under UNCLOS, the maximum maritime zone that a state can claim is 350 NM from baselines along its coast (or 100 NM from the 2500m isobath, a limitation which does not apply to China based on the geology of the South China Sea).

Under international law, a state's border must either be a land territory, a river, or a territorial sea - which are all subject to its full sovereignty. A state cannot appropriate as its sovereign territory a fully submerged area beyond its territorial sea. James Shoal is 80 KM from Malaysia's coast in Bintulu, Sarawak, within Malaysia's EEZ.

China Holds Sovereignty Oath Swearing Ceremony at James Shoal in January 2014



A Chinese taskforce composed of three warships from the South China Sea Fleet of the Navy of the Chinese People's Liberation Army (PLAN) held a sovereignty oath-swearing ceremony on January 26, 2014 in the waters of James (Zengmu) Shoal off the coast of Sarawak, Borneo in the South China Sea. The Singapore *Straits Times* quoted China's Foreign Ministry spokesman Qin Gang that Malaysia did not lodge any protest against China. Photo: Xinhua

China Seized Scarborough (Panatag) Shoal in 2012



In 2012, China seized Scarborough Shoal from the Philippines. In November 2012, following a three-month standoff between Philippine and Chinese vessels around the shoal, China informed the Philippines that Chinese coast guard vessels would remain permanently on the shoal. Scarborough Shoal, including its lagoon, has an area of 58 square miles or 150 square KMs (15,000 hectares). Located 124 NM from Zambales, Scarborough Shoal is rich in fisheries and is one of the traditional fishing grounds of Filipino fishermen. The shoal is a high tide elevation, with the biggest rock protruding 1.2 meter above water at high tide. China claims that Scarborough Shoal generates a 200 NM EEZ.

China Seized Luconia Shoals in 2013



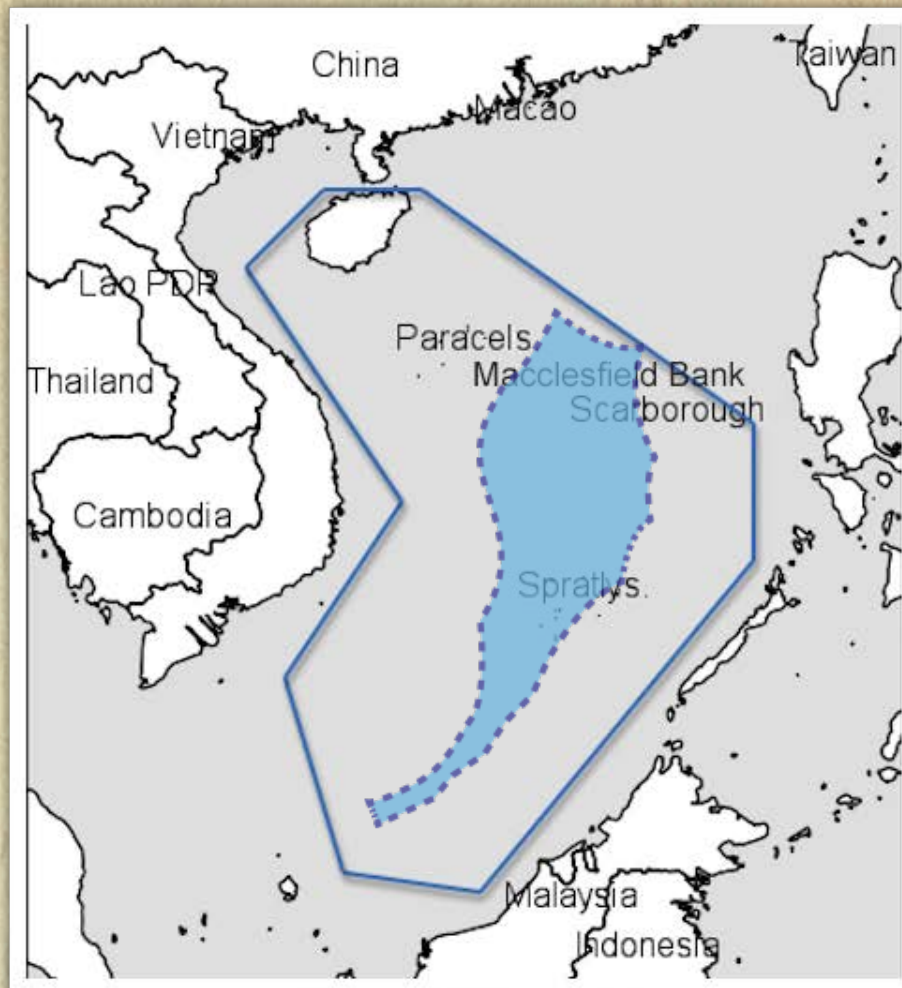
In 2013, China seized Luconia Shoals from Malaysia. Malaysian National Security Minister Shahidan Kassim posted on *Facebook* last June 4, 2015 the location map of Luconia Shoals, 54 NM from Sarawak, with this statement: **"This small island is not a disputed territory but the foreign ship which came here has intruded into our national waters."**

That foreign ship is the Chinese Coast Guard vessel *Haijing 1123*, which anchored on Luconia Shoals since April 2013 and has remained there up to now.

Luconia Shoals, covering 100 square miles, are one of the largest reef formations in the South China Sea. Luconia Shoals, with a sandbar above water at high tide, are rich in fish, oil and gas. China claims that all geologic features in the Spratlys generate a 200 NM EEZ.



Waters Hainan Claims under its Administration



The enclosed waters under Hainan's administration comprise 2 million square kilometers out of the 3.5 square kilometers total surface area of the South China Sea. China claims a total of 3 million square kilometers or 85.7% of the waters of the South China Sea. Macclesfield Bank, which is part of the high seas, is within the enclosed waters.

Hainan's 2014 Fishery Regulations

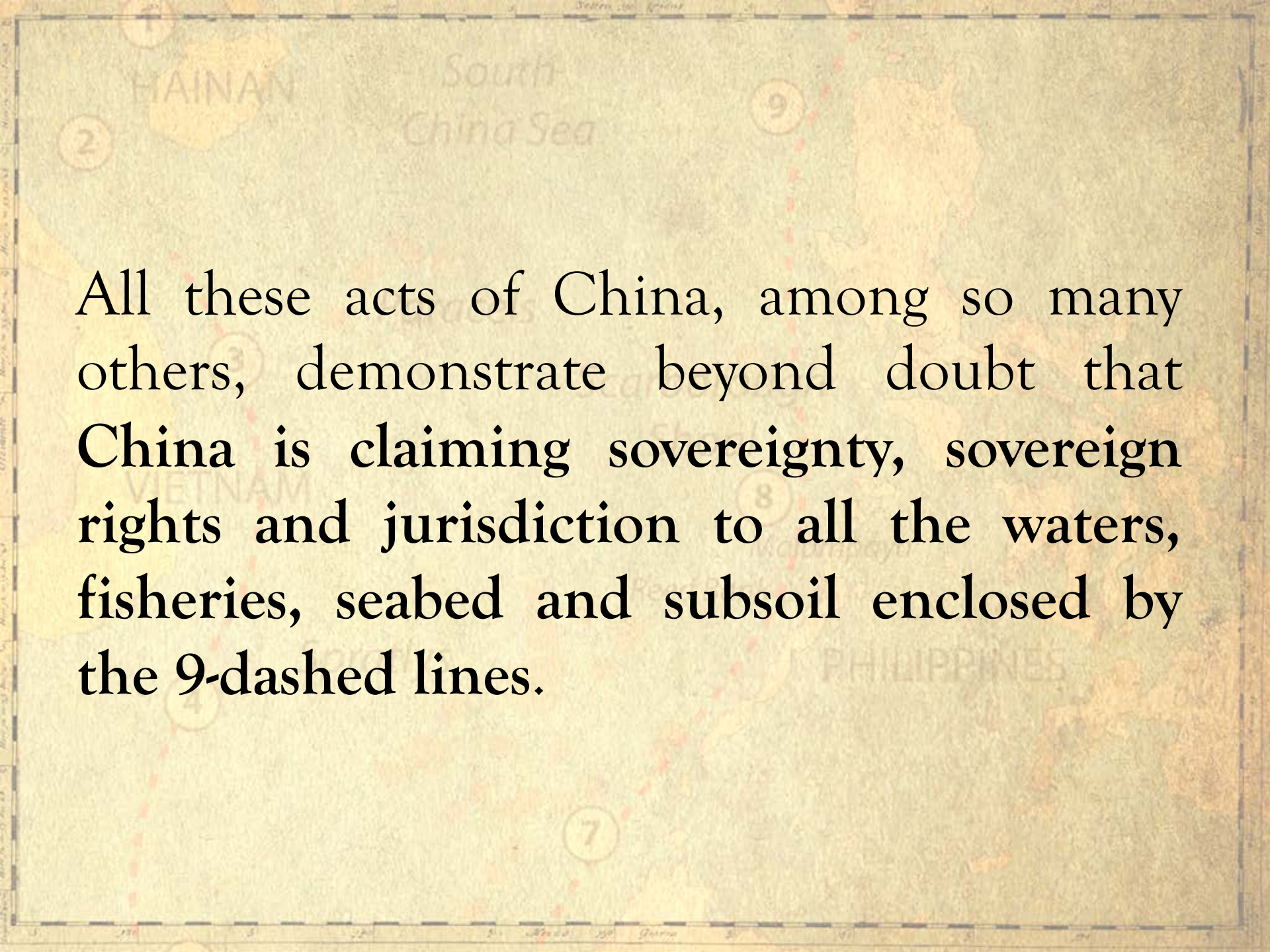
Article 35 of the Hainan Province's 2014 Fishery Regulations, which took effect on January 1, 2014, mandate that foreign fishing vessels "entering the waters under the jurisdiction of this province (Hainan) to engage in fishery operations or fishery resource surveys shall secure approval from relevant departments of the State Council."

The Fishery Regulations apply to Macclesfield Bank, which is part of the high seas. Moreover, since 1999 Hainan has unilaterally imposed an annual fishing ban, from mid-May to end July, on waters in and around the Paracels, **Macclesfield Bank** and Scarborough Shoal. Violators of the ban face fines, confiscation of fishing equipment, and even criminal charges.

China Installed HD 981 Oil Rig in 2014



In 2014, China placed its \$1 billion HD 981 oil rig within the EEZ of Vietnam. In protest, Vietnamese workers in export processing zones in Vietnam rioted, burning several Chinese factories. A Vietnamese fishing boat sank near the oil rig after being rammed by a Chinese vessel.

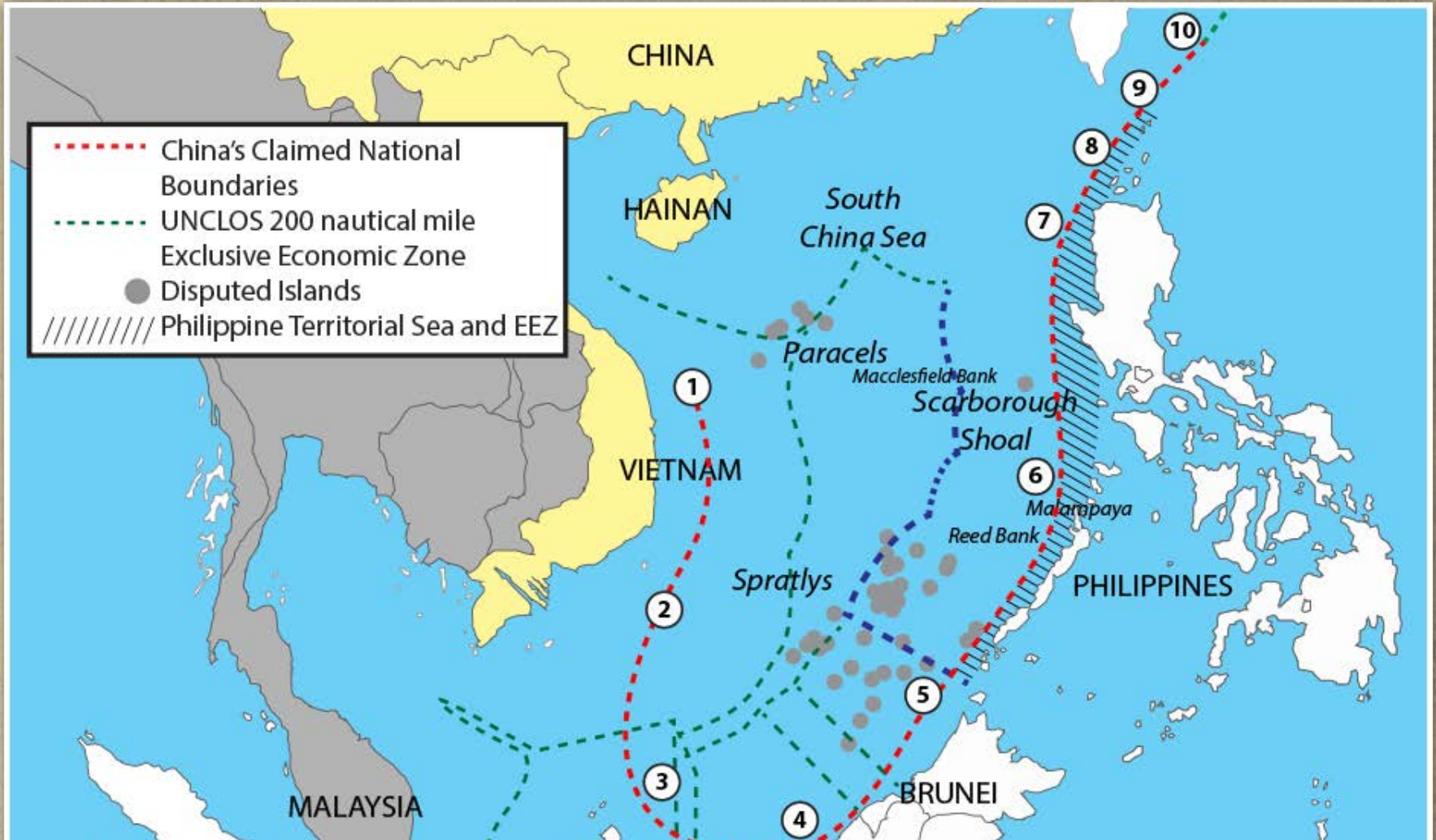
A faded map of the South China Sea region is visible in the background. It shows the island of Hainan at the top left, the coast of Vietnam along the left side, and the Philippines to the east. A prominent feature is a series of nine red dashed lines forming a U-shape around the central and southern parts of the South China Sea. The text is overlaid on this map.

All these acts of China, among so many others, demonstrate beyond doubt that China is claiming sovereignty, sovereign rights and jurisdiction to all the waters, fisheries, seabed and subsoil enclosed by the 9-dashed lines.

What is the Effect of China's "National Boundaries" under the 9-dashed Lines?

The Philippines loses about 80% of its EEZ facing the West Philippine Sea, including the entire Reed Bank and part of the Malampaya gas field. Malaysia loses also about 80% of its EEZ in Sabah and Sarawak facing the South China Sea, as well as most of its active gas and oil fields in the same area. Vietnam loses about 50% of its total EEZ. Brunei loses about 90% of its total EEZ. Indonesia loses about 30% of its EEZ facing the South China Sea in Natuna Islands, whose surrounding waters comprise the largest gas field in Southeast Asia.

Philippines' Sliver of Territorial Sea and EEZ



The Philippines will be left with a sliver of water as its territorial sea and EEZ. The Philippines and China will have a very long common sea border from Balabac Island in southern Palawan to Yamin Island in northern Batanes. The dashed lines are just 64 KMs from Balabac Island, 70 KMs from the coast of Burgos, Ilocos Norte, and 44 KMs from Yamin Island.

China's Continuing Mass Production of Warships

China is mass-producing destroyers, frigates, corvettes and other warships at a faster rate than any other country in world history during peacetime.

According to the U.S. Office of Naval Intelligence, “During 2014 alone, more than 60 naval ships and crafts were laid down, launched, or commissioned, with a similar number expected through the end of 2015.”

China's Type 056 Corvette



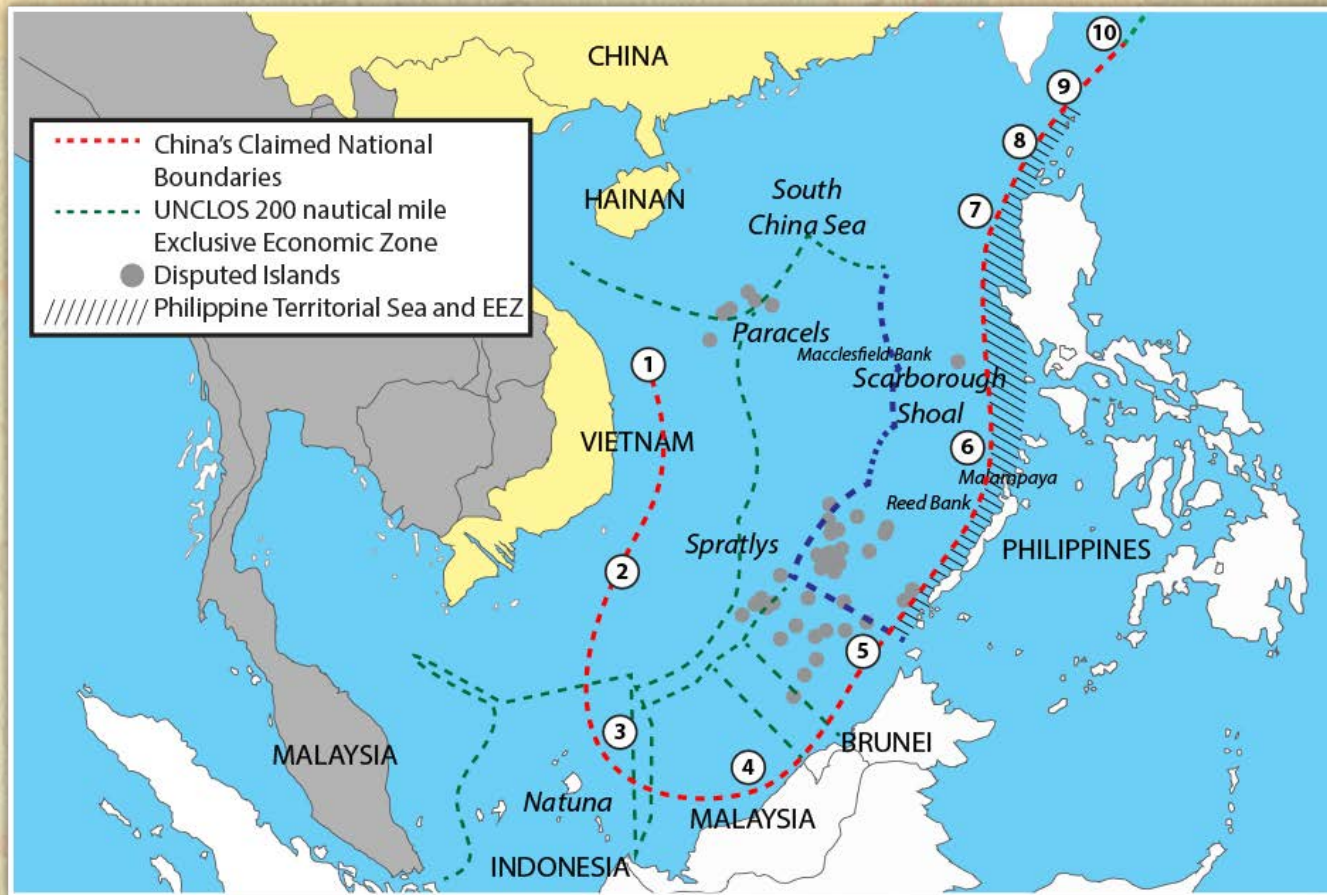
China launched its 25th Type 056 Corvette last March 19, 2015, out of a total planned 40 Type 056 Corvette fleet. The PLA Navy believes that it can control the South China Sea with 20 of these Corvettes.

China's Second Navy - The Coast Guard



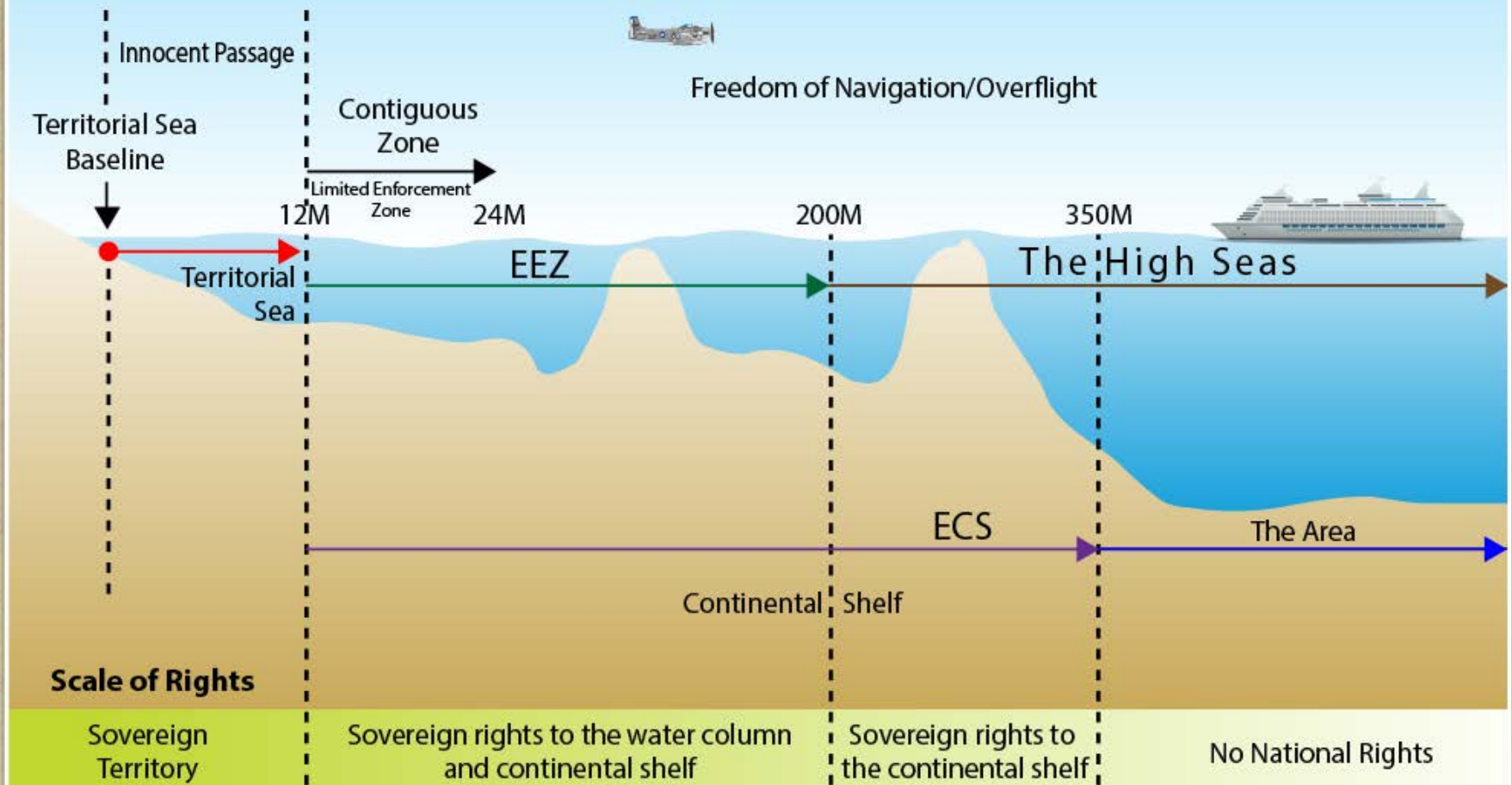
China will deploy this year a 10,000-ton coast guard vessel, the world's largest blue water coast guard vessel. A second 10,000-ton sister ship is under construction. China has more coast guard vessels than Japan, Vietnam, Indonesia, Malaysia and the Philippines combined. China's Coast Guard is the largest blue water coast guard fleet in the world.

2015 China Military Strategy



Under its 2015 “China Military Strategy,” China will shift from “offshore waters defense” to the combined “offshore waters defense” and “open seas protection.” The CMS states: “The traditional mentality that land outweighs the sea must be abandoned, and **great importance** has to be attached to managing the seas and oceans and protecting maritime rights and interests.”

Maritime Zones under UNCLOS



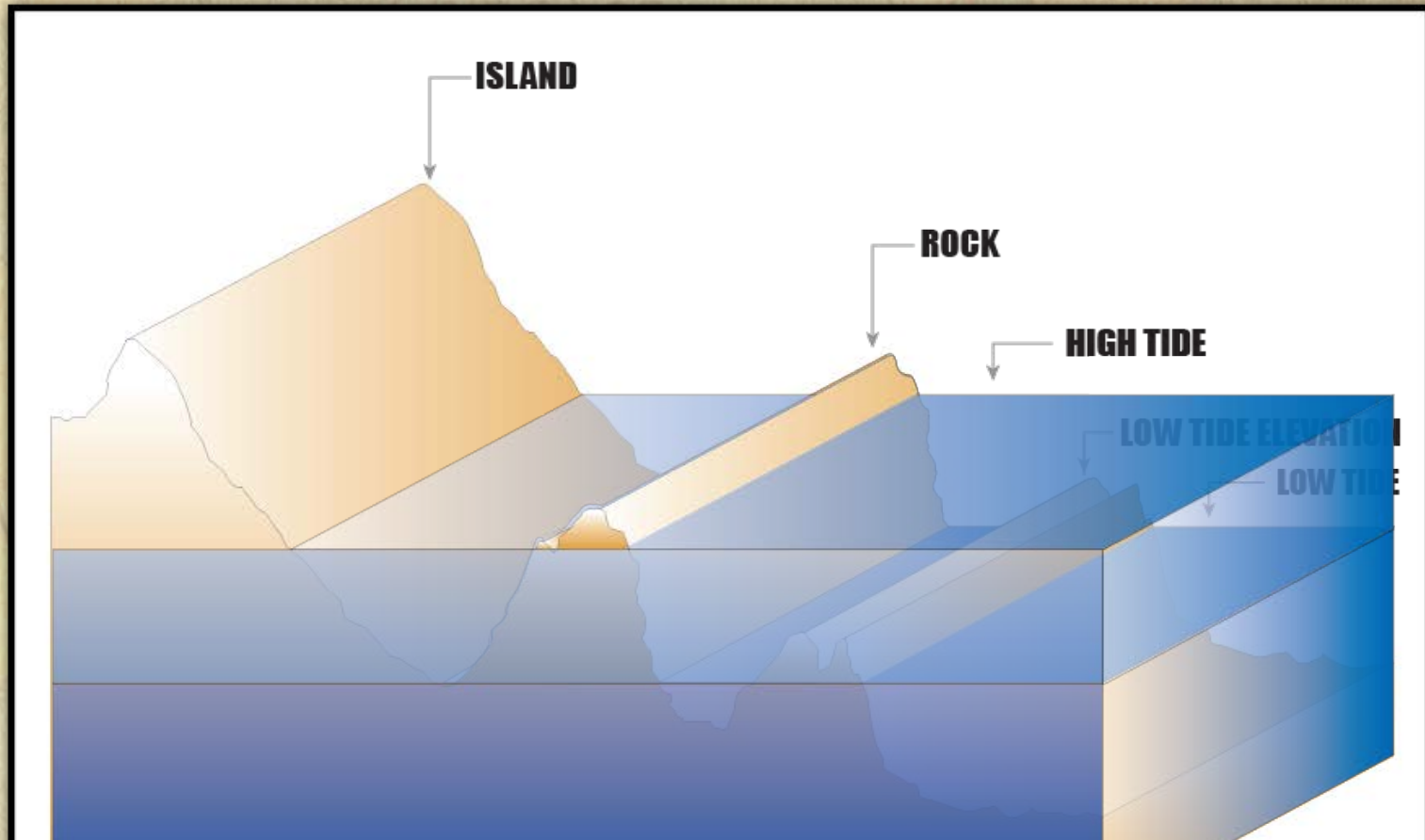
An island above water at high tide is entitled to a 12 NM territorial sea. If such island is capable of human habitation or economic life of its own, it is entitled to a 200 NM EEZ. If such island has a natural prolongation of its continental shelf within its EEZ, it is entitled to an ECS up to an additional 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 China 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 (LTE)

A Low-Tide Elevation (LTE) is a naturally formed area of land (rock, reef, atoll or sandbar) surrounded by water, above water at low tide but submerged at high tide.

An LTE is part of the submerged continental shelf. An LTE is not land or territory, and has no territorial sea or territorial airspace (Art. 13, UNCLOS). An LTE beyond the territorial sea is not subject to appropriation by any State (*Nicaragua v. Colombia*, ICJ, 2012).

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 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).

Is the Philippine arbitration case against China a *territorial* or a *maritime* dispute, or both?

The Philippine arbitration case against China is not a territorial dispute but solely a maritime dispute involving the interpretation or application of UNCLOS:

Whether the waters enclosed by China's 9-dashed lines can encroach on the 200-NM EEZ of the Philippines in the West Philippine Sea.

This is the fundamental issue raised by the Philippines before the UNCLOS tribunal.

The Philippines is **not** asking the tribunal to rule what state owns certain islands, or rocks above water at high tide.

The Philippines is asking the tribunal to rule what is the extent of the **maritime entitlements** (0, 12, or 200 NM) of certain islands or rocks, regardless of what state owns them; and whether certain geologic features are LTEs or not. All these are **maritime** disputes.

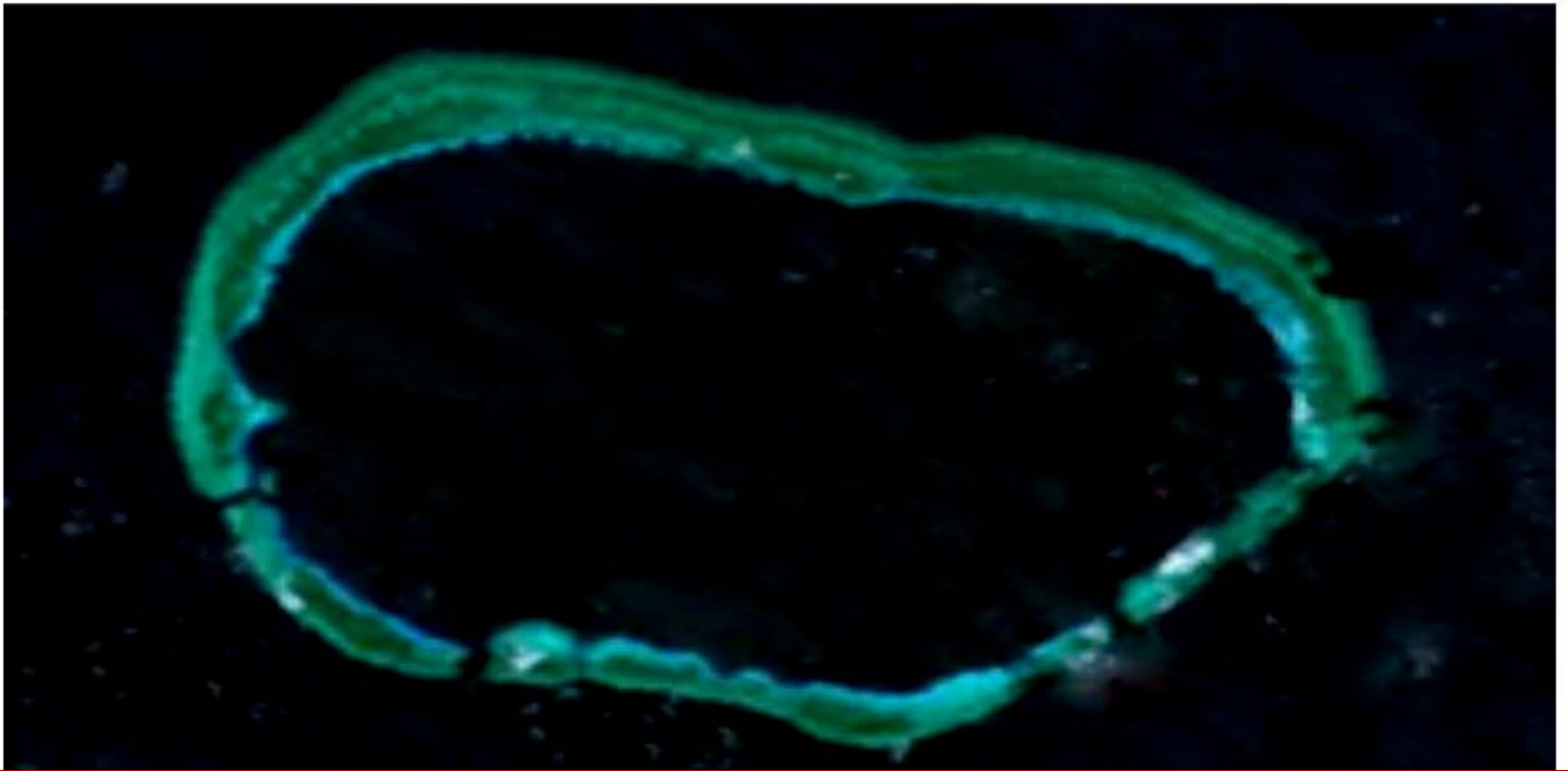
There is no need to settle first who has sovereignty over these geologic features to determine their maritime entitlements.

Scarborough Shoal - Incapable of Human Habitation



One does not need to know what state has sovereignty over these rocks to conclude with certainty that these rocks are not capable of sustaining human habitation or economic life of their own. Not a single blade of grass grows on these rocks, and not a single drop of fresh water can be squeezed from these rocks. The biggest rock, 1.2 meters above water at high tide, can generate only a 12 NM territorial sea, regardless of what state has sovereignty over it. Whether China or the Philippines has sovereignty over Scarborough Shoal will not change the shoal's maritime entitlement.

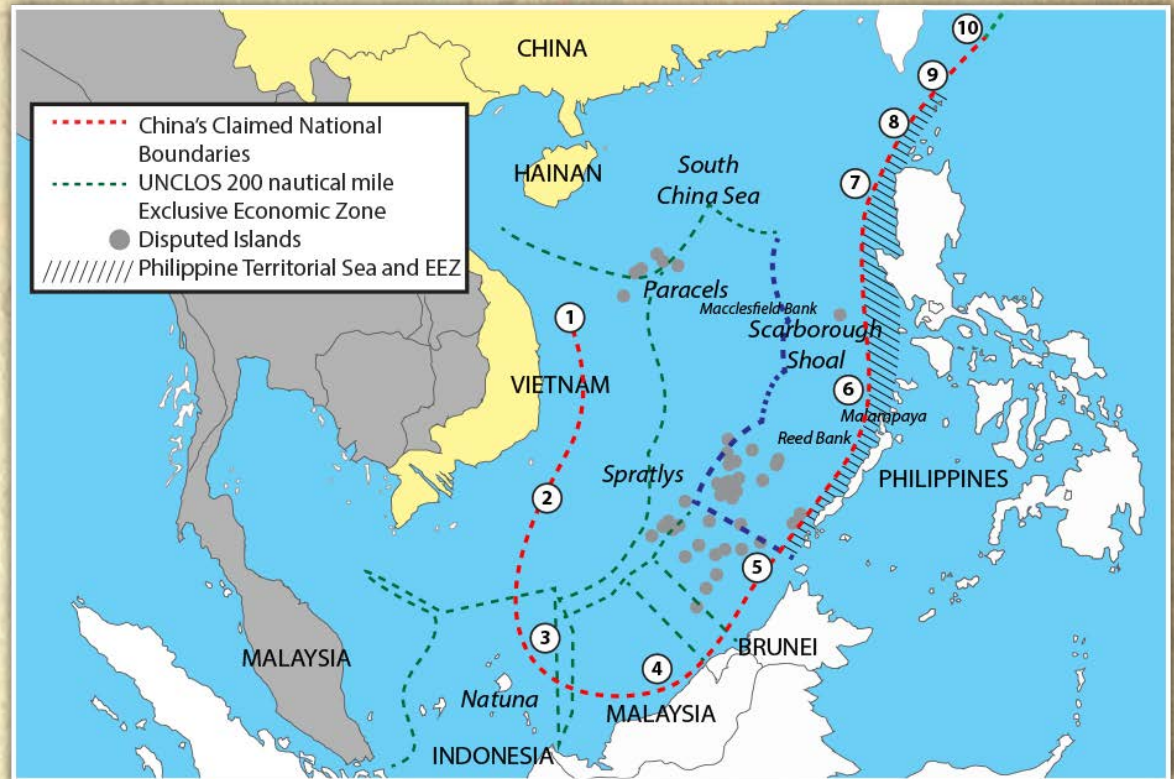
Mischief Reef - Not Subject to Sovereignty



As an LTE, Mischief Reef is part of the seabed or continental shelf. Being located beyond the territorial sea, it is incapable of appropriation or ownership by any state. In short, it is not subject to the sovereignty of any state. Thus, there is no need, in fact it is futile, to know what state has sovereignty over this LTE to determine its maritime entitlement. An LTE beyond the territorial sea does not generate any maritime entitlement.

Absence of Land Dominates No Sea

China claims that since the basic principle is the “land dominates the sea,” sovereignty over the land must first be determined before maritime entitlements can be allocated. However, the 9-dashed lines are not based on or measured from land so this principle cannot not



apply. What applies is the reverse of the principle - **the absence of land dominates no sea**. Since the 9-dashed lines are not measured from land, and even completely ignore land as source of the lines, they cannot claim any sea. The dispute whether the 9-dashed lines, or historic rights, can be the basis to claim maritime zones is a dispute involving the interpretation of UNCLOS, not a dispute involving boundary delimitation between states.

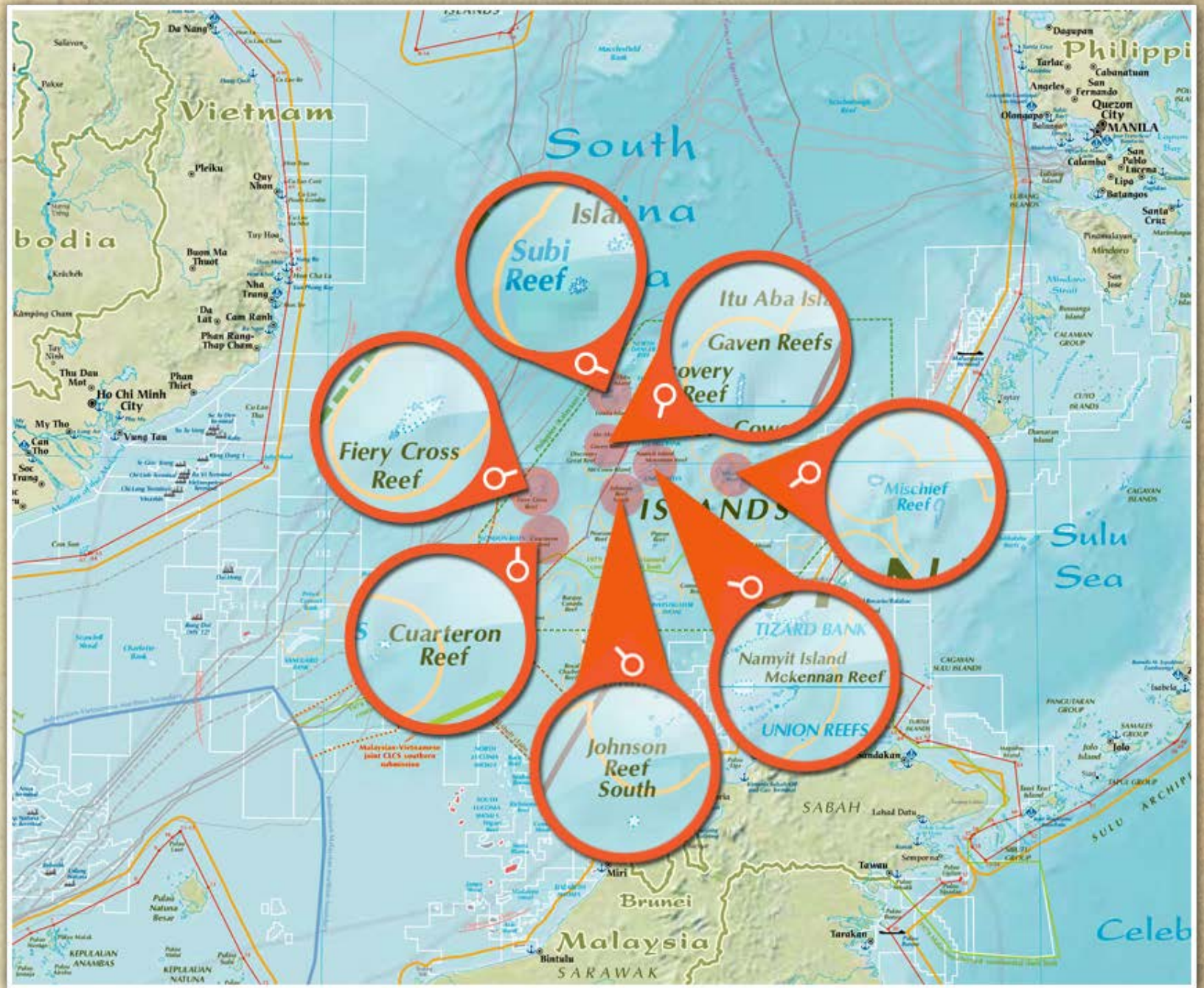
China's Reclamations in the Spratlys

China has on-going reclamations on seven (7) reefs, Fiery Cross Reef, Cuarteron Reef, Gaven Reef, Johnson South Reef, McKennan Reef, Mischief Reef and Subi Reef. These are all the reefs China occupies. However, China has actually also dredged ten (10) other reefs for filling materials for the seven reefs China is reclaiming.*

China has explained: “The primary purpose of these activities is to improve the working and living conditions of personnel stationed there, to better fulfill our international obligations concerning maritime search and rescue, disaster prevention, and mitigation, and to enable China to provide better services to vessels from China, her neighbors, and other countries sailing in the South China Sea.”**

* J. Ashley Roach, an ASIL member, Captain, JAGC, USN (retired), Office of the Legal Adviser, U.S. Department of State (retired), and Global Associate and Senior Visiting Scholar at the Centre for International Law (CIL) (2014–2015), National University of Singapore; see <http://english.vietnamnet.vn/fms/marine-sovereignty/137126/china-s-shifting-sands-in-the-spratlys.html>

** Statement of Wang Min, China's deputy permanent representative to the United Nations.



Vietnam

Cambodia

South China Sea

Philippines

Subi Reef

Itu Aba Island

Gaven Reefs

Fiery Cross Reef

Mischief Reef

Cuarteron Reef

TIZARD BANK

Nanyit Island
Mckennan Reef

Johnson Reef South

UNION REEFS

Sulu Sea

Malaysia

Celebes

Ho Chi Minh City

MANILA

ISLANDS

SABAH

SULU ARCHIPELAGO

Fiery Cross (Kagitingan) Reef Pre-Reclamation 2012



Fiery Cross Reef is about 1 meter above water at high tide. It is just outside the Philippines' EEZ but within its continental shelf. In 1987, UNESCO agreed that China would build a weather station on Fiery Cross Reef as part of the global oceanic survey. That weather station would later turn out to be a Chinese military air and naval base.

China's Airbase with Seaport on Fiery Cross Reef

Source: China State Shipbuilding Corporation



One of the reclamation projects of China is an airbase with a seaport, expected to be completed in 2015. The airbase, with a 3,000 meter runway, is on a 270-hectare reclamation on Fiery Cross Reef, larger than 213-hectare Woody Island which hosts China's airbase in the Paracels. This reclamation will also be larger than the combined area of the 20 largest islands in the Spratlys, and more than twice the area of Diego Garcia Island, the U.S. airbase in the Indian Ocean.

June 2015 Chinese Photo of Completed Reclamation on Fiery Cross Reef - An Airbase With 3 KM Runway



Spratlys

4

As Admiral Harry Harris, commander of the U.S. Pacific Command stated, “A 10,000-foot (3 KM) runway is large enough to take a B-52, almost large enough for the Space Shuttle, and 3,000 feet longer than what you need to take off a 747.” Admiral Harris also stated that China is building on Fiery Cross Reef hangars for tactical fighters.

China's Strategic Bomber H-6K with 7,000 KM Range



The H-6K can carry under its wing pylons six conventional or nuclear armed CJ-10A cruise missiles with 2,200 KM range. Although the H-6 was first domestically produced in 1968, this upgraded version, using composite materials, modern avionics and a powerful radar, first entered service only in October 2009.

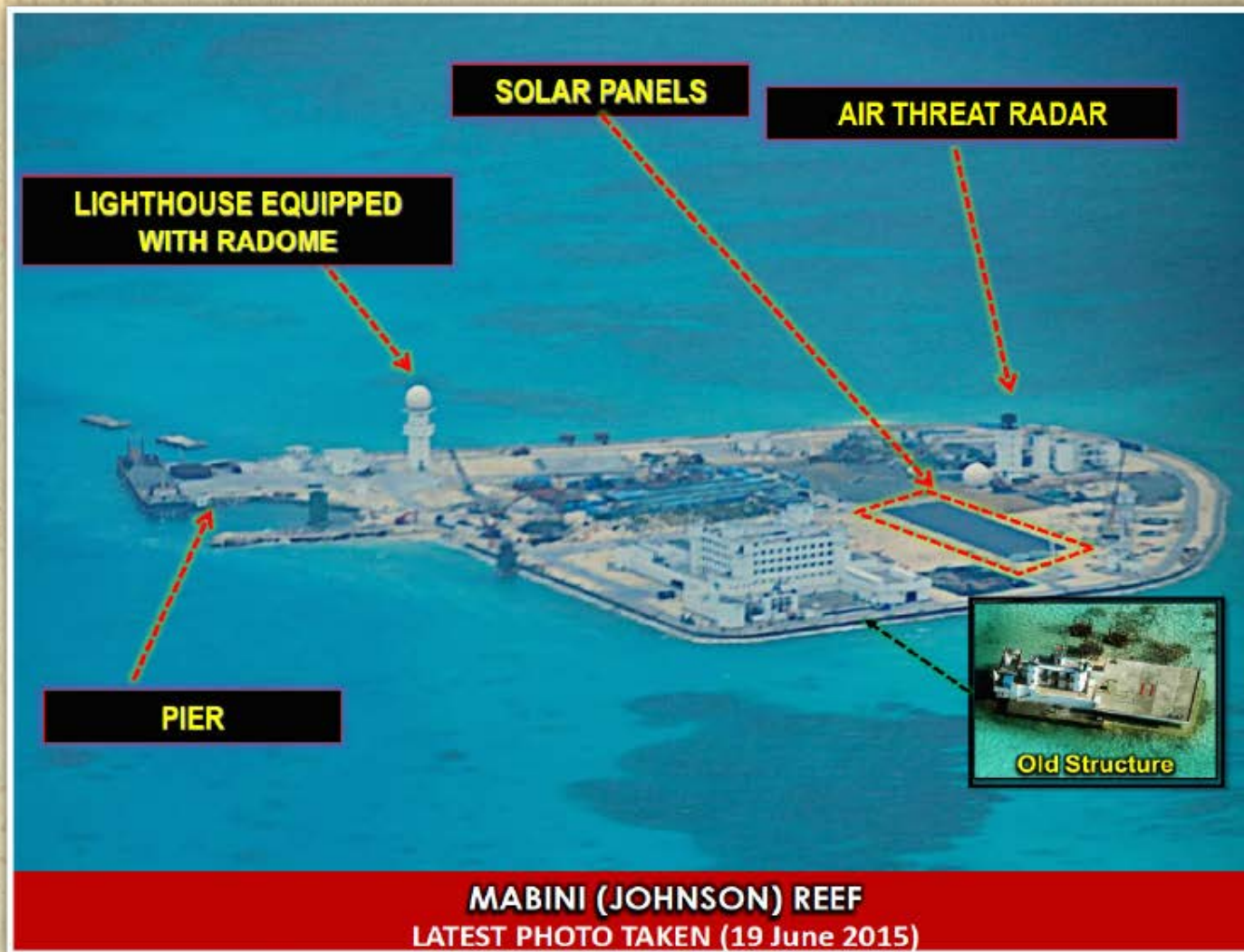
Johnson South (Mabini) Reef Pre-Reclamation



Image Credit: Johnson South Reef image via Google Earth

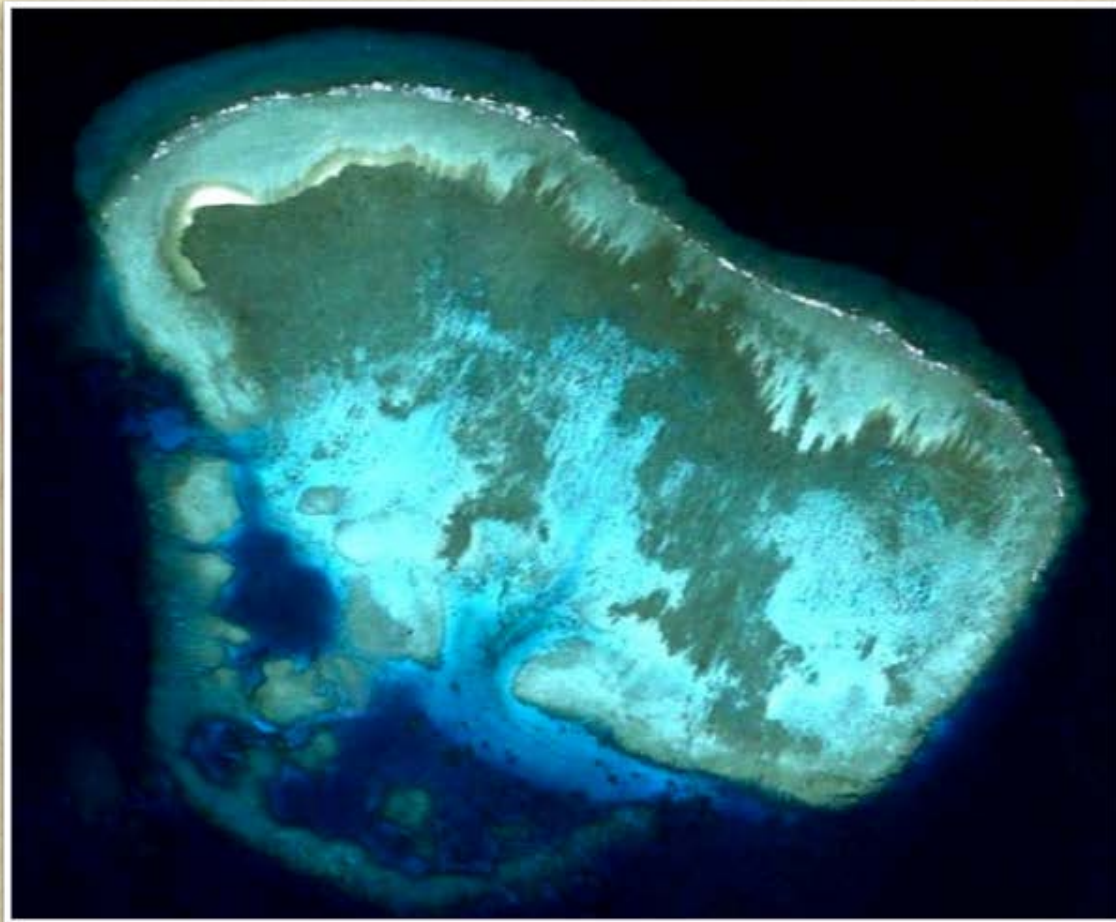
Johnson South Reef is an LTE within the Philippines' EEZ. [Note: Chinese, Philippine and other countries' nautical charts designate this as an LTE. Only the U.S. nautical chart designates this as a high tide feature.]

Johnson South (Mabini) Reef June 19, 2015



In 1988, Chinese naval forces forcibly dislodged the Vietnamese soldiers guarding this LTE. Over 77 Vietnamese soldiers died in the battle. Johnson South Reef is within the Philippines' EEZ.

McKennan (Chigua) Reef Pre-Reclamation



McKennan Reef is an LTE within the Philippines' EEZ. It is within 12 NM of Sin Cowe Island.

McKenna (Chigua) Reef May 5, 2015



Gaven (Burgos) Reef at Start of Reclamation 2014

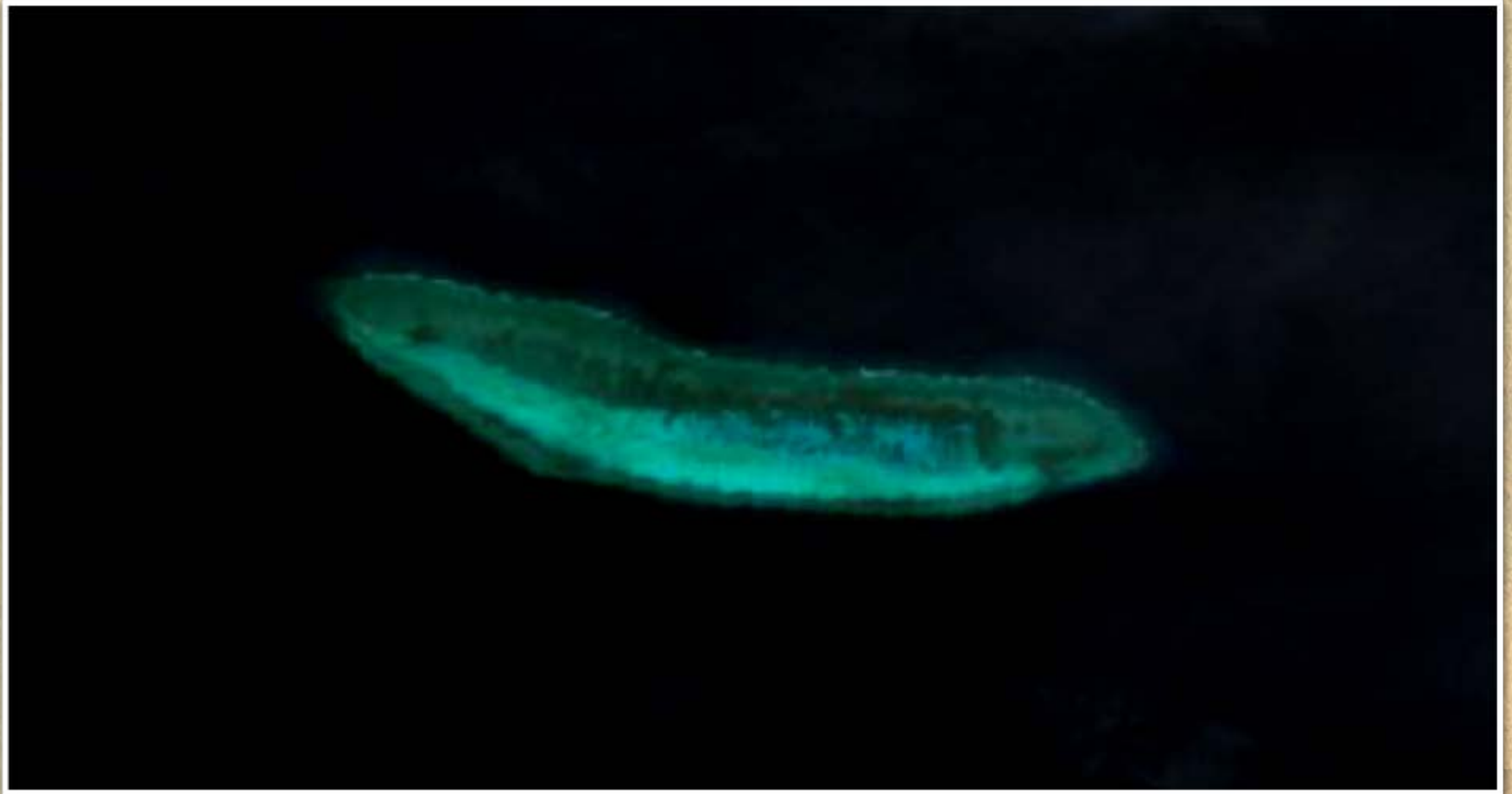


Gaven Reef is outside of the Philippines' EEZ but within its continental shelf. Gaven Reef is an LTE within 12 NM of Namyt Island.

Gaven Reef May 9, 2015



Cuarteron (Calderon) Reef Pre-Reclamation



Cuarteron Reef is outside the Philippines' EEZ but within its continental shelf. It is above water at high tide.

Cuarteron Reef May 7, 2015



Cuarteron Reef is a high tide elevation just outside the Philippines' EEZ.

Subi (Zamora) Reef Pre-Reclamation



Subi Reef is an LTE outside of the Philippines' EEZ but within its continental shelf. Subi Reef is just outside the 12-NM territorial sea of the 37-hectare Pagasa (Thitu) Island, the largest island occupied by the Philippines in the Spratlys.

Subi (Zamora) Reef October 1, 2015



Under UNCLOS, Subi Reef, an LTE in the high seas, cannot be used as a military facility. Article 88 of UNCLOS mandates that “**the high seas shall be reserved for peaceful purposes.**” The total area of Subi Reef, including the lagoon and rim of the reef, is 16 sq. km. In its original state, the Subi Reef’s lagoon was 22 meters deep. Subi Reef’s location, size and depth make it ideal for a naval base with an airfield.

Subi (Zamora) Reef October 1, 2015

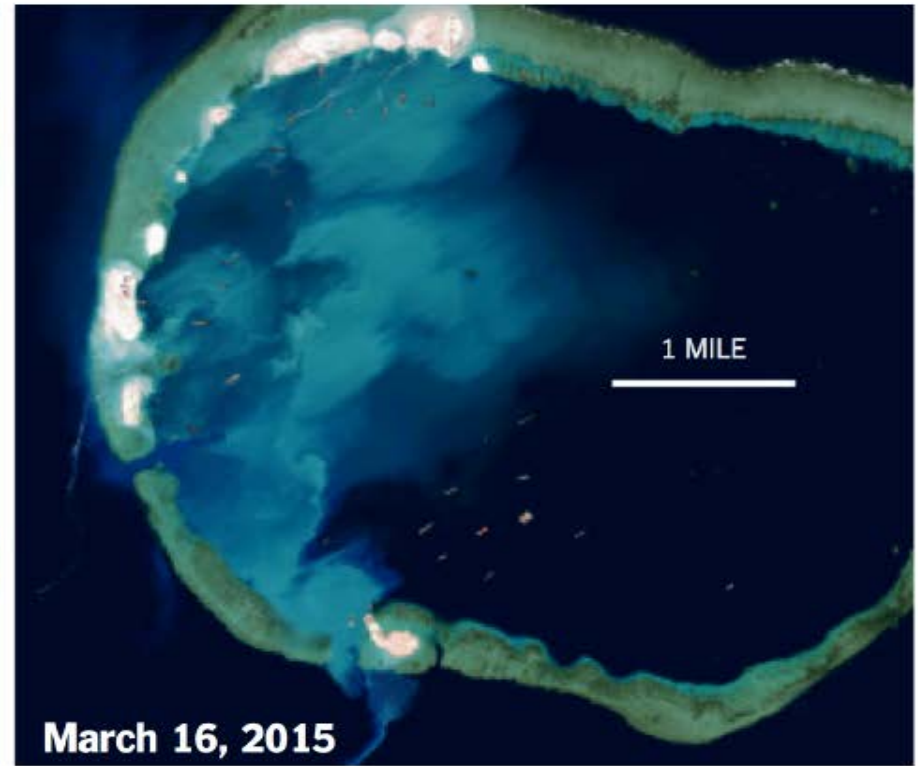
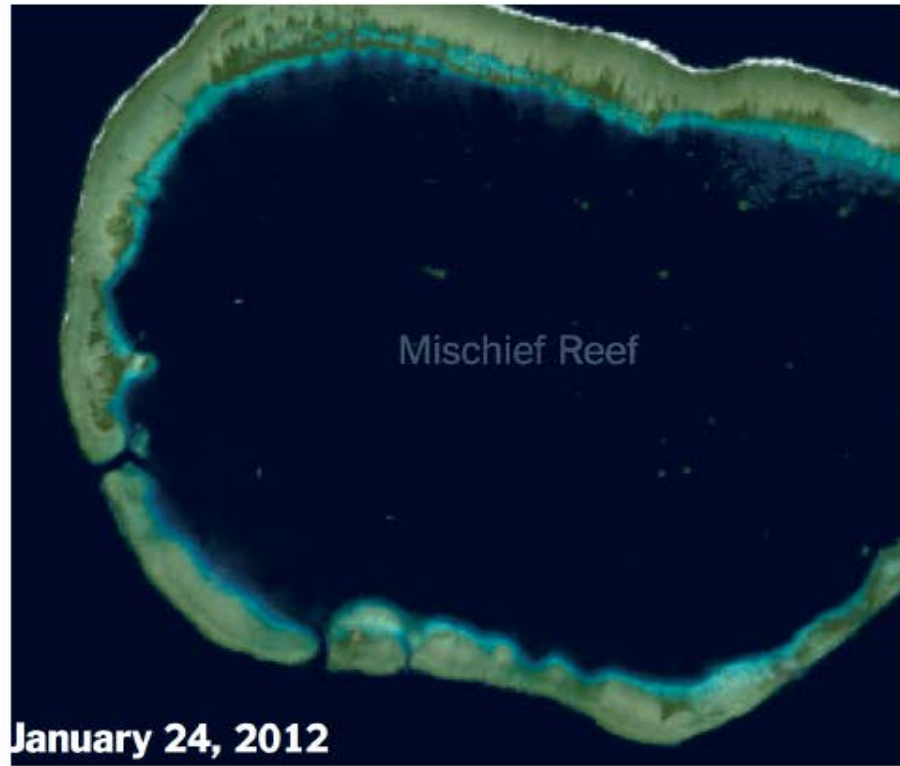


Ongoing subgrading of a 3km
future airstrip & taxiway

ZAMORA (SUBI) REEF
(PHOTO TAKEN: 01 OCT 2015)

Mischief (Panganiban) Reef

January 2012 and March 2015



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 September 17, 2015, China has reclaimed 560 hectares out of a planned 800 hectares. China can garrison thousands of troops on Mischief Reef.

Mischief (Panganiban) Reef October 12, 2015



PANGANIBAN/MISCHIEF REEF (as of 12 Oct 2015)

Mischief (Panganiban) Reef October 3, 2015



PANGANIBAN/MISCHIEF REEF (as of 03 Oct 2015)

Mischief Reef and Palawan, 125 NM Distance



Mischief Reef is an LTE that is 125 NM from Palawan, well within the 200 NM EEZ of the Philippines. As an LTE, Mischief Reef is part of the submerged continental shelf of the Philippines. With an air and naval base in Mischief Reef between Palawan and all the Philippine-occupied islands in the Spratlys, China can block Philippine ships re-supplying Philippine-occupied islands in the Spratlys.

Reclamations Violate the Declaration of Conduct

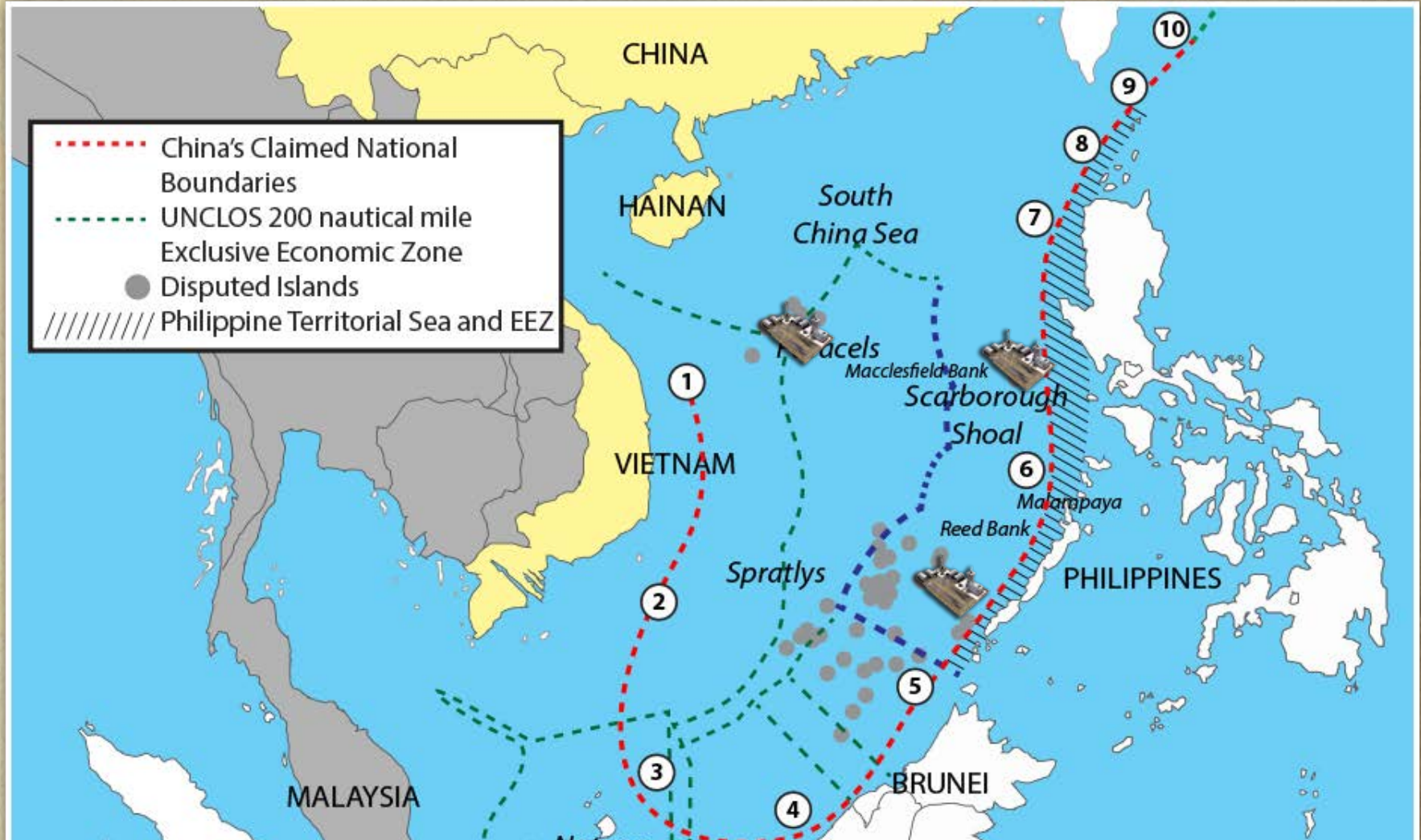
China's reclamations violate the 2002 Asean-China Declaration of Conduct, which states that the parties undertake to exercise self-restraint, like "refraining from action of inhabiting on presently uninhabited islands, reefs, shoals, cays and other features."

China's New Airbase on Woody Island, the Paracels



Woody Island has an area of 213 hectares. It has a 2,700 meter runway that can handle all of China's 4th generation fighter aircraft as well as the H-6K strategic bomber.

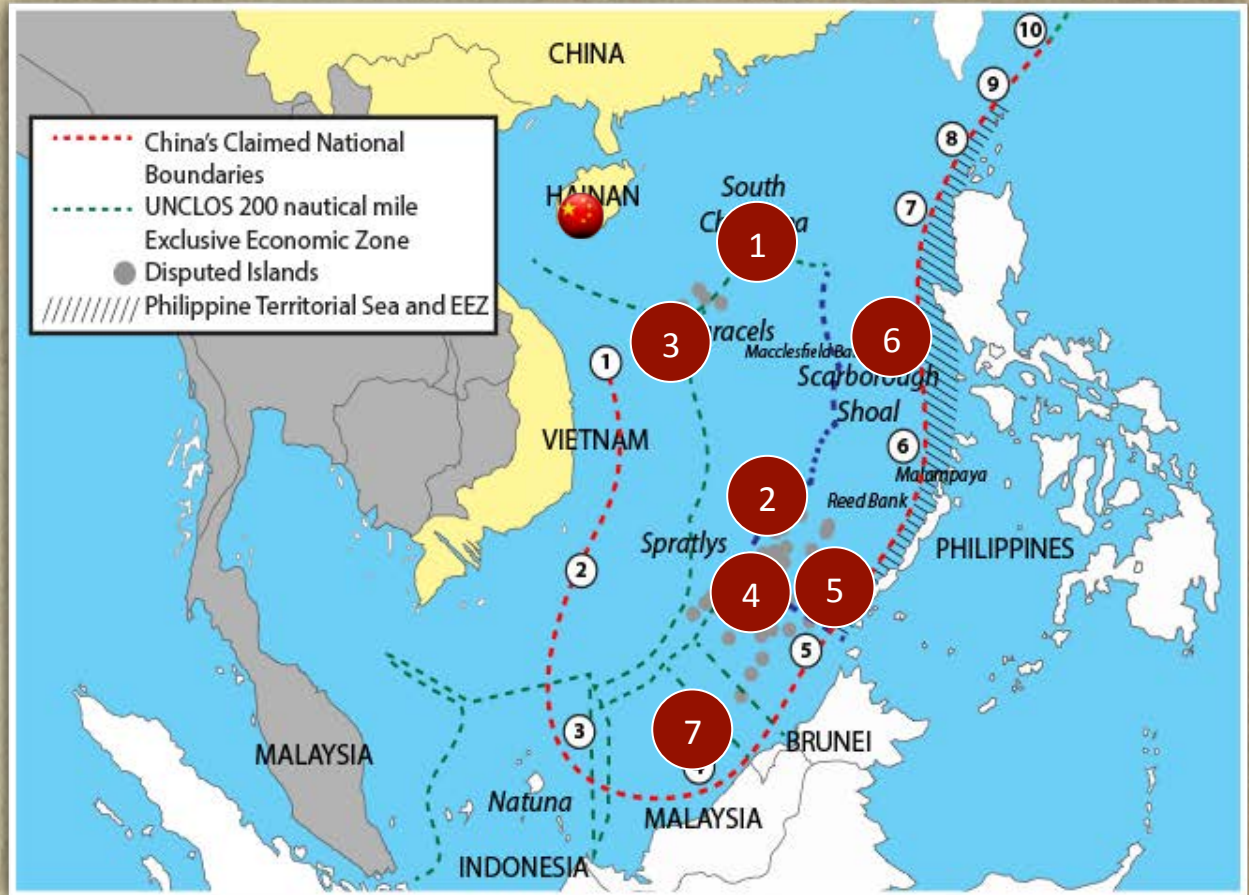
An ADIZ in the South China Sea?



China conducted in June 2015 its first air-sea military drill in the Bashi Channel between Taiwan and the Philippines. China announced that in the future it would conduct regular air-sea military drills in the Bashi Channel.

China's Creeping Expansion in the SCS from 1946 to 2015

Before World War II, China's southernmost defense perimeter was Hainan Island. Before the war, China did not have a single soldier or sailor stationed in any SCS island outside of Hainan Island. Right after the war, China took over the Amphitrite Group of the Paracels and Itu Aba in the Spratlys following the defeat of the Japanese, moving China's defense perimeter southward. In 1974, China forcibly dislodged the South Vietnamese from the Crescent Group of the Paracels. In 1988, China forcibly evicted Vietnam from Johnson South Reef, moving further south China's defense perimeter in the Spratlys.



In 1995, China seized Mischief Reef from the Philippines, just 125 NM from Palawan. In 2012, China seized Scarborough Shoal from the Philippines, just 124 NM from Luzon. In 2013, China seized Luconia Shoals from Malaysia, just 54 NM from Sarawak's coast. In 2014, China started reclaiming rocks and submerged areas in the Spratlys to build air and naval bases.

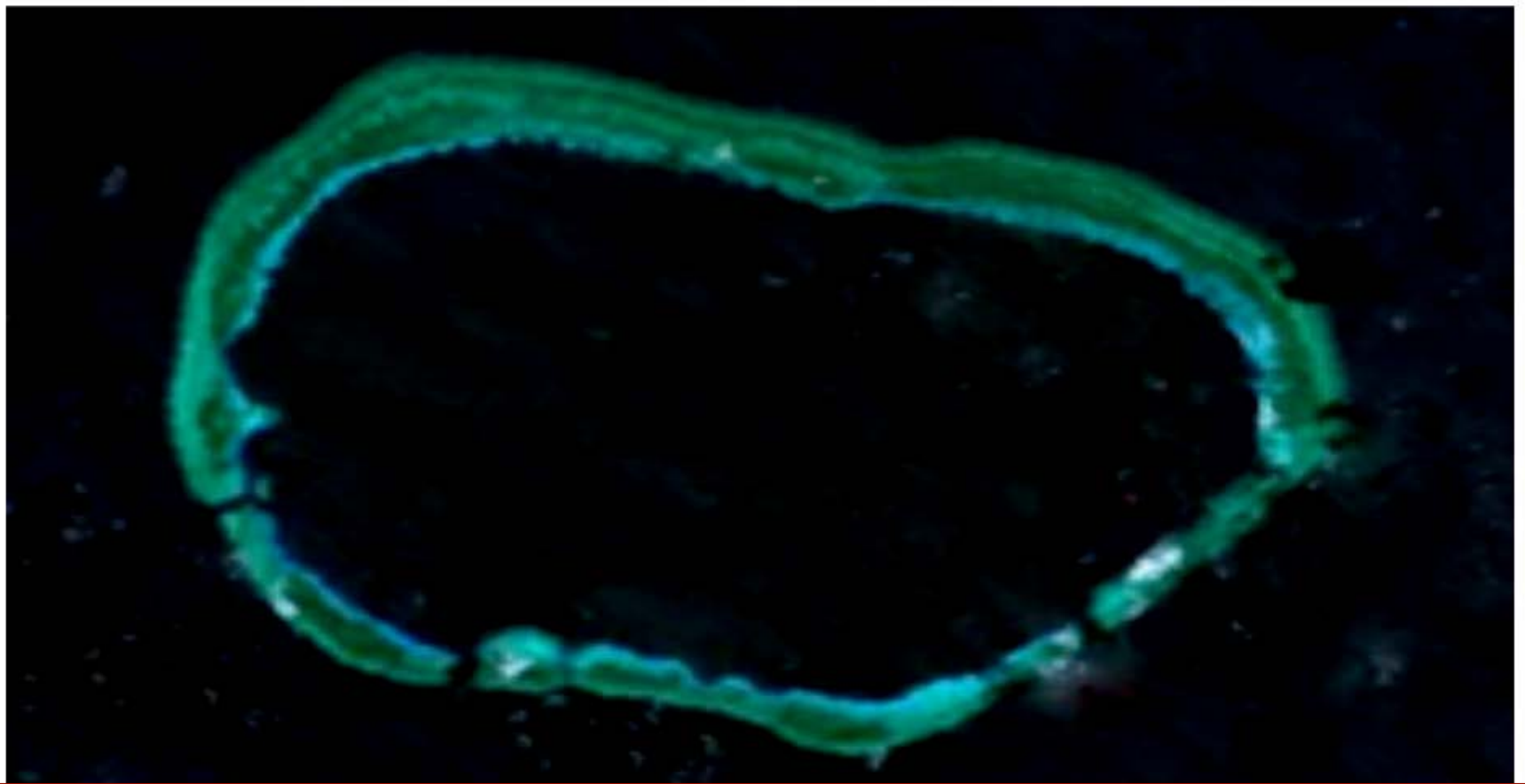
China's Grand Design in the South China Sea

China's grand design is to control the South China Sea for economic and military purposes. China wants all the fisheries, oil, gas and mineral resources within the 9-dashed lines. China has the largest fishing fleet in the world with 70,000 vessels. China's per capita fish consumption is the highest in the world at 35.1 kg/year, while the rest of Asia is only 21.6 kg/year. China is the largest net importer of petroleum in the world.

China also wants the South China Sea as a sanctuary for its nuclear-armed submarines - free from surveillance by U.S. submarine-hunting Poseidon airplanes or U.S. nuclear attack submarines.

The reclamations in the Spratlys are not a knee-jerk response to the Philippines' arbitration case but part of China's long-term grand design. As Zang Jie, head of the Asia Pacific Security program at the government-linked Chinese Academy of Social Sciences, stated: **"China has wanted to do this for a long time. Now it has the dredging boats, the money and the people. So it is doing it."**

Mischief Reef - A 30-Million Year Work of Nature



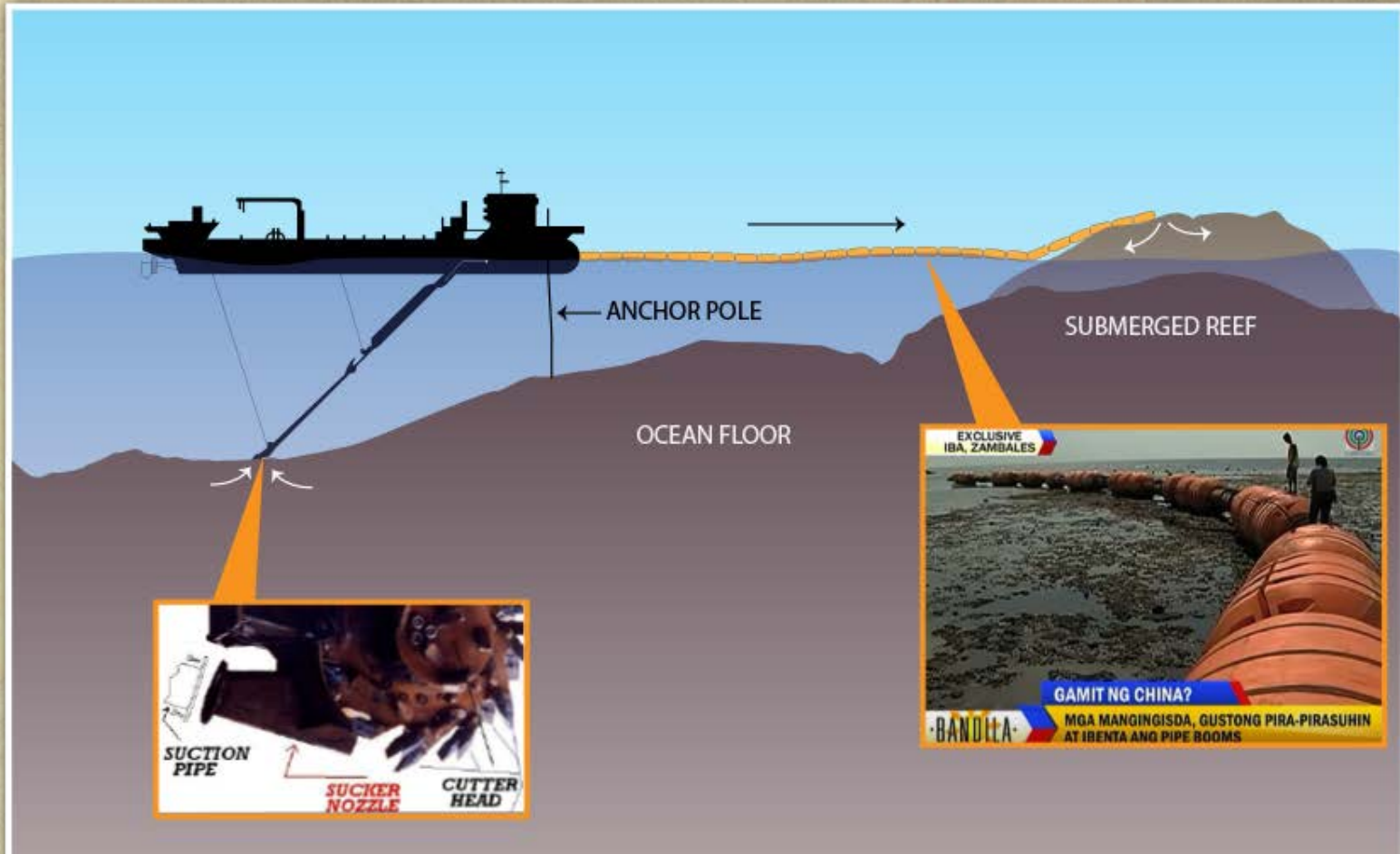
It takes 30 million years for the reefs of an atoll like Mischief Reef to form. Reefs are the breeding ground of fish. In the Spratlys, the eggs and larvae spawned by fish are carried by currents to the Sulu Sea, the coasts of Palawan, Luzon, Malaysia, Brunei, Indonesia, Vietnam and even China. All the reefs in the seven reclamation sites of China are now dead. Reefs need clear waters to grow. Reclamations make the waters in nearby reefs turbid, unhealthy for both reefs and fish. The coral reefs in the South China Sea comprise 34% of the world's total coral reefs, despite the South China Sea occupying only 2.5% of world's total ocean and sea surface.

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



The *Tiang Jing Hao* 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 Dredging Is Done 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.

Fiery Cross Reef January 28, 2015



According to Dr. John McManus, a renowned marine biologist who has studied the marine life in the Spratlys, China's reclamations are the "most rapid permanent loss of coral reef in human history. It's a terrible, terrible thing to do this."

China's Reclamations Violate International Law

1. Article 192 of UNCLOS mandates, **“States have the obligation to protect and preserve the marine environment.”** China's massive and wanton reclamation in the Spratlys is destroying the marine environment.
2. Article 123 of UNCLOS requires coastal states in semi-enclosed seas to **“cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention xxx with respect to the protection and preservation of the marine environment.”** China reclaimed seven geologic features in the Spratlys, destroying ten other reefs, without notifying, consulting or cooperating with other coastal states.
3. Under international law, parties to arbitration have the the obligation **“not to aggravate the dispute pending its settlement,”** and the obligation **“not to create an irremediable situation and in particular not to frustrate the purpose”** of the arbitration.

Who can create artificial islands, or erect structures on LTEs, in the EEZ or ECS?

Only the adjacent coastal state has the right to create artificial islands, or erect structures on LTEs, within its EEZ or ECS (Arts. 60 & 80, UNCLOS). Thus, such artificial islands or structures put up by other states within the EEZ or ECS of a coastal state are illegal under UNCLOS.

Thus, Article 60, Part VI of UNCLOS, on “Artificial islands, installations and structures in the exclusive economic zone,” states:

- “1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:
 - (a) artificial islands;
 - (b) installations and structures for the purposes provided in Article 56 (exploitation of non-living resources in the seabed, marine scientific research, protection and preservation of marine environment) and other economic purposes;
 - (c) xxx.”

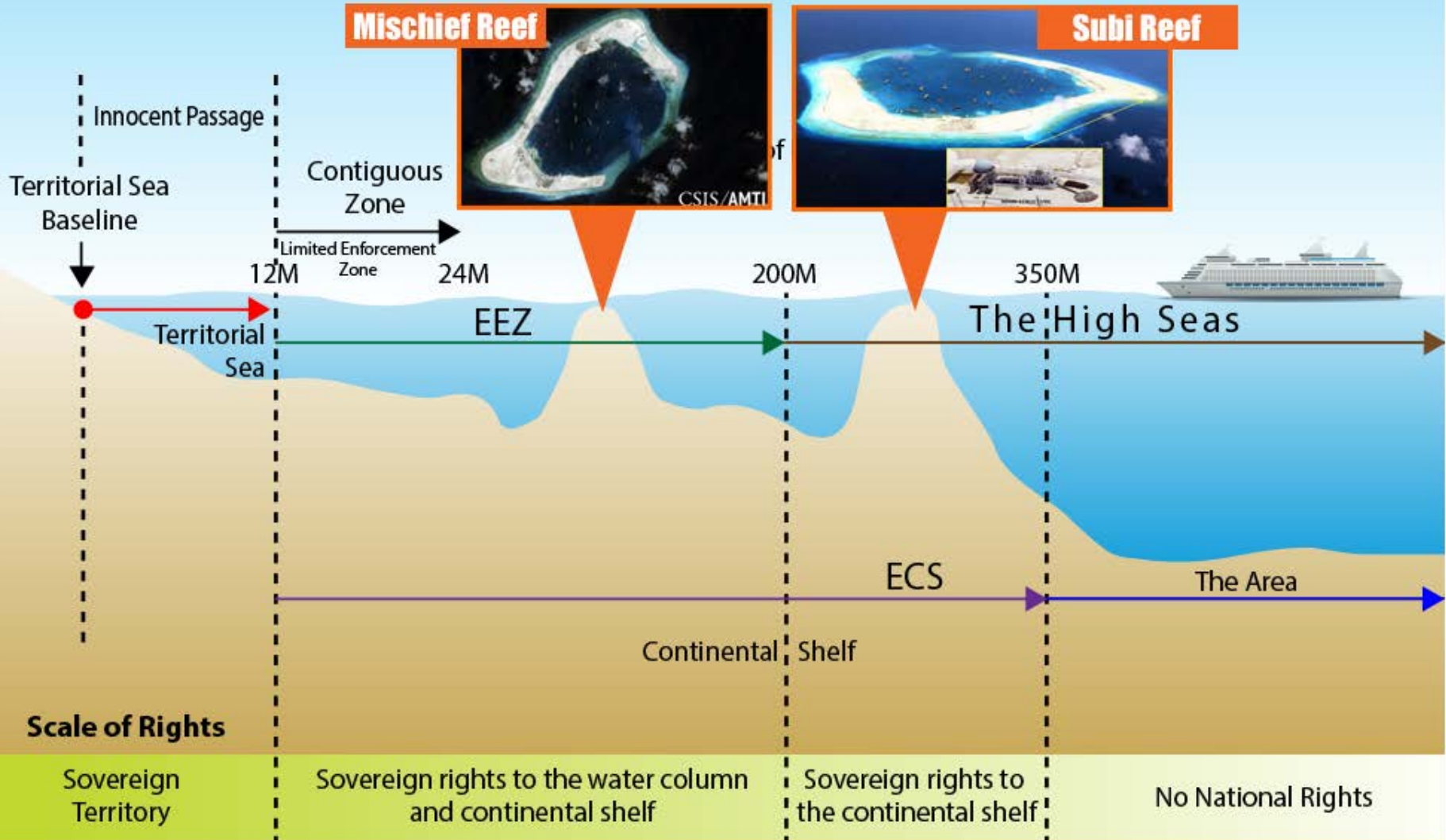
- “2. The coastal state shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health safety and immigration laws and regulations.”

Article 80, Part VI of UNCLOS, on “Artificial islands, installations and structures on the continental shelf,” states:

“Article 60 applies *mutatis mutandi* to artificial islands, installations and structures on the continental shelf.”

Clearly, China’s reclamations on LTEs in the EEZ and continental shelf of the Philippines violate UNCLOS and are thus illegal under international law.

Maritime Zones under UNCLOS



Legal Significance of USS Lassen's Sail-By of Subi Reef

“It is important to highlight that this U.S. freedom-of-navigation operation was not conducted under the innocent passage or transit passage regimes of UNCLOS; rather, it targeted excessive maritime claims such as the validity of territorial sea claims associated with recently reclaimed “islands” in the South China Sea that were formerly defined as “low-tide elevation” features, which do not have associated territorial waters per UNCLOS. In a broader sense, this operation challenged China’s “nine-dashed line” claim in the South China Sea, which clearly exceeds any definition of territorial seas as defined in customary international law.”*

*Sean Liedman, Military Fellow, U.S. Navy, interview by Jonathan Masters, Council of Foreign Relations, 28 October 2015.

Do LTEs and artificial islands acquire a maritime zone if by reclamation they are raised above water at high tide ?

No. UNCLOS defines an island as a “naturally formed” area of land, surrounded by water, and above water at high tide. (Art. 121, UNCLOS)

Article 60(8) of UNCLOS provides:

“8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone, or the continental shelf.”

Article 2(2) of UNCLOS states that “sovereignty extends to the air space over the territorial sea.” While a coastal state’s artificial structure installed within its own EEZ is entitled to 500-meter safety zone (Article 60(5), UNCLOS), an illegally installed structure by another state is not entitled to this legal 500-meter safety zone. A legal right cannot arise from an illegal act.

Reclamations Tamper with the Evidence

How can the Philippines establish before the Tribunal that Mischief Reef, Gaven Reef, Subi Reef and McKennan Reef are LTEs when China has already covered them with sand and these geologic features are now permanently above water at high tide?

The Philippines can show that China's own nautical charts prior to the reclamations designate these four geologic features as LTEs, just like Philippine nautical charts. The nautical charts of other countries, such as those of the United Kingdom, the United States, Japan, Russia and Vietnam are unanimous in their designations of these geologic features as LTEs .

Can a state claim “historic rights” in the EEZ/ECS of another state?

Historic rights or historic title cannot be invoked to claim natural resources in the EEZ of another state. UNCLOS granted to coastal states “sovereign rights” to exploit its EEZ. “Sovereign rights” means supreme rights, superior to the rights of other states. This extinguished all historic rights or claims by other states in the EEZ of a coastal state. The word “exclusive” in the term EEZ means the economic exploitation of the zone is **exclusive** to the adjacent coastal state.

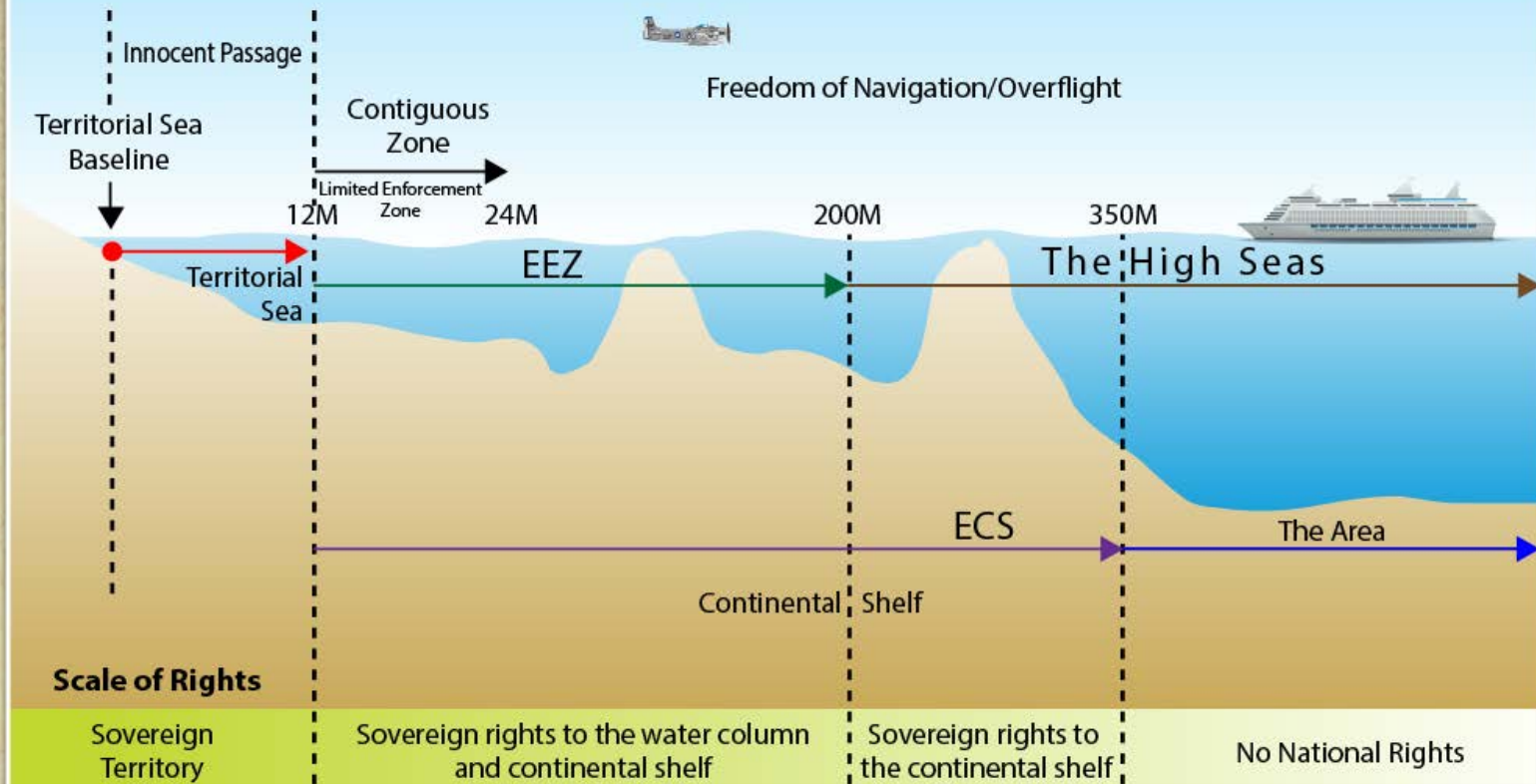
A Coastal State Has Inherent Right to its Continental Shelf

“The rights of a coastal state over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation” (Art. 77(3), UNCLOS).

“[I]f the coastal state does not explore the continental shelf or exploit its natural resources, **no one may undertake such activities without the express consent of the coastal state**” (Art. 77[2]). This is an express prohibition to the application of historic rights claimed by other states in the continental shelf of another coastal state.

The continental shelf of a state covers its EEZ and extended continental shelf.

Freedom of Navigation and Over-flight Maritime Zones under UNCLOS



China, one among less than 20 coastal states, asserts that in the EEZ there is no freedom of navigation for warships and no freedom of over-flight for warplanes, which must secure the prior consent of the coastal state before navigating or flying in its EEZ. In May 2015, however, China conducted naval drills in the Mediterranean Sea where there are no high seas but only overlapping EEZs of coastal states. China did not secure permission from the coastal states to sail through, or conduct naval drills, in their EEZs. In September 2015, Chinese naval ships sailed through the EEZ of the U.S. Aleutians without securing U.S. permission. In 2013, Chinese warships also sailed in the EEZs of Hawaii and Guam without seeking U.S. permission.

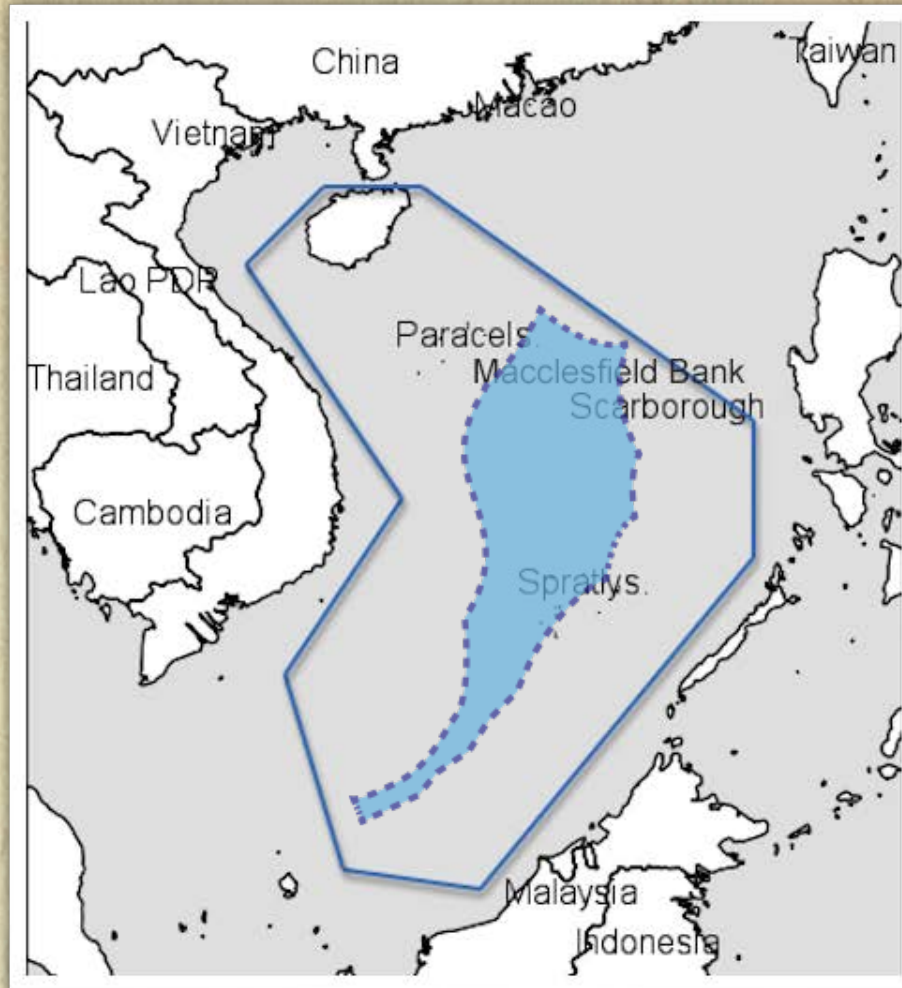
The High Seas Part of Global Commons

The high seas have always been part of the global commons, whether before or after UNCLOS. The high seas could not be subject to sovereignty by any state, whether before or after UNCLOS.

UNCLOS declares: “The high seas are open to all states, whether coastal or land-locked. Freedom of the high seas xxx comprises, *inter alia*, xxx freedom of fishing” (Art. 87, UNCLOS).

UNCLOS declares: “No state may validly purport to subject any part of the high seas to its sovereignty” (Art. 89, UNCLOS).

The High Seas Are Claimed by Hainan Province



The enclosed waters under Hainan's administration comprise 2 million square kilometers out of the 3.5 square kilometers total surface area of the South China Sea. China claims a total of 3 million square kilometers or 85.7% of the waters of the South China Sea. Macclesfield Bank, which is part of the high seas, is within the enclosed waters.

Grand Theft of the Global Commons

By appropriating for itself the fishery resources in the high seas of the South China Sea, China is committing a grand theft of the global commons.

All states, coastal and landlocked, are **interested parties in the South China Sea dispute** because China is appropriating for itself the fishery resources in the high seas.

2002 ASEAN-China Declaration of Conduct

The South China Sea dispute shall be resolved “in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea.”

China Insists on Respect for Historical Facts

After the Philippines filed in January 2013 its arbitration case against China under UNCLOS, China's Foreign Minister Wang Yi declared that the South China Sea dispute should be resolved in accordance with "historical facts and international law."

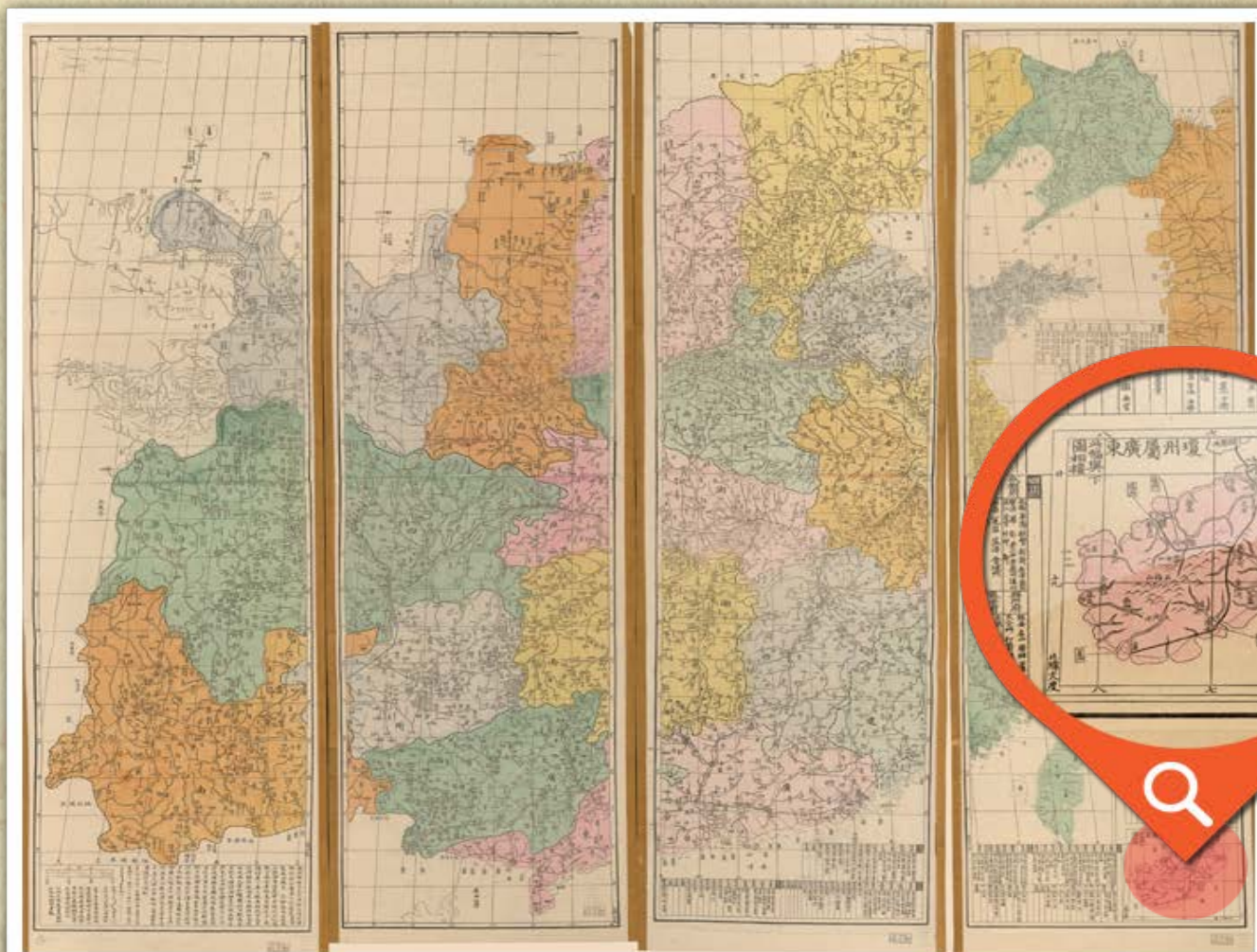
Ancient Maps of China and the Philippines

Official and unofficial maps of China from 1136 during the Song Dynasty until the end of the Qing Dynasty in 1912 show that the southernmost territory of China has always been Hainan Island. Official and unofficial maps of the Philippines from 1636 until 1933 show that Scarborough Shoal has always been part of the Philippines. The first name of Scarborough Shoal is “Panacot,” which appeared in the 1734 Murillo Velarde map published in Manila.

1136 AD “Hua Yi Tu”

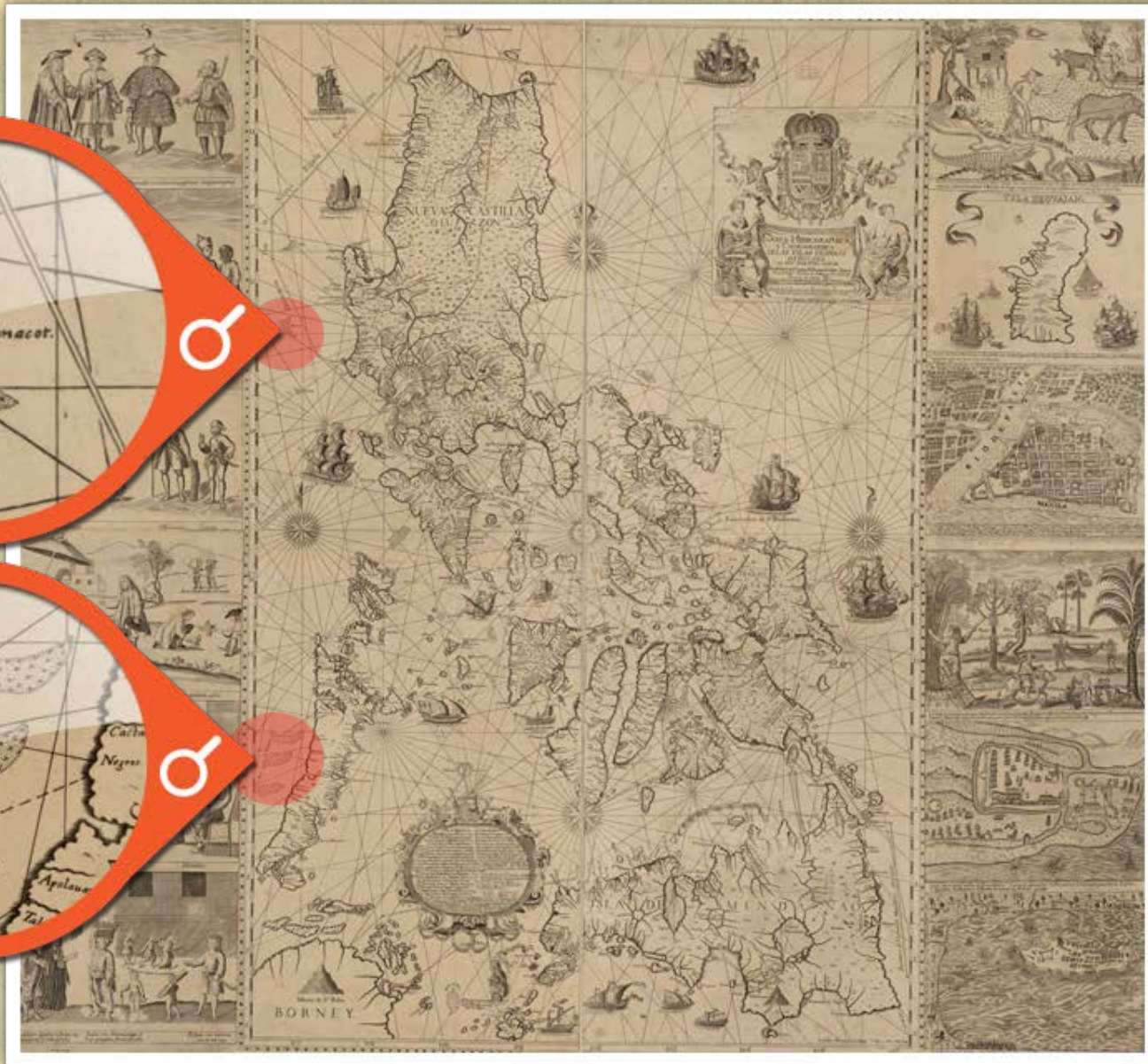


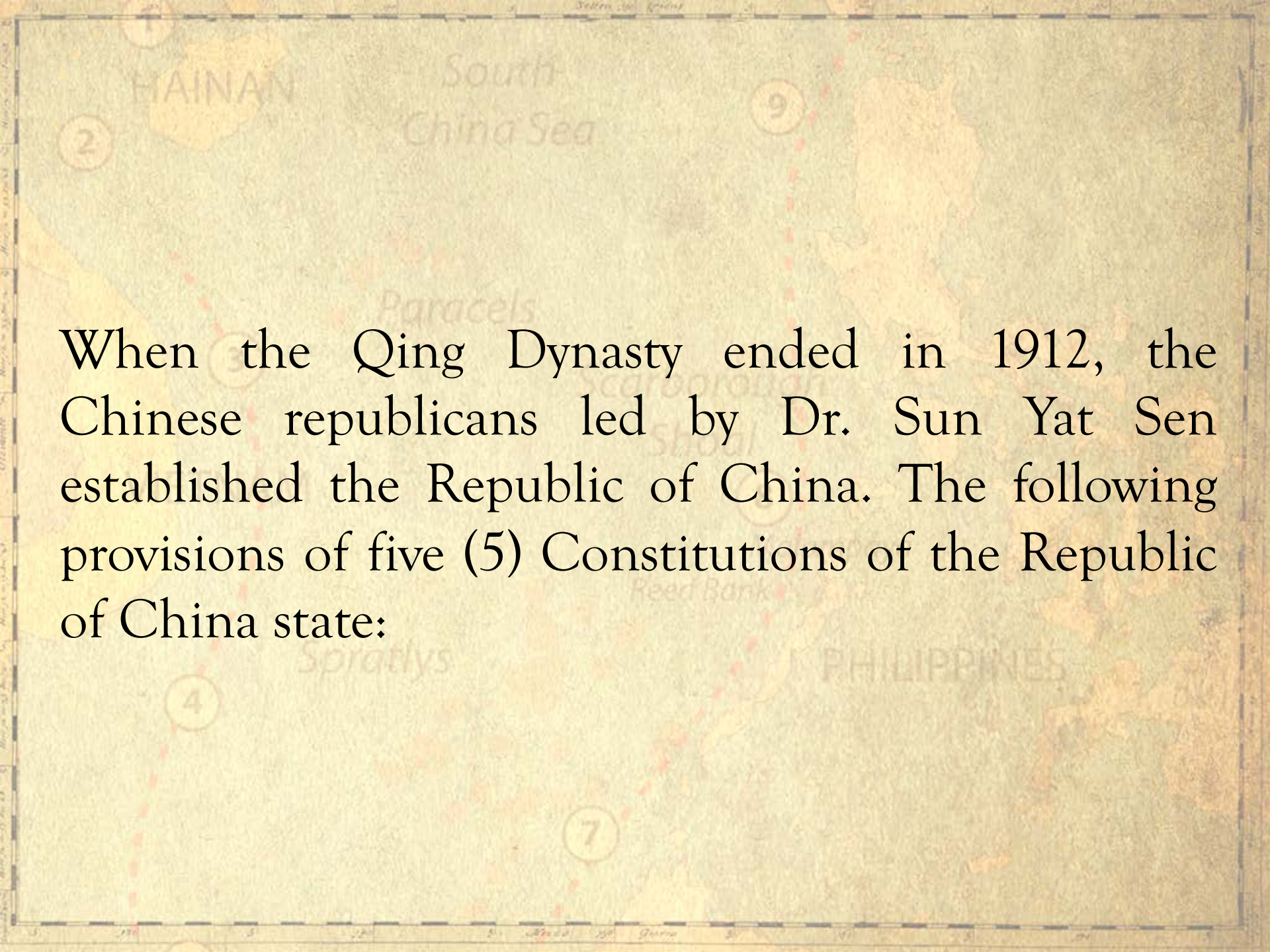
1896 “Huang Chao Zhi Sheng Yu Di Quan Tu” or The Qing Empire’s Complete Map of All Provinces.



During the Chinese dynasties, Hainan Island was a part of Guangdong Province. Hainan became a separate province only in 1988.

1734 Murillo Velarde Map



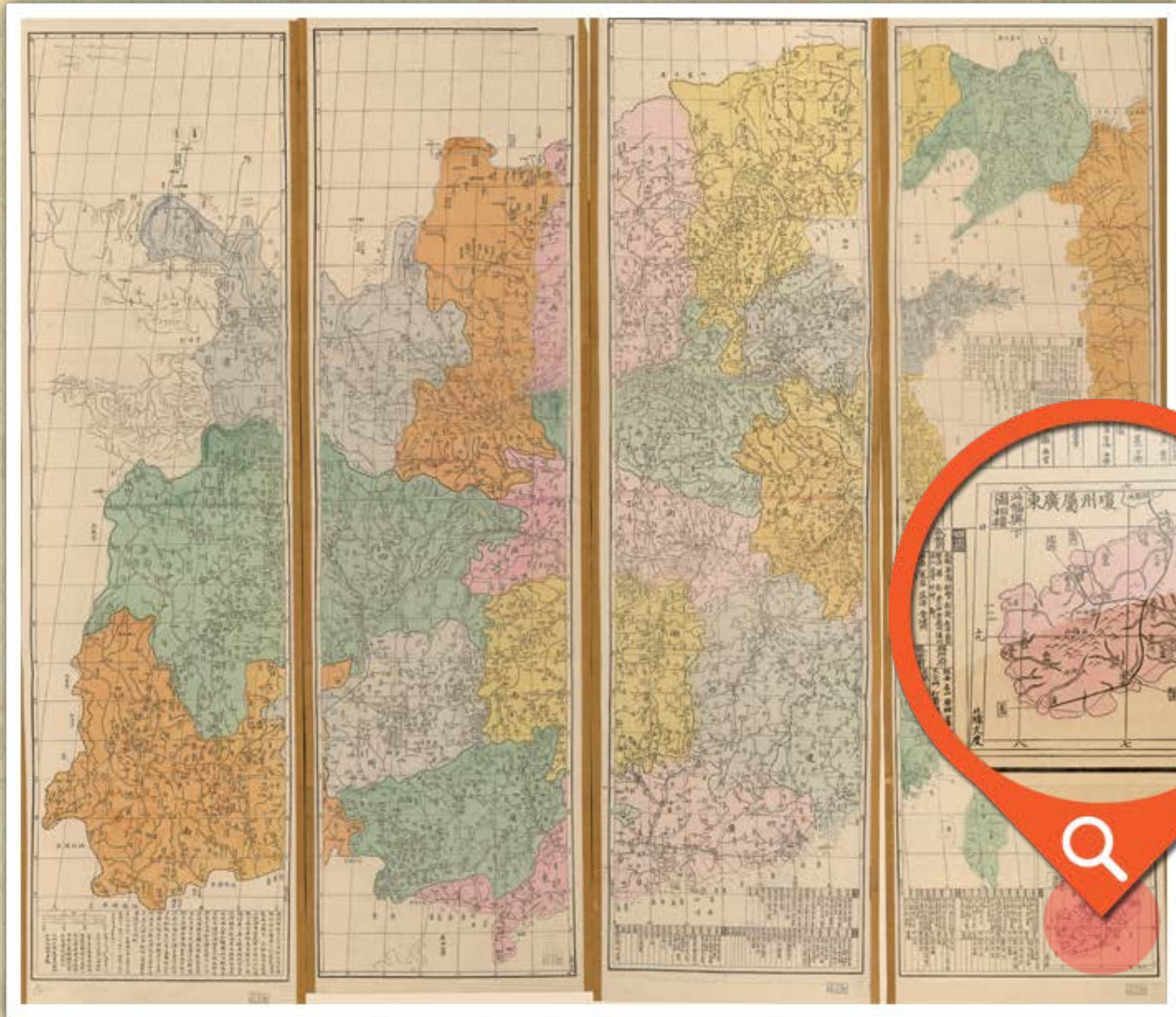


When the Qing Dynasty ended in 1912, the Chinese republicans led by Dr. Sun Yat Sen established the Republic of China. The following provisions of five (5) Constitutions of the Republic of China state:

Constitution of 1912

Article 3, Chapter 1, of the Provisional Constitution of the Republic of China of March 11, 1912 states: “The territory of the Republic of China is composed of 22 provinces, Inner and Outer Mongolia, Tibet and Qinghai.” As we have seen in the 1896 map of the Qing Dynasty, one of the 22 provinces is Guangdong, which includes Hainan Island as the southernmost territory of China.

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

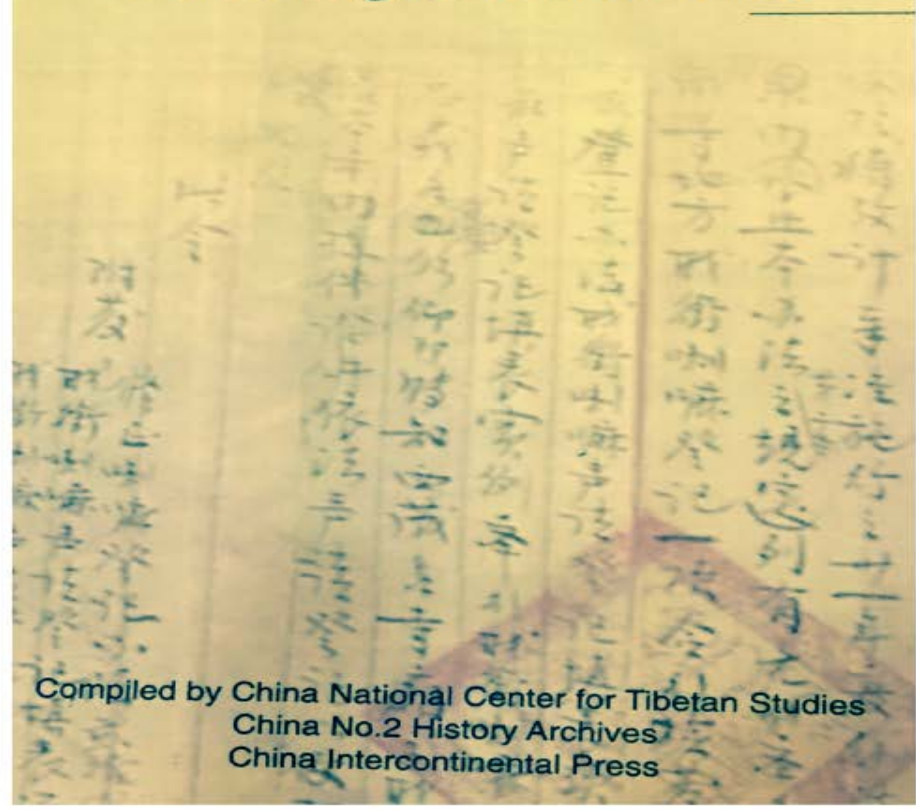


Constitution of 1914

Article 3, Chapter 1 of the Constitution of the Republic of China of May 1, 1914 states: “The territory of the Republic of China continues to be the territory of the former empire.” The editorial comment in the *Regulations of the Republic of China Concerning Rule over Tibet* (1999) explains the words “former empire” as “referring to the Qing Dynasty.”

Official Publication of PROC: Territory of Republic of China Is the Same as Territory of the Qing Empire, with Hainan Island as Southernmost Border

**Regulations of the Republic of China
Concerning Rule Over Tibet**



All constitutional provisions cited are from an official publication of the People's Republic of China entitled *Regulations of the Republic of China Concerning Rule Over Tibet* (China No. 2 History Archives, China International Press, January 1, 1999).

“Former empire” means the Qing Dynasty

Page 3 of the *Regulations* state:

The Provincial Constitution of the Republic of China issued on May 1, 1914 stipulated: “The territory of the Republic of China continues to be the territory of the former empire (*referring to the Qing Dynasty--Ed.*)”;

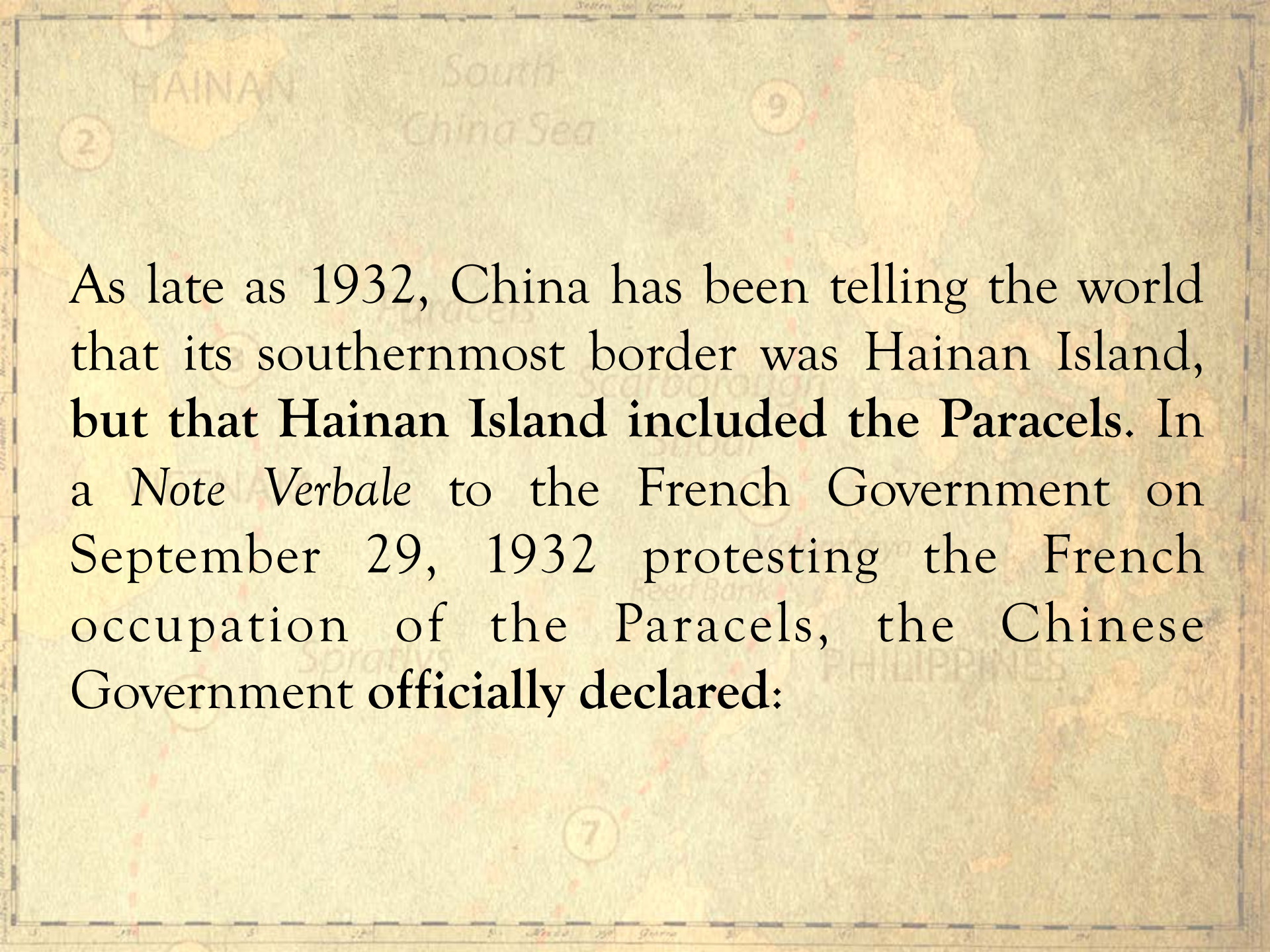
The Provincial Constitution of the Republic of China issued on May 1, 1914 stipulated: “The territory of the Republic of China continues to be the territory of the former empire (*referring to the Qing Dynasty—Ed.*)”; “People of the Republic of China, irrespective of race, class and religion, are equal in law.”

Constitutions of 1924, 1937 and 1946

Article 3, Chapter 2, of the Constitution of the Republic of China of October 10, 1924 states: “The territory of the Republic of China continues to be the traditional territory.”

The Constitution of the Republic of China of January 1, 1937 states: “The territory of the Republic of China continues to be the territory it owned in the past.”

Article 4, Chapter 1 of the Constitution of the Republic of China of December 25, 1946 states: “The territory of the Republic of China shall be that encompassed by its traditional boundaries.”



As late as 1932, China has been telling the world that its southernmost border was Hainan Island, but that **Hainan Island included the Paracels**. In a *Note Verbale* to the French Government on September 29, 1932 protesting the French occupation of the Paracels, 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.”

XXXX

“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]

1933 “Zhonghua Min Guo Fen Sheng Xin Tu”



Despite Chinese maps that appeared in the 1930s and 1940s showing the Paracels as part of China, China's Republican Constitutions of 1937 and 1946 still declared that its territory remained the same as the territory of the former empire.

Screenshot from China's Manila Embassy Website



Huangyan Island was first discovered and drew into China's map in China's Yuan Dynasty(1271-1368AD). In 1279, Chinese astronomer Guo Shoujing performed surveying of the seas around China for Kublai Khan, and Huangyan Island was chosen as the point in the South China Sea.

(2)

1. It is China who first discovered Huangyan Island, gave it the name, included it into its territory, and exercised jurisdiction over it.

Huangyan Island was first discovered and drew into China's map in China's Yuan Dynasty(1271-1368AD). In 1279, Chinese astronomer Guo Shoujing performed surveying of the seas around China for Kublai Khan, and Huangyan Island was chosen as the point in the South China Sea.

However, in a document entitled *China's Sovereignty Over Xisha and Zhongsha Islands Is Indisputable* issued on January 30, 1980, China's Ministry of Foreign Affairs **officially declared** that the Nanhai island that Guo Shoujing visited in 1279 was in **Xisha** or what is internationally called the **Paracels**, a group of islands more than 380 NM from Scarborough Shoal. China issued this official document to bolster its claim to the Paracels to counter Vietnam's strong historical claims to the same islands. This Chinese **official document**, published in *Beijing Review*, Issue No. 7 dated February 18, 1980, states:

No. 7 February 18, 1980

BEIJING REVIEW

北京周報

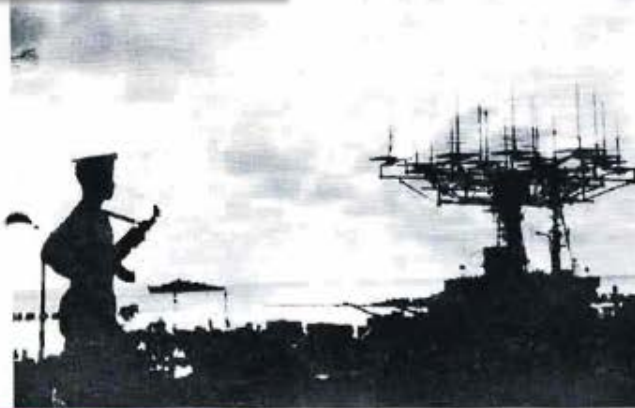
A CHINESE WEEKLY
OF
NEWS AND VIEWS

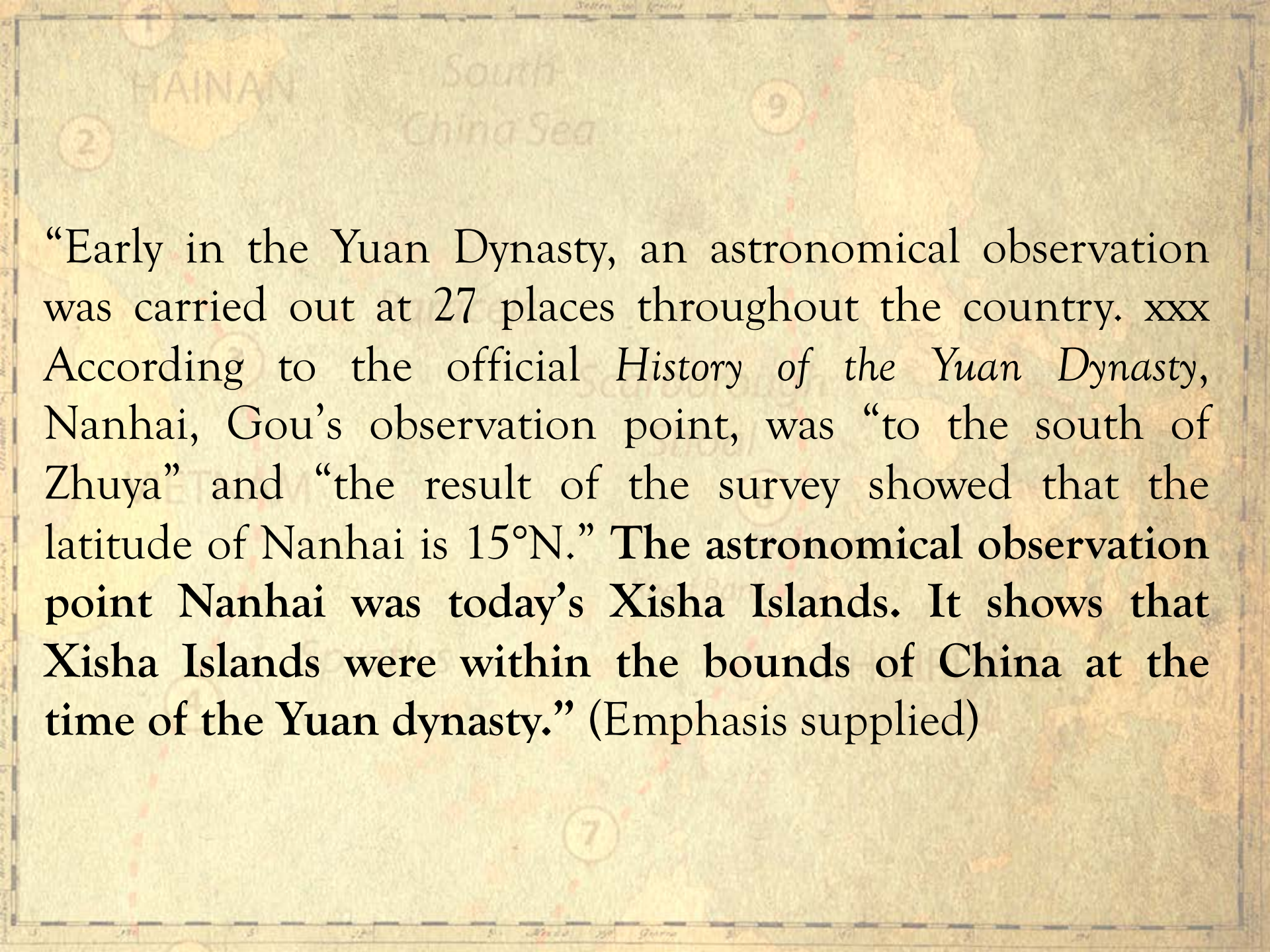
China's Indisputable
Sovereignty Over Xisha
And Nansha Islands

China's Indisputable
Sovereignty Over Xisha
And Nansha Islands.

●
Make Every Day Count
In the 80s

●
Mounting Tension on Kampu-
chean-Thai Border





“Early in the Yuan Dynasty, an astronomical observation was carried out at 27 places throughout the country. xxx According to the official *History of the Yuan Dynasty*, Nanhai, Gou’s observation point, was “to the south of Zhuya” and “the result of the survey showed that the latitude of Nanhai is 15°N.” The astronomical observation point Nanhai was today’s Xisha Islands. It shows that Xisha Islands were within the bounds of China at the time of the Yuan dynasty.” (Emphasis supplied)

Gaocheng Observatory

This 12.6 meter high stone observatory in Henan Province is the only extant astronomical observatory among the 27 that Guo Shoujing built during the Yuan Dynasty.





Taiwan's President Ma Ying-jeou Statement

In September 2014, Taiwan's President Ma Ying-jeou, who belongs to the Kuomintang Party, which controlled the Chinese mainland government in 1947 that adopted the 9-dashed lines, clarified the extent of China's claim under the lines.

President Ma declared that the claim was **limited only to the islands and their adjacent 3 NM (now 12 NM) territorial sea**. President Ma unequivocally stated that there were **“no other so-called claims to sea regions.”**

This express clarification from Taiwan directly contradicts China's claim that China has **“indisputable sovereignty”** over all the waters enclosed within the 9-dashed lines.

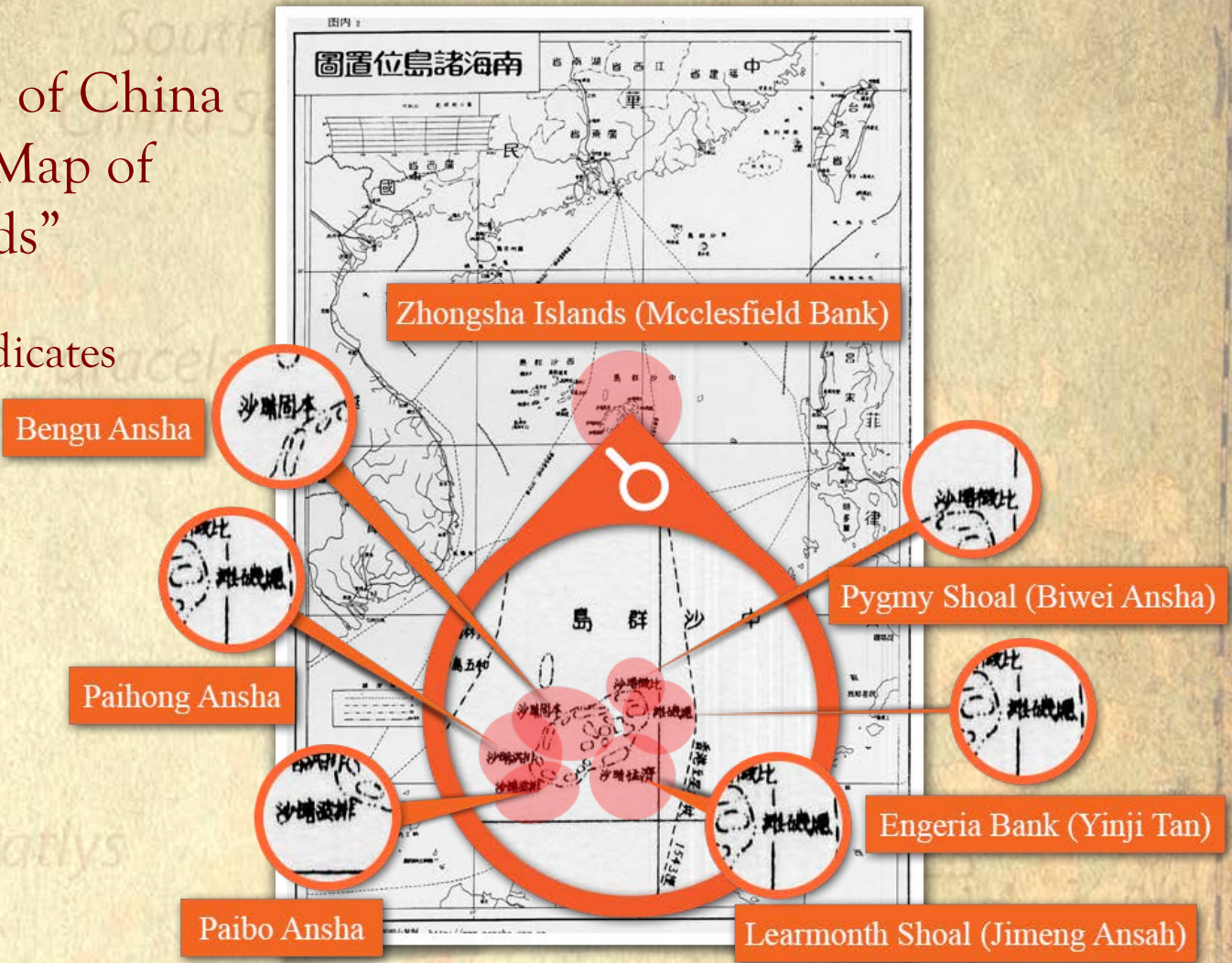
President Ma Ying-jeou: A Law of the Sea Scholar

In an October 21, 2014 interview with the *New York Times*, President Ma, who earned an S.J.D. from Harvard University with specialty in the Law of the Sea, stated:

“There is a basic principle in the Law of the Sea, that land dominates the sea. Thus marine claims begin with land; however, even if it is logically this way, when resolving disputes, it is not impossible to first resolve resource development issues. xxx.”

The Original 1947 9-dashed Lines Map of China Entitled “Location Map of the South Sea Islands”

The title of the map indicates a claim to the islands, not the sea. China calls the South China Sea *Nanhai* or *South Sea*. European navigators gave the name South China Sea.



Mentioned as Zhongsha Island's features were: Pygmy Shoal (Biwei Ansha), Engeria Bank (Yinji Tan), Learmonth Shoal (Jimeng Ansha), Paibo Ansha, Paihong Ansha, and Bengu Ansha. Huangyan Island (Scarborough Shoal) or its second name Minzhu Jiao is not mentioned.

What is the legal basis of the Philippines' claim to Scarborough Shoal

The 1898 Treaty of Paris between Spain and the United States drew a rectangular line wherein Spain ceded to the United States all of Spain's territories found within the treaty lines. Scarborough Shoal lies outside of the treaty lines.

However, two years later, in the 1900 Treaty of Washington, Spain clarified that it had also relinquished to the United States “all title and claim of title, which (Spain) may have had at the time of the conclusion of the Treaty of Peace of Paris, to any and all islands belonging to the Philippine Archipelago, lying outside the lines” of the Treaty of Paris. Thus, Spain ceded Scarborough Shoal to the United States under the 1900 Treaty of Washington (*Treaty between Spain and the United States for Cession of Outlying Islands of the Philippines, signed November 7, 1900.*).

In 1938 the U.S. Had Already Determined Scarborough Shoal Is Part of Philippine Territory

When the issue of whether Scarborough Shoal forms part of Philippine territory, Secretary Cordell Hull of the U.S. State Department stated in his *Memorandum of July 27, 1938* to Harry Woodring, Secretary of War:

Because of the absence of other claims, the shoal should be regarded as included among the islands ceded to the United States by the American-Spanish Treaty of November 7, 1900*... In the absence of evidence of a superior claim to Scarborough Shoal by any other government, the Department of State would interpose no objection to the proposal of the Commonwealth Government to study the possibilities of the shoal as an aid to air and ocean navigation.

*Treaty of Washington; boldfacing supplied.

Source: A CNA Occasional Paper, *Philippine Claims in the South China Sea: A Legal Analysis*, Mark E. Rosen, JD, LL.M [citing François-Xavier Bonnet, *The Geopolitics of Scarborough Shoal*, available at www.irasec.com.] (2014)

From 1960s to 1980s, Scarborough Shoal was used by the American and Philippine military as an **impact range** for their warships and warplanes. *Notices to Mariners* were issued worldwide by American and Philippine authorities thru the International Maritime Organization of the United Nations whenever bombing runs were made. Not a single country registered any protest to these military activities.

Philippine Navy Notice to Mariners in September 1981

Bombing and gunnery exercise using live ammunition have taken place at 15 degrees 07 minutes North, 117 degrees 46 minutes East within 20 mile radius. The exercises are conducted more or less on a daily basis and likely to continue indefinitely.

LUZON, W. COAST - SCARBOROUGH SHOALS -
PC&GS Chart 4200

Bombing and gunnery exercises using live ammunition have taken place at 15 degrees 07 minutes North, 117 degrees 46 minutes East within 20 mile radius. The exercises are conducted ^{more or less} on a daily basis and likely to continue indefinitely.

All ships, watercraft, ~~and~~ aircraft and others concerned are advised to take necessary precaution from the above mentioned coordinate.

(FROM NAVAREA XI COORDINATOR: H D 63-81)

The Philippine Navy issued a *Notice to Mariners* on 18 September 1981 warning mariners that the U.S. Navy would undertake gunnery and bombing exercises in Scarborough Shoal.

Bureau of Coast and Geodetic Survey, Notice to Mariners, February 24, 1983

The Bureau of Coast and Geodetic Survey announces the following navigational warnings to all mariners and others concerned in surface navigation

The missile firing ranges are bound as follows:

Vessels may be requested to alter course within the above areas due to firing operations and are requested to monitor VHF Channel 16, 500 KHZ or other appropriate marine broadcast frequencies for details of firing schedules before entering above areas.

The Bureau of Coast and Geodetic Survey announces the following navigational warnings to all mariners and others concerned in surface navigation.

NAVPHIL. 24/83

LIECHU, NW. COAST - LIECHU SEA -
PCGS Chart 4705

Intermittent missile firing operations were reported February 1983 to take place 0001Z to 2400Z Monday through Sunday within OPAREAS RP/225 and RP/D-25A, at vicinity of Foro Pt., San Fernando, La Union.

The missile firing ranges are bound as follows:

RP/D-25

- a) 18 degrees 02 minutes North,
117 degrees 48 minutes East;
- b) 15 degrees 08 minutes North,
119 degrees 44 minutes East;
- c) 14 degrees 41 minutes North,
119 degrees 00 minute East;
- d) 17 degrees 33 minutes North;
117 degrees 04 minutes East;

RP/D-25A

- a) 15 degrees 30 minutes North,
119 degrees 30 minutes East;
- b) 16 degrees 10 minutes North,
119 degrees 30 minutes East;
- c) 16 degrees 30 minutes North,
119 degrees 55 minutes East;
- d) 16 degrees 30 minutes North,
120 degrees 05 minutes East;
- e) 16 degrees 37 minutes North,
120 degrees 11 minutes East;

- 2 -

- f) 16 degrees 44 minutes North,
120 degrees 03 minutes East;
- g) 18 degrees 00 minute North,
118 degrees 02 minutes East;
- h) 18 degrees 02 minutes North,
117 degrees 48 minutes East.

Vessels may be requested to alter course within the above areas due to firing operations and are requested to monitor VHF Channel 16, 500 KHZ or other appropriate marine broadcast frequencies for details of firing schedules before entering above areas.

Vessels inbound and outbound for Subic Bay and/or San Fernando Harbor are advised to review appropriate message traffic/broadcasts for schedule missile exercise firings.

(INFORMATION FROM ISMATIC DAILY MEMORANDUM NO. 28;
HYDROFAC 175/83(91))

Principal Substantive Jurisdictional Issues Raised by China

First, the claims of the Philippines involve **sovereignty issues** and thus outside the jurisdiction of the tribunal since UNCLOS does not govern sovereignty issues.

Second, even assuming the claims of the Philippines do not involve sovereignty issues, the claims involve **sea boundary delimitation issues**, which China has excluded from compulsory arbitration under the optional exception in Art. 298 of UNCLOS.

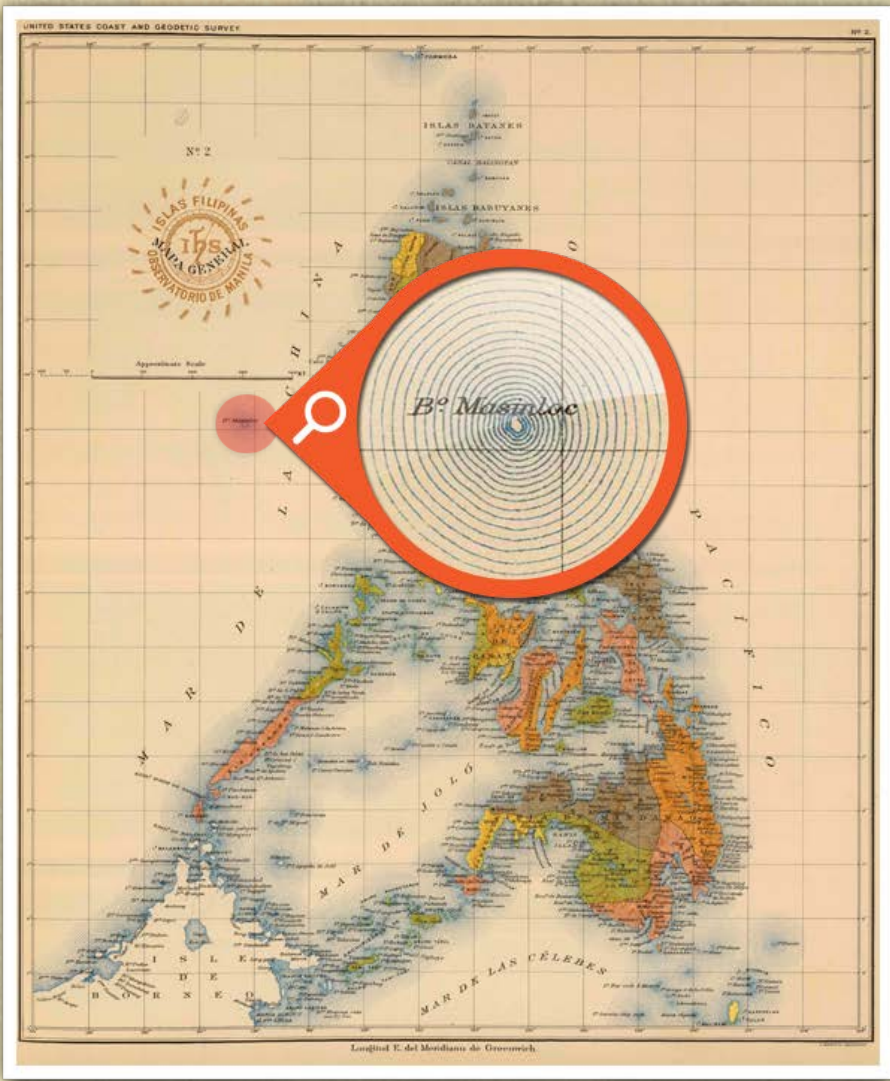
The tribunal rejected these two arguments of China for all the claims of the Philippines.

Why is it important to apply UNCLOS to the South China Sea dispute?

If UNCLOS does not apply to the South China Sea dispute, as when China's 9-dashed lines are allowed to gobble up the EEZs of coastal states as well as the high seas, then UNCLOS, the constitution for the oceans and seas, cannot also apply to any maritime dispute in the rest of the oceans and seas of our planet. It will be the beginning of the end for UNCLOS. The rule of the naval cannon will prevail in the oceans and seas of our planet, no longer the rule of law. There will be a naval arms race among coastal countries.

The Grotian Question

Will the world community allow a single state to re-write the Law of the Sea, so this single state can exercise indisputable sovereignty to almost an entire sea, subject the high seas to its sovereign jurisdiction, and seize large areas of other coastal states' EEZs, which are their legal maritime entitlements under both customary international law and UNCLOS?



9

End

