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**The Philippines v. China Case and
the South China Sea Disputes**

Robert Beckman

**Director, Centre for International Law (CIL)
National University of Singapore**



Part 1

Background to the Case

Territorial Sovereignty Disputes

- **Paracel Islands** are claimed by China/Taiwan and Vietnam & and occupied by China
- **Scarborough Shoal** is claimed by China/Taiwan and the Philippines and effectively occupied by China
- **Spratly Islands** are claimed in whole or in part by:
 1. China / Taiwan
 2. Vietnam
 3. Philippines
 4. Malaysia
 5. Brunei Darussalam

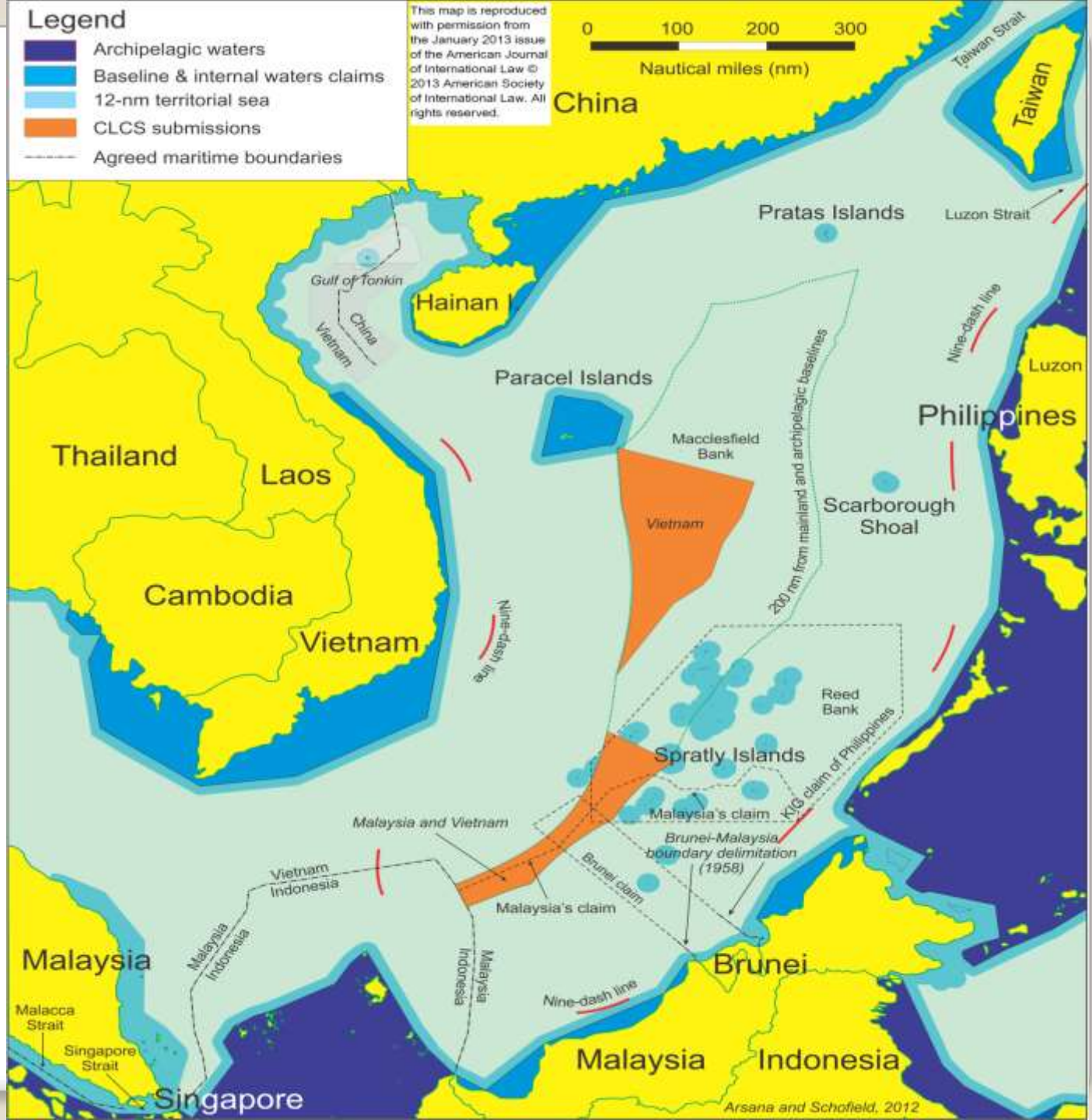
Sovereignty & Maritime Claims in the South China Sea

- Vietnam, Philippines, Malaysia & Brunei claim a **200 nm EEZ** from their mainland coasts or main archipelago
- They have also claimed or indicated they will claim an **extended continental shelf** beyond the limit of the 200 nm EEZ
- They **have not** claimed an EEZ from any of the disputed offshore islands
- To obtain access to the resources, China must base its claim to maritime space either from the disputed offshore islands or from its nine-dash line map

Legend

- Archipelagic waters
- Baseline & internal waters claims
- 12-nm territorial sea
- CLCS submissions
- Agreed maritime boundaries

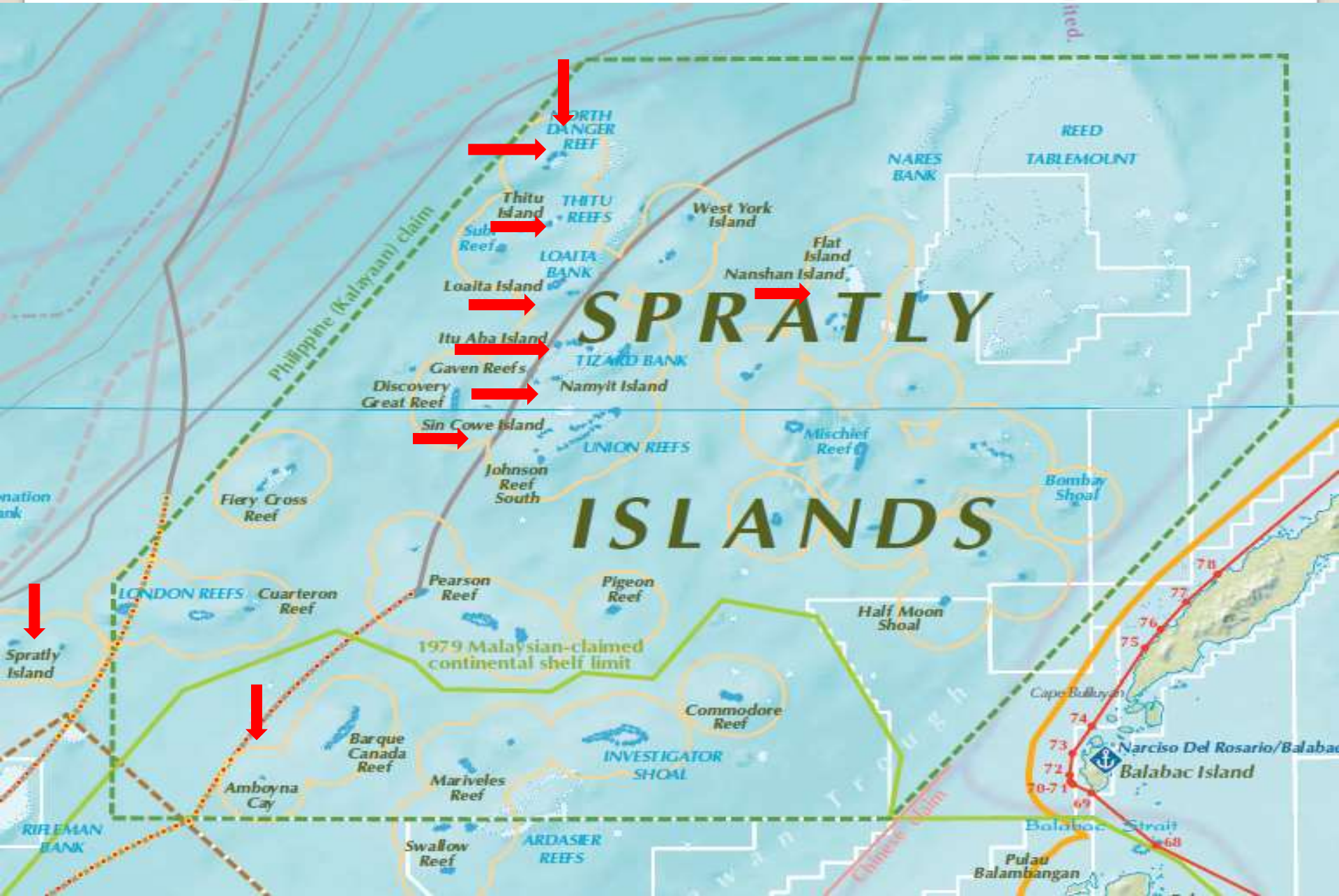
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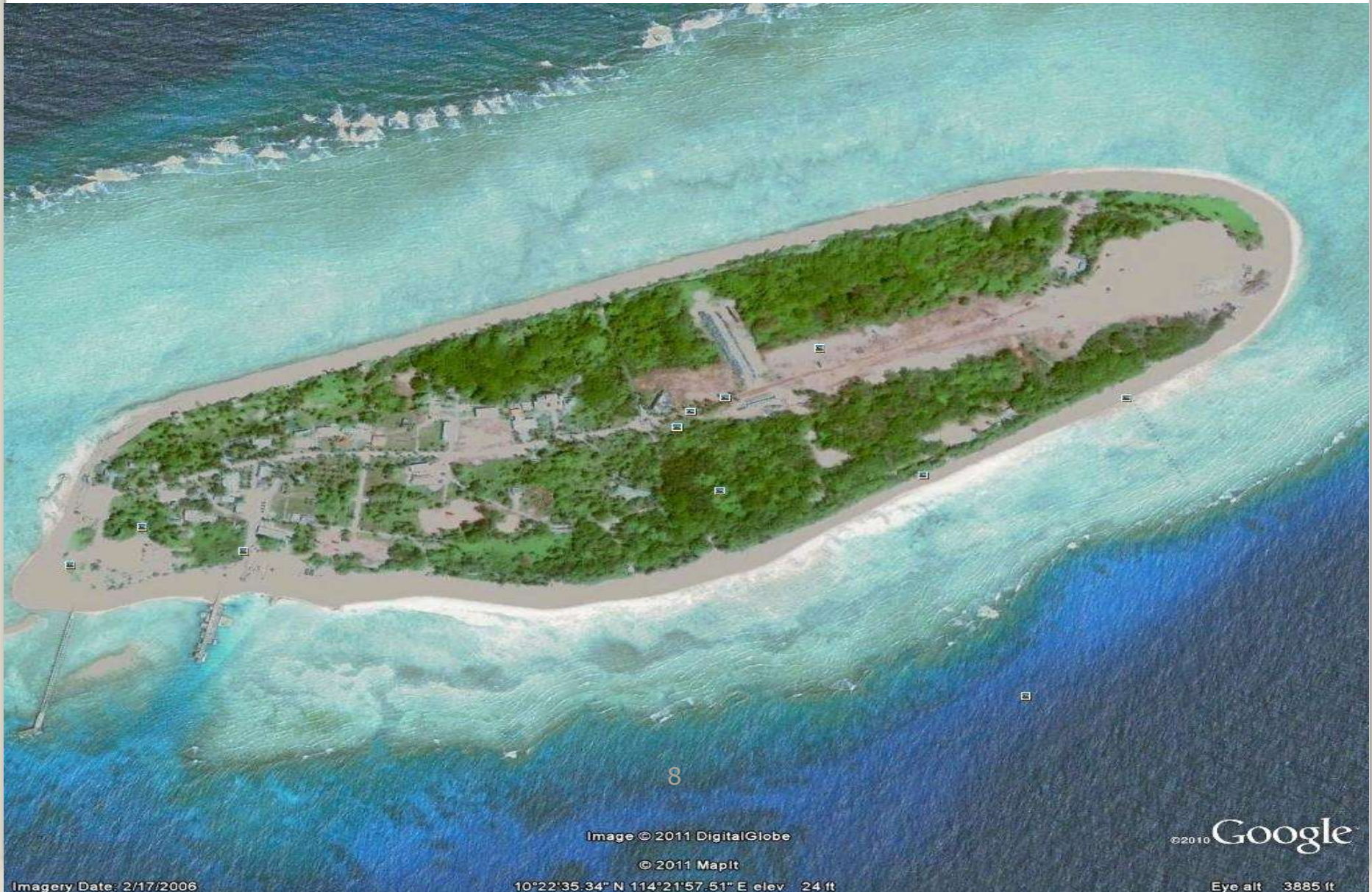
Overview of the Spratly Islands

- More than 130 “geographic features” in Spratly Islands
- Less than 40 meet the definition of an island in Article 121
- Only 10-13 are large enough to be entitled in principle to an EEZ and CS of their own
- Total dry land area of the 13 largest is less than 2 km²
- Itu Aba - the largest and only island with fresh water – is 400 x 1400 metres
- Many of the occupied features are low-tide elevations or submerged reefs which have been turned into artificial island

10 largest islands in the Spratlys



Itu Aba / Taiping (Taiwan)



8

Image © 2011 DigitalGlobe

© 2011 MapIt

10°22'35.34" N 114°21'57.51" E elev. 24 ft

©2010 Google

Eye alt 3885 ft

Imagery Date: 2/17/2006

Nanshan Island

- Size 390 m x 290 m
- Vegetation, buildings, small lake of brackish water



Occupied Features in Spratlys

- At least 44 are occupied with installations and structures:
 - Vietnam 25 (5 of largest)
 - Philippines 8 (5 of largest)
 - **China** 7
 - Malaysia 3
 - Taiwan 1 (Itu Aba, the largest)

Part 2

The Legal Disputes

Legal Disputes in South China Sea

- **Territorial Sovereignty Disputes**
- **UNCLOS Disputes: disputes on the interpretation or application of the 1982 LOS Convention**
 1. **Maritime Boundary Delimitation (excluded by 298 Declaration)**
 2. **Nine-Dash Line – claim to historical rights & jurisdiction permissible under UNCLOS**
 3. **Islands v Rocks under Article 121**
 4. **Low-tide elevations and submerged features**
 5. **Interference with sovereign rights in EEZ**

Main Issue : China's maritime claims within the Nine-Dash Line

CHINA'S POSITION:

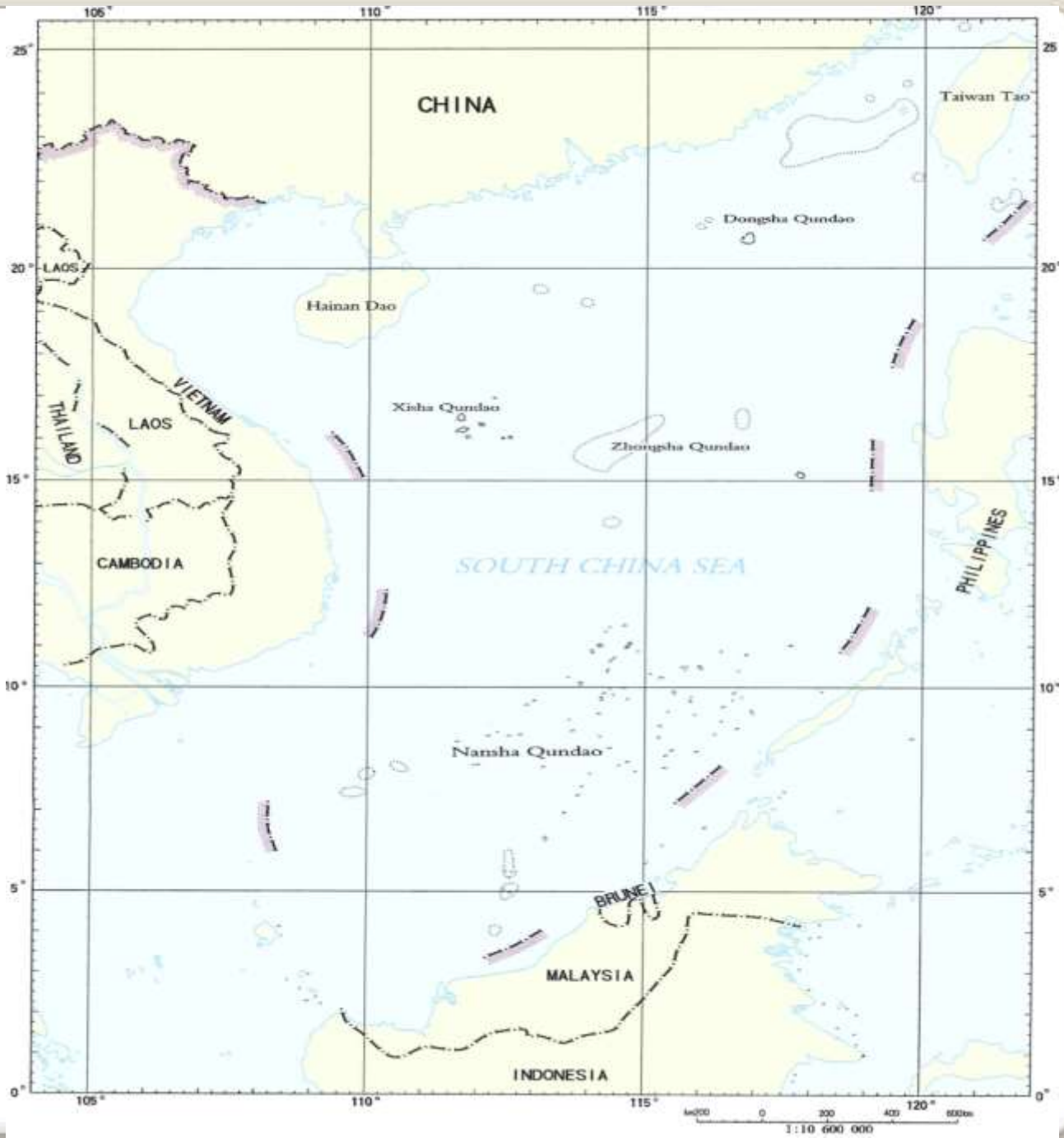
1. **Sovereignty** over islands and their adjacent waters
2. **Sovereign Rights and Jurisdiction** in the EEZ and Continental Shelf measured from the islands
3. **Historical Rights and Jurisdiction** (and **control**) over the natural resources in and under the waters within the nine-dash line ?

PHILIPPINES POSITION:

1. "Land dominates the sea"
2. Any claim to maritime space must be from **land territory**, including islands, not from a historical map

China's Statement of 7 May 2009

- China filed formal objection to the Joint Submission of Malaysia and Vietnam stating that:
 - 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 (see attached map).



China's Note Verbale of 11 April 2011

- 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.
- **Islands** in SCS are entitled to a territorial sea, EEZ & continental shelf
- China's sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence.

Claim to Historic Rights – 15 Sep 2011

Statement of MOFA Spokesperson

- China's sovereignty, rights and **relevant claims** over the South China Sea have been formed in the **long course of history** and upheld by the Chinese government.
- Our sovereignty over the islands in the South China Sea is based on **discovery, preoccupation as well as long-term, sustained and effective management.**
- The UN Convention on the Law of the Sea does not entitle any country to extend its exclusive economic zone or continental shelf to the territory of another country, and **it does not restrain or deny a country's right which is formed in history and abidingly upheld.**

Dispute on Islands v Rocks

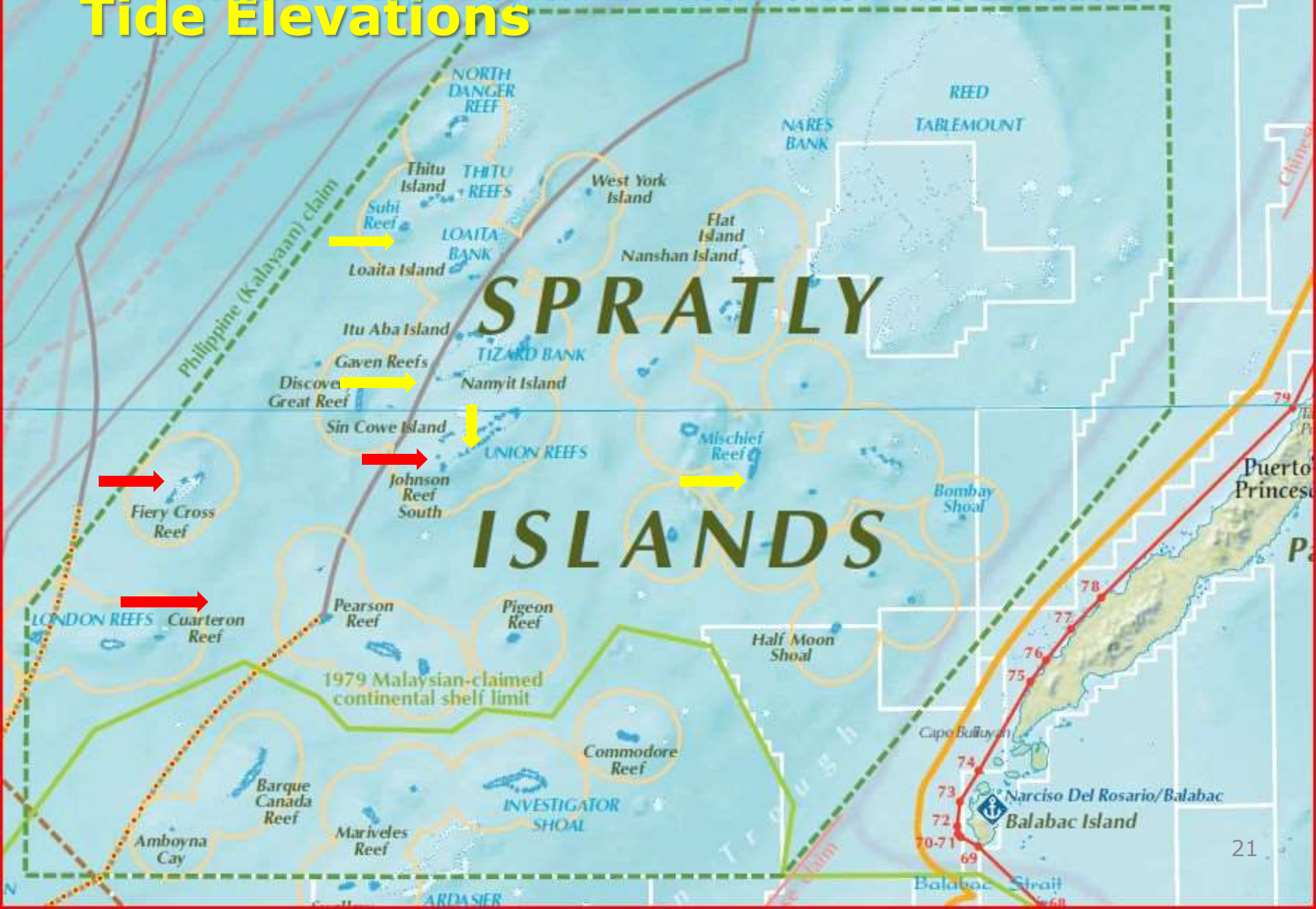
- Philippines challenges status of **Scarborough Shoal** and the 3 reefs (**Johnson, Cuarteron** and **Fiery Cross**) occupied by China in the Spratlys
- Admits that the six tiny protrusions on Scarborough Shoal and the 3 reefs are **islands** because some protrusions are above water at high tide
- Argues they are **“rocks”** entitled to only a 12 nm territorial Sea because they cannot sustain human habitation or economic life of their own
- Argues that China has no right to the resources outside the 12 nm territorial sea of these **“rocks”**
- Argues that China is unlawfully exploiting resources outside 12 nm of these **“rocks”** and is interfering in the Philippines’ right to exploit the resources in its EEZ

Article 121 Regime of Islands

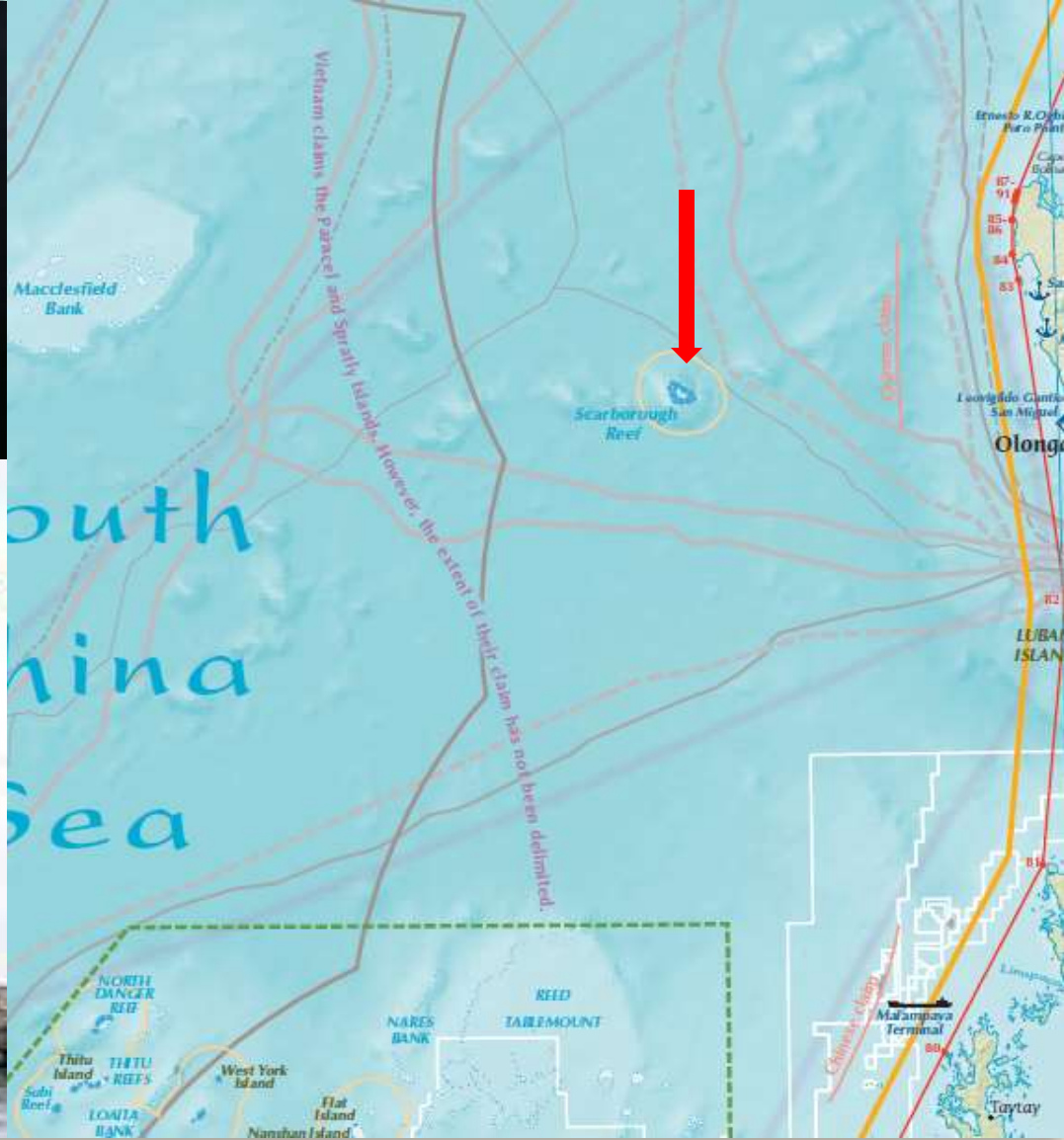
- 1. An **island** is a naturally formed area of land, surrounded by water, which is above water at high tide.
- 2. **Except as provided for in paragraph 3**, *islands have same maritime zones as other land territory, including territorial sea, EEZ and continental shelf*
- 3. **Rocks** which **cannot sustain human habitation or economic life of their own** shall have no exclusive economic zone or continental shelf.

Chinese Occupied Islands and Low Tide Elevations

Features Occupied by China – Rocks & Low-Tide Elevations



Scarborough Shoal



Cuarteron Reef

9°55'N, 115°32'E (reef above water at high tide in US map) Isolated atoll,
Closest potential island is Spratly Island, over 50nm away



Disputes on submerged features

1. Philippines argues that 4 of the reefs occupied by China (**Mischief**, **McKenna**, **Gaven** and **Subi**) are not islands because they are not naturally formed areas of land above water at high tide
2. Argues that these features are not entitled to any maritime zones of their own under UNCLOS
3. Argues that Mischief and McKenna reefs are part of the continental shelf of the Philippines and that the Philippines has jurisdiction over them

Low-tide elevations

- *Article 13 Low-Tide Elevations*
- 1. A low-tide elevation is a **naturally formed** area of **land** which is surrounded by and above water at low tide but **submerged at high tide**.
- 2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has **no territorial sea** of its own.

Artificial Islands, Installations and Structures

Article 60. Artificial Islands, Installations and Structures in the Exclusive Economic Zone

- 1. The coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures in its EEZ
- 2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures
- 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.

Mischief Reef

9°55'N, 115°32'E (Reef in US map) Isolated atoll,
Closest potential islands are Sin Cowe East Island and
Nanshan Island, 40-60nm away



Source: T's Public Gallery, Private Web Albums, Sept. 4, 2007
<http://www.zoodlibrary.edu/SouthChinaSea>

Part 3

Procedural Issues

Compulsory Procedures entailing Binding Decisions

- General rule under UNCLOS – **any dispute** on the interpretation or application of any provision is subject to compulsory procedures entailing binding decisions
- If dispute on any provision arises and cannot be settled by negotiation, either party may **unilaterally** bring the other to a court or tribunal
- The “default procedure” – Arbitration under Annex VII

Article 298. Optional Exceptions

- China has formally declared under Article 298 that it does not accept the compulsory procedures entailing binding decisions for certain categories of disputes, including:
 1. the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations,
 2. or those involving historic bays or titles
 3. or those involving military activities
- Not possible for ASEAN claimants to bring China to a Court or Tribunal on the delimitation of maritime boundaries

Initiation of Arbitral Proceedings

- On **22 January 2013** Philippines initiated arbitral proceedings against China under Annex VII of UNCLOS by giving China its Notification and the Statement of Claim
- Philippines alleged that there are disputes between the parties on the interpretation and application of provisions of UNCLOS and these disputes could not be resolved by consultation and negotiation
- **Philippines expressly states that the disputes fall outside the excluded categories in China's Declaration under Art 298**
- Philippines also gave notice that it was appointing ITLOS Judge Rudiger Wolfrum as its arbitrator

Timeline for Arbitral Process

- **21 Feb 2013 (30 days)** – Deadline for China to appoint arbitrator who can be its national
- **22 Feb - 8 March (2 weeks)** – Philippines can request ITLOS President to appoint one arbitrator on behalf of China; He must appoint within 30 days of the request from UN List of Arbitrators
- **23 March 2013 (60 days)** – Deadline for appointment of remaining 3 arbitrators by parties (from UN List of Arbitrators)
- **24 March - 6 April 2013 (2 weeks)** – If fail to reach agreement, Philippines can request ITLOS President to appoint remaining 3 arbitrators; ITLOS President must appoint within 30 days of the request (these appointments must be from UN List of Arbitrators)

Default of Appearance

Annex VII, Article 9

- If one party fails to appear to defend the case, other party may request tribunal to continue and make an award
- **Absence of a party or failure to defend case is not a bar to the proceedings**
- Before making an Award, the arbitral tribunal must satisfy itself that :
 - (1) it has jurisdiction; and
 - (2) the claim is well founded in fact and law

Finality of the Award

- The Award is **final and without appeal**
- It shall be complied with by the parties to the dispute
- There is no mechanism by which the Tribunal or the Philippines can enforce the Award
- If China fails to implement the Award, the Philippines can go back to the Arbitral Tribunal and for further orders

Settlement of the Case / Provisional Measures

- The case can be settled by agreement of the parties at any time up to the issuance of the Award
- If China takes action prior to the establishment of the Arbitral Tribunal which the Philippines believes prejudices its rights, it can request the International Tribunal for the Law of the Sea to prescribe Provisional Measures
- Once the Arbitral Tribunal has been established, it can request Provisional Measures from the Tribunal

Conclusions

1. The case presents a challenge to the dispute settlement regime under UNCLOS
2. The case **will not resolve the underlying disputes** on which State has the better claim to sovereignty over the islands
3. Even if the case resolves issues concerning rocks or islands, **it will not resolve how to draw the boundaries** between the maritime zones from the disputed islands and the maritime zones from the main territories of the bordering States
4. The case may pressure China to bring its nine-dash line claim into conformity with UNCLOS

Thanks for your Attention

Robert Beckman

Director, Centre for International Law

Email: cildir@nus.edu.sg

Website: www.cil.nus.edu.sg