

2ND CONFERENCE ON SOUTH CHINA SEA
April 24-25, 2015
Nanjing University

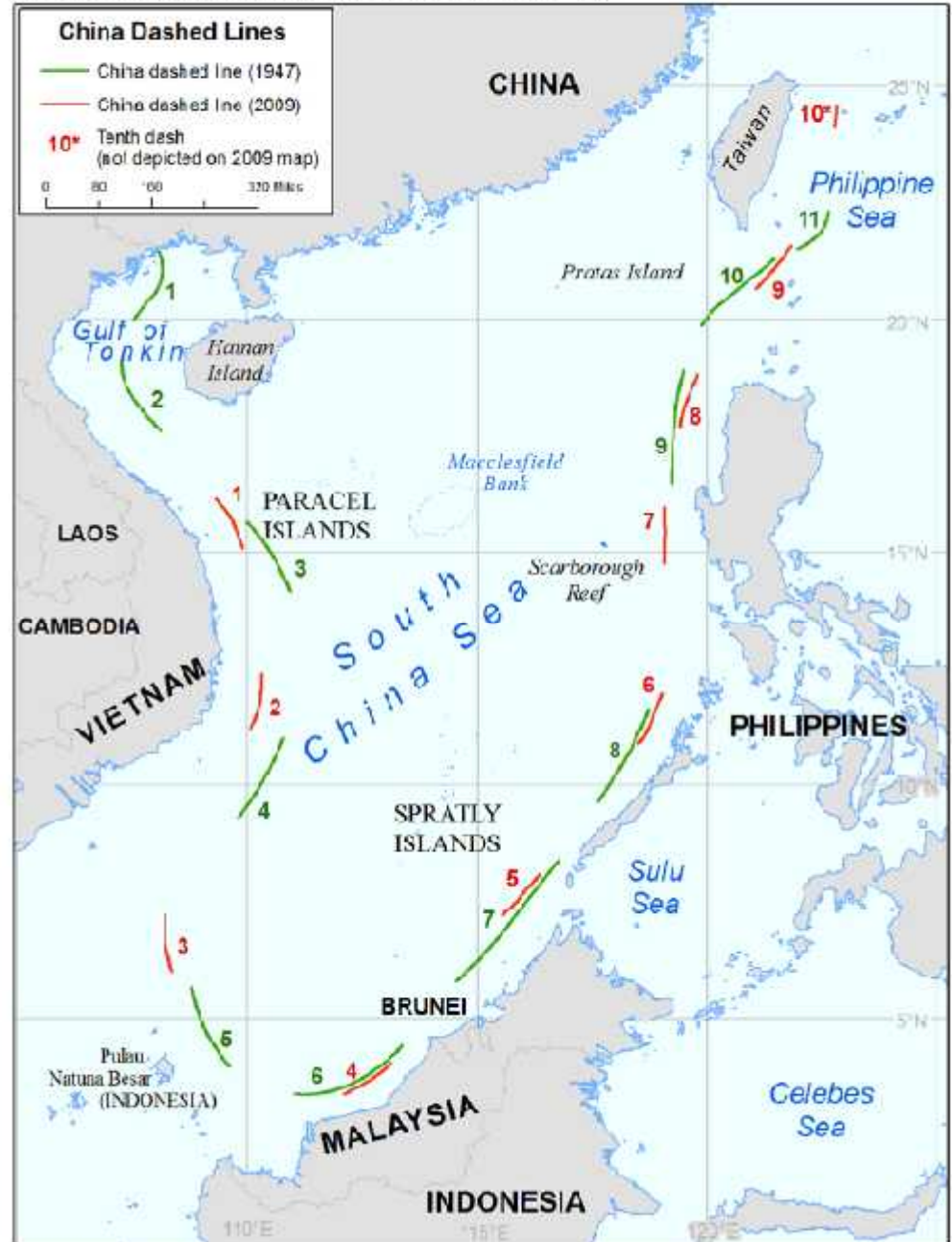
International Law and China's Reclamations Works in the South China Sea

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Map 5: Comparison of Dashed Line in 2009 and 1947 Maps



Part 1

Occupied Features in Spratly Islands

Occupied Features in Spratlys

At least 44 are occupied with installations & structures:

- Vietnam 25 (5 of largest)
- Philippines 8 (5 of largest)
- **China** 7
- Malaysia 3
- Taiwan 1 (Itu Aba, the largest)

Total Land Area of 13 largest – about 2 km²

China / Philippines / Vietnam / Taiwan / Malaysia



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.

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.**

Where a low-tide elevation is situated within 12 nm from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of territorial sea.

2. Where a low-tide elevation is wholly situated more than 12 nm from the mainland or an island, **it has no territorial sea of its own.**

Artificial Islands

- **Islands because of man-made works on sea-bed or on a low-tide elevation**
- **Not “island” because not naturally formed area of land**
- **No maritime zones of their own**
- **Coastal State has sovereignty if within territorial sea**
- **Coastal State has jurisdiction and control if within its EEZ**
- **Coastal State may establish 500 metre “safety zone”**

Submerged Off-shore Features

- Features which are below water even at low-tide
- Are part of the seabed
- Not subject to a claim of sovereignty because not land
- If structure built on them, their status does not change
- If reclaimed to be artificial island, provisions on artificial islands applies
- “Jurisdiction” over such features belongs to the State on whose continental shelf it lies

Itu Aba / Taiping (Taiwan)



Thitu Island (Philippines)



Spratly Island (Vietnam)



Imagery Date: 05/12/07

© 2011 MapIt
Image © 2011 DigitalGlobe
13°35'34.63"N 111°55'11.76"E elev: 12 ft

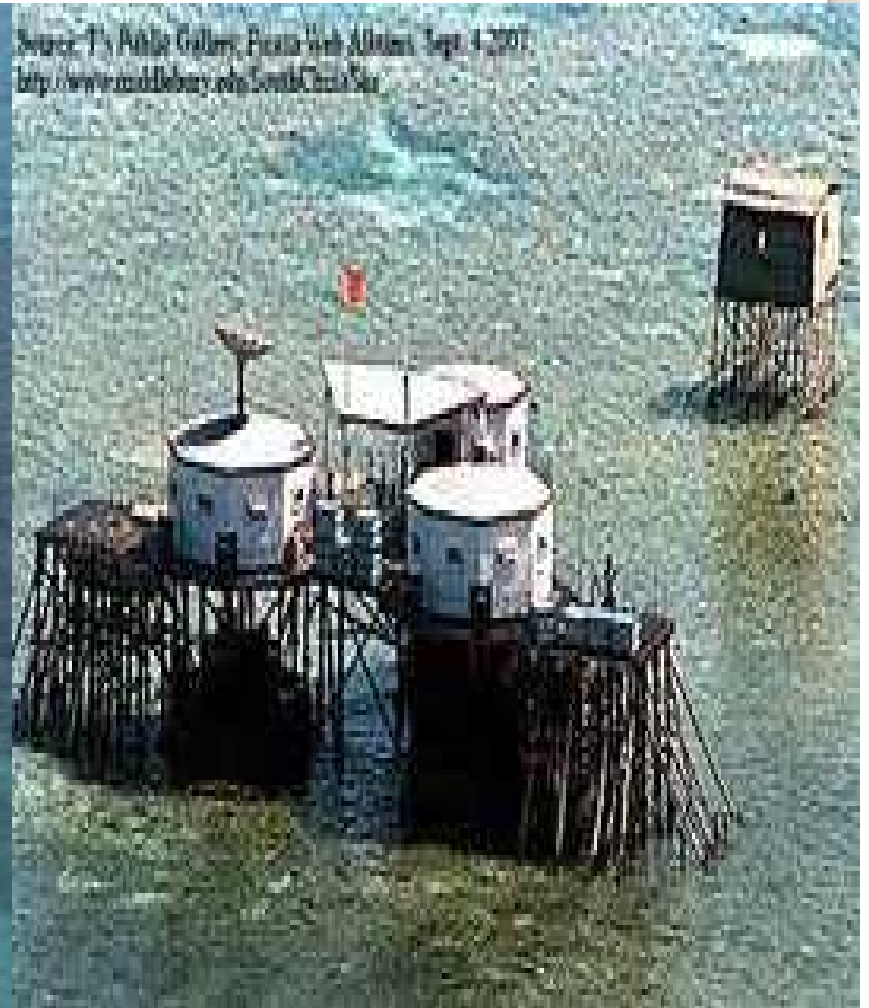
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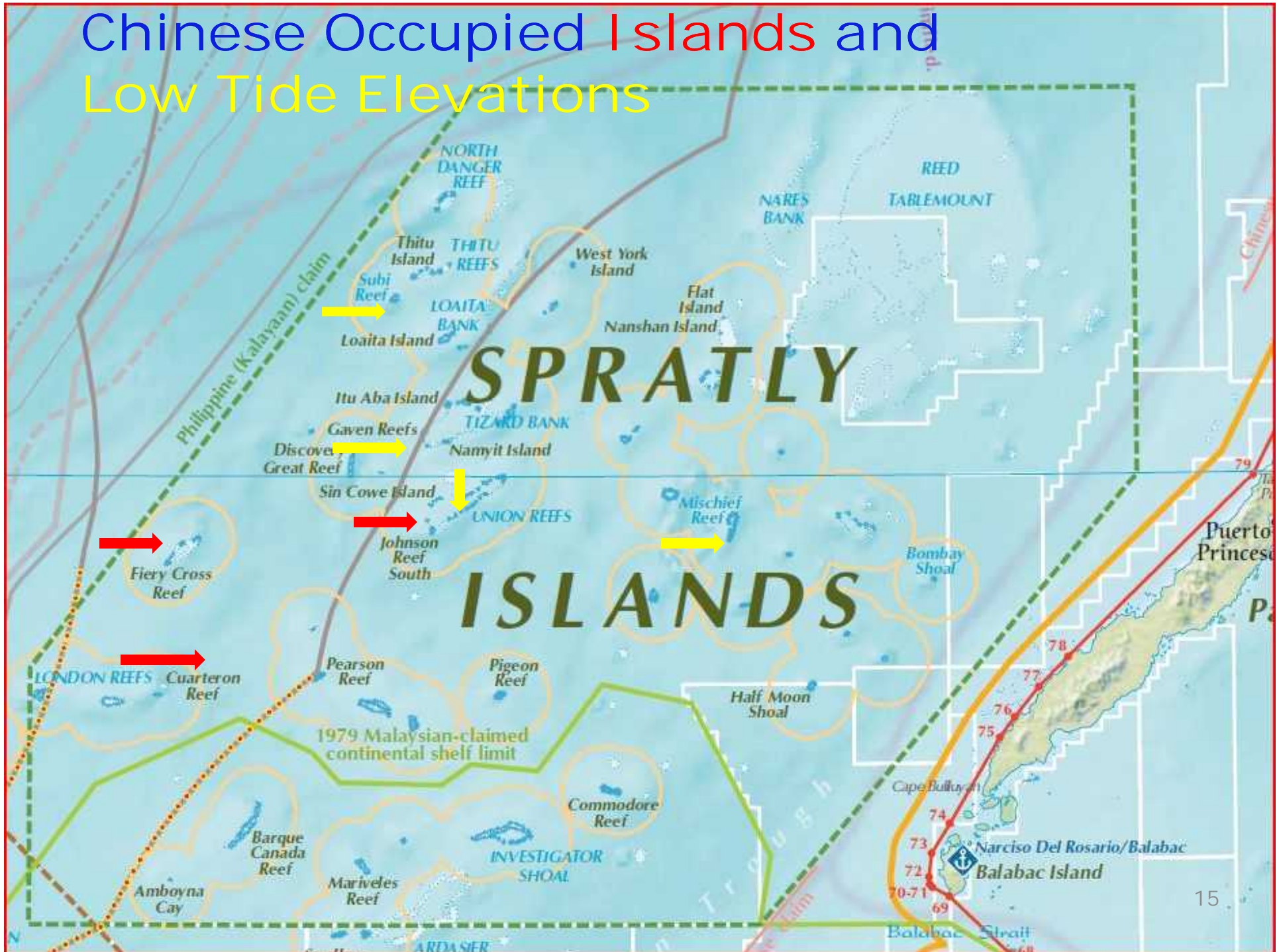
Swallow Reef / Pulau Layang Layang (Malaysia)



Mischief Reef (China)



Chinese Occupied Islands and Low Tide Elevations



Part 2

China's Reclamation Works



[reclaimed land area
=2.65 square kilometers]

suction hopper
dredger in operation

likely airstrip under construction
(~3,300 meters long)

new harbor being dredged

Fiery Cross Reef, Spratly Islands

South China Sea

14 Feb, 2015

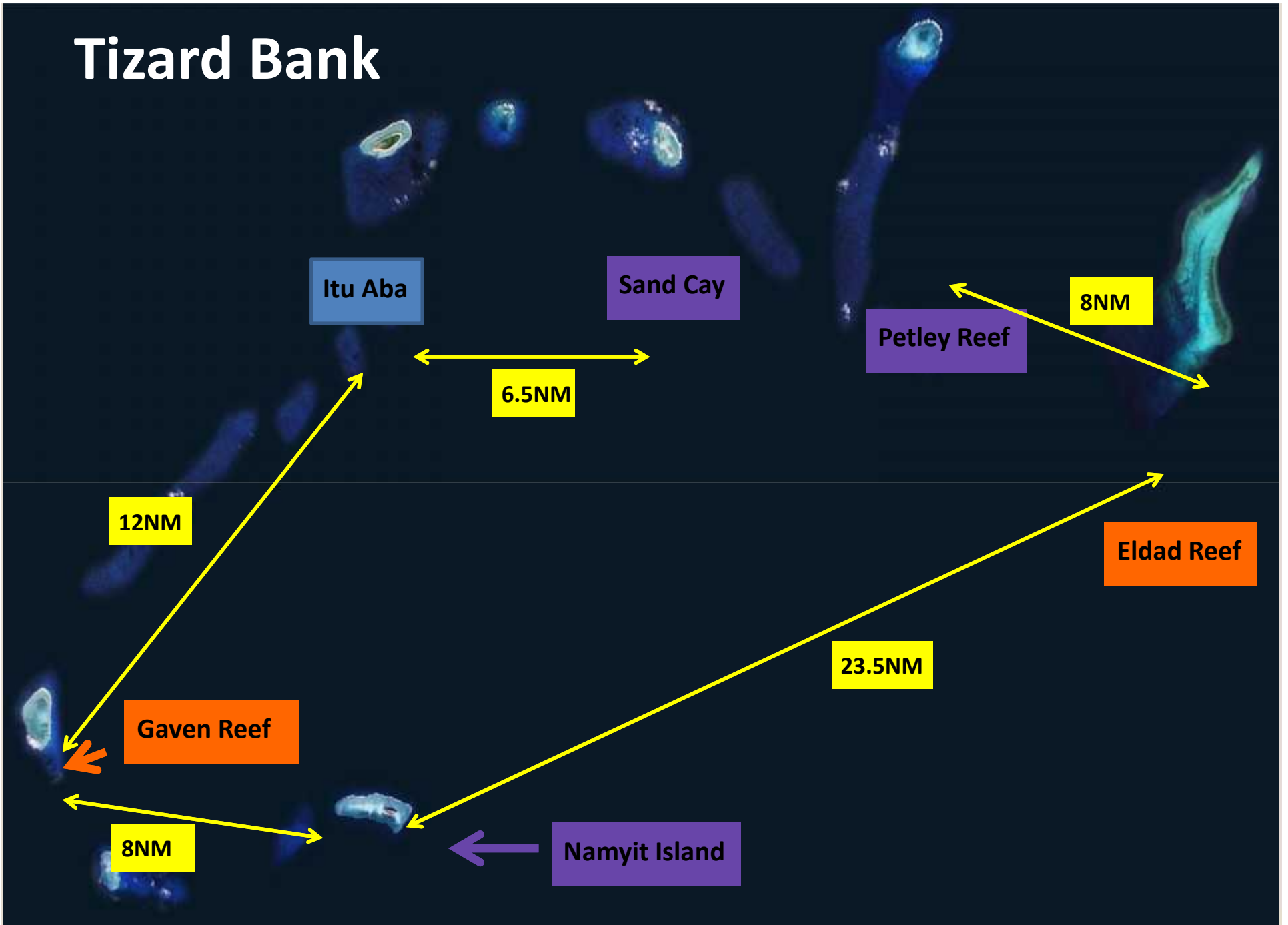
former reef being filled
with sand and coral cuttings



Reclamation on Gavin Reef



Tizard Bank



Reclamation on Johnson South Reef

13 March 2012



20 February 2013



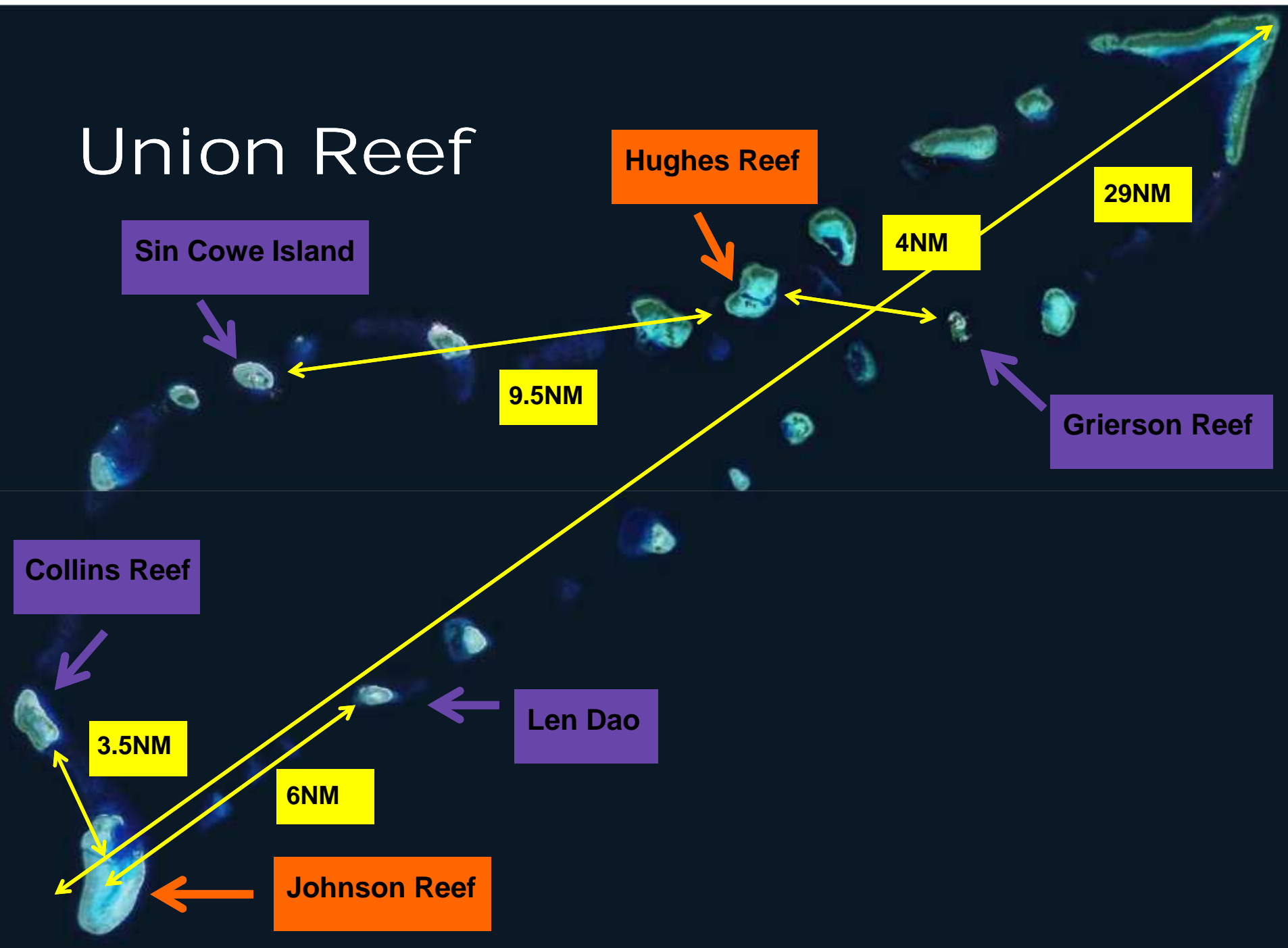
25 February 2014



11 March 2014



Union Reef

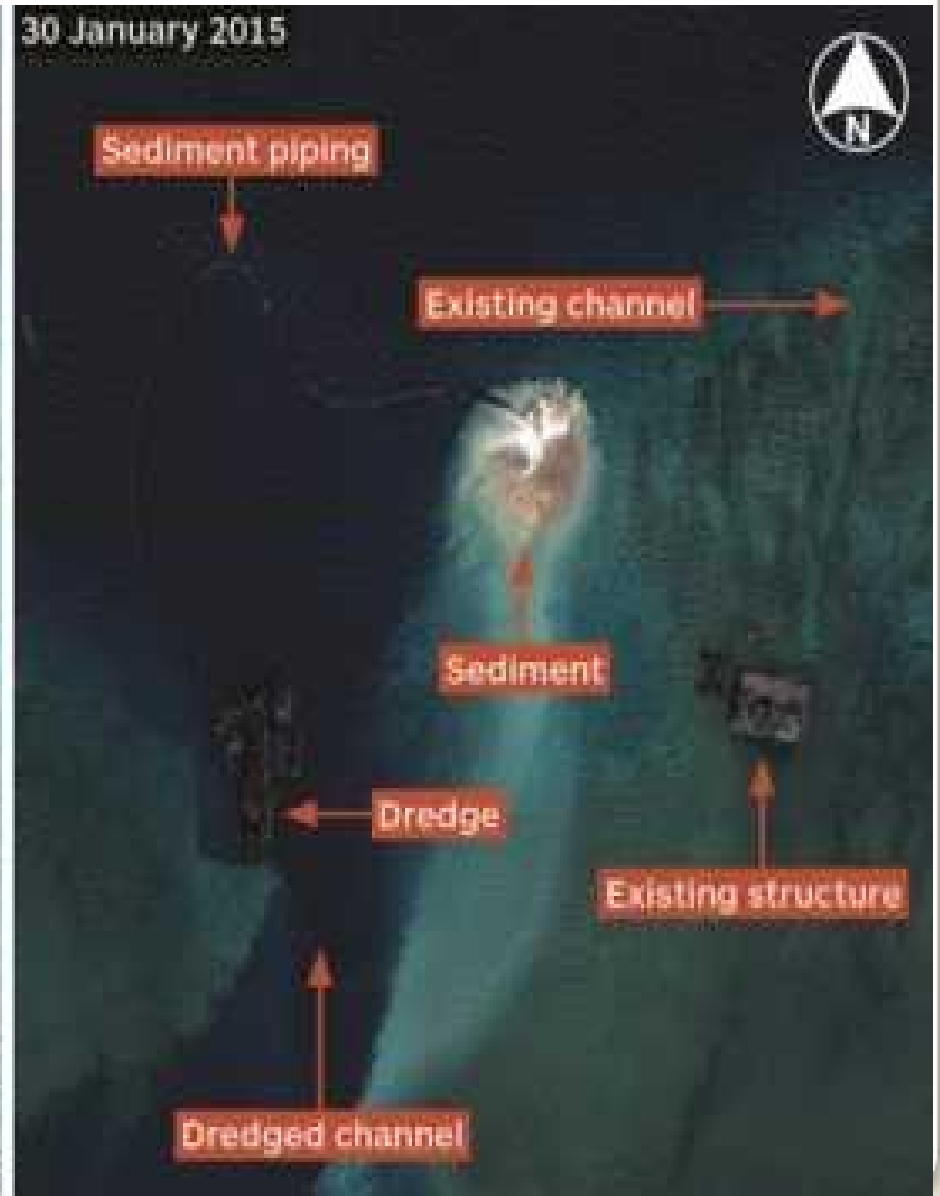


Mischief Reef Reclamation

19 July 2014



30 January 2015



Part 3

China's Reclamations and International Law

What Reclamations will not change

- 1. Will not strengthen sovereignty claim to islands under international law because of protests**
- 2. Will not change status of features**
- 3. Will not enhance claims to maritime zones from features**

Article 194(1) General Obligation to prevent pollution of marine environment

- **Article 194(1) imposes a general obligation on States to take all measures consistent with UNCLOS that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.**

Article 194 (2) Obligation concerning transboundary pollution

- States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment,

Obligations “to ensure”

- Provisions in UNCLOS establishing a responsibility to ensure set out obligations that States Parties must fulfil by exercising their power over entities under their jurisdiction and control, such as ships flying their flag or companies subject to their national jurisdiction.
- Must be read in light of the reasoning in the 2011 Advisory Opinion on Responsibility of Sponsoring States.
- The Advisory Opinion defines the “responsibility to ensure” as one of “due diligence”.

Environmental Impact Assessment

- Article 206 provides that when States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment.
- In paragraph 145 of its 2011 Advisory Opinion on Responsibility of Sponsoring States, the ITLOS Seabed Disputes Chamber affirmed that the obligation to conduct an environmental impact assessment (EIA) is a general obligation under both Article 206 of UNCLOS and customary international law.

Duty to Cooperate

- In the MOX Plant Case (Ireland v. United Kingdom), and the Land Reclamation Case (Malaysia v. Singapore) ITLOS stated that the “duty to cooperate” is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law
- Duty to Cooperate similar to **Article 19 of 1992 Rio Principles**:
 - States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Precautionary Approach

- In its 2010 decision in the Pulp Mills case the ICJ stated in paragraph 164 that:
 - . . . the Court considers that while a precautionary approach may be relevant to the interpretation and application of the provisions of the Statute, it does not follow that it operates as a reversal of the burden of proof.
- In its 2011 Advisory Opinion on Responsibility of Sponsoring States, ITLOS suggests that it agrees with the ICJ on the precautionary approach, and hints that it may be willing to read it into UNCLOS

Part 4

Conclusions

Reclamations and UNCLOS

- 1. Will not enhance sovereignty claims**
- 2. Cannot change status of features or enhance rights & jurisdiction to resources in maritime zones**
- 3. May be in violation of obligations under UNCLOS to protect and preserve the marine environment**
- 4. Enhances view of China as State that is acting in defiance of international law**
- 5. Code of Conduct should contain provisions to prevent “incidents at sea” near occupied features**

Thanks for your Attention !

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