

AsianSIL 6th Biennial Conference

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Friday 25 August, Parallel Session 1F
SOUTH CHINA SEA ARBITRAL AWARD AND ITS
IMPLICATIONS FOR THE LAW OF THE SEA

Significance of the Award on Rights to Resources

Robert Beckman

Part One

Significance of the Award Generally

Significance of Award

1. Binding on Philippines and China notwithstanding China's policy of non-appearance, non-recognition and non-compliance
2. Award has significance for
 - other States bordering the SCS
 - all States with an interest in UNCLOS as basis for legal order in the oceans
3. Award has special significance with respect to access to resources in EEZ of Philippines and Vietnam

Importance of UNCLOS

- UNCLOS defines the scope of maritime entitlements in the South China Sea
- Sovereignty claims in maritime space based on principle that “land dominates the sea”
- Sovereignty over land territory, including islands (naturally formed areas of land surrounded by and above water at high tide)
- Low-tide elevations and the seabed are not capable of appropriation

Historic Rights within 9DL



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- China's claims to historic rights within the 'nine-dash line' are contrary to UNCLOS and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under UNCLOS;
- To the extent China had historic rights to resources in the waters of the South China Sea, such rights were extinguished by the entry into force of UNCLOS to the extent they were incompatible with the system of maritime zones in UNCLOS

Status & Entitlement

- None of the high-tide features (islands) in the Spratly Islands generate entitlements to an EEZ or continental shelf because they are “rocks” within Article 121(3)
- Mischief Reef and Second Thomas Shoal are low-tide elevations that are capable of appropriation and do not generate entitlements to maritime zones

Award & “Disputed Areas”

1. The Award significantly reduced the disputed maritime areas in the South China Sea
2. Only maritime areas in dispute between China and Philippines are the 12nm territorial sea around the disputed islands
3. Practical effect: no overlapping areas of EEZ or continental shelf subject to the provisions in Article 74(3) and 83(3) on “provisional arrangements of a practical nature”

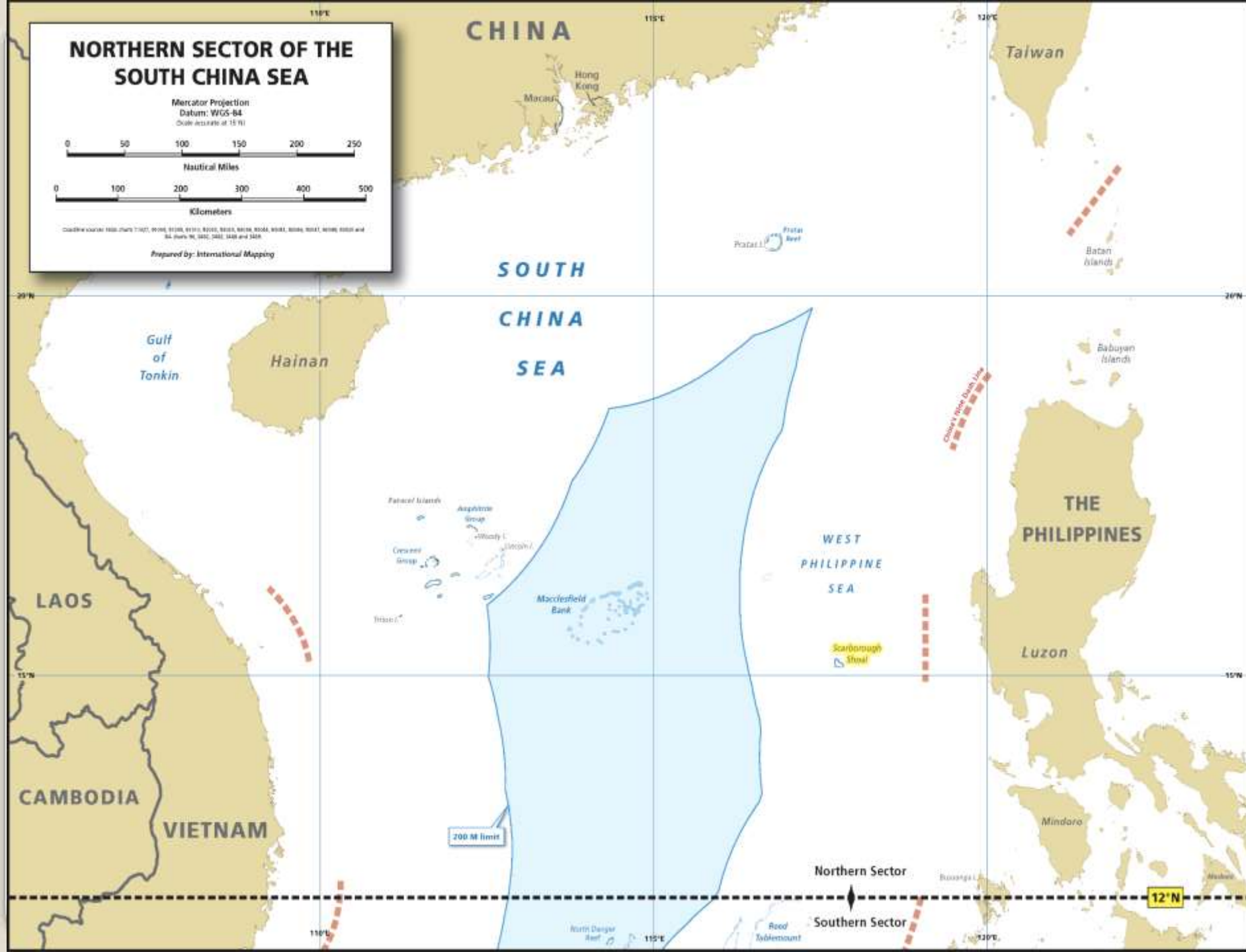
NORTHERN SECTOR OF THE SOUTH CHINA SEA

Mercator Projection
Datum: WGS-84
Scale accurate at 15°N



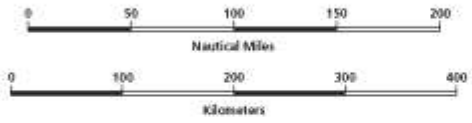
Coastline courtesy of NOAA (1:200,000, 91111), NOAA (1:500,000, 91111), NOAA (1:500,000, 91111), NOAA (1:500,000, 91111), NOAA (1:500,000, 91111) and NOAA (1:500,000, 91111)

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CHINA'S MAXIMUM POTENTIAL ENTITLEMENTS UNDER UNCLOS COMPARED TO ITS NINE-DASH LINE CLAIM IN THE SOUTHERN SECTOR

Mercator Projection
Datum: WGS-84
Scale accurate at 1:100k



Coordinates: 102° 40' E, 103° 10' E, 103° 40' E, 104° 10' E, 104° 40' E, 105° 10' E, 105° 40' E, 106° 10' E, 106° 40' E, 107° 10' E, 107° 40' E, 108° 10' E, 108° 40' E, 109° 10' E, 109° 40' E, 110° 10' E, 110° 40' E, 111° 10' E, 111° 40' E, 112° 10' E, 112° 40' E, 113° 10' E, 113° 40' E, 114° 10' E, 114° 40' E, 115° 10' E, 115° 40' E, 116° 10' E, 116° 40' E, 117° 10' E, 117° 40' E, 118° 10' E, 118° 40' E, 119° 10' E, 119° 40' E, 120° 10' E, 120° 40' E, 121° 10' E, 121° 40' E, 122° 10' E, 122° 40' E, 123° 10' E, 123° 40' E, 124° 10' E, 124° 40' E, 125° 10' E, 125° 40' E, 126° 10' E, 126° 40' E, 127° 10' E, 127° 40' E, 128° 10' E, 128° 40' E, 129° 10' E, 129° 40' E, 130° 10' E, 130° 40' E, 131° 10' E, 131° 40' E, 132° 10' E, 132° 40' E, 133° 10' E, 133° 40' E, 134° 10' E, 134° 40' E, 135° 10' E, 135° 40' E, 136° 10' E, 136° 40' E, 137° 10' E, 137° 40' E, 138° 10' E, 138° 40' E, 139° 10' E, 139° 40' E, 140° 10' E, 140° 40' E, 141° 10' E, 141° 40' E, 142° 10' E, 142° 40' E, 143° 10' E, 143° 40' E, 144° 10' E, 144° 40' E, 145° 10' E, 145° 40' E, 146° 10' E, 146° 40' E, 147° 10' E, 147° 40' E, 148° 10' E, 148° 40' E, 149° 10' E, 149° 40' E, 150° 10' E, 150° 40' E, 151° 10' E, 151° 40' E, 152° 10' E, 152° 40' E, 153° 10' E, 153° 40' E, 154° 10' E, 154° 40' E, 155° 10' E, 155° 40' E, 156° 10' E, 156° 40' E, 157° 10' E, 157° 40' E, 158° 10' E, 158° 40' E, 159° 10' E, 159° 40' E, 160° 10' E, 160° 40' E, 161° 10' E, 161° 40' E, 162° 10' E, 162° 40' E, 163° 10' E, 163° 40' E, 164° 10' E, 164° 40' E, 165° 10' E, 165° 40' E, 166° 10' E, 166° 40' E, 167° 10' E, 167° 40' E, 168° 10' E, 168° 40' E, 169° 10' E, 169° 40' E, 170° 10' E, 170° 40' E, 171° 10' E, 171° 40' E, 172° 10' E, 172° 40' E, 173° 10' E, 173° 40' E, 174° 10' E, 174° 40' E, 175° 10' E, 175° 40' E, 176° 10' E, 176° 40' E, 177° 10' E, 177° 40' E, 178° 10' E, 178° 40' E, 179° 10' E, 179° 40' E, 180° 10' E, 180° 40' E, 181° 10' E, 181° 40' E, 182° 10' E, 182° 40' E, 183° 10' E, 183° 40' E, 184° 10' E, 184° 40' E, 185° 10' E, 185° 40' E, 186° 10' E, 186° 40' E, 187° 10' E, 187° 40' E, 188° 10' E, 188° 40' E, 189° 10' E, 189° 40' E, 190° 10' E, 190° 40' E, 191° 10' E, 191° 40' E, 192° 10' E, 192° 40' E, 193° 10' E, 193° 40' E, 194° 10' E, 194° 40' E, 195° 10' E, 195° 40' E, 196° 10' E, 196° 40' E, 197° 10' E, 197° 40' E, 198° 10' E, 198° 40' E, 199° 10' E, 199° 40' E, 200° 10' E, 200° 40' E

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VIETNAM

SOUTH
CHINA
SEA

Northern Sector
Southern Sector

THE
PHILIPPINES

Sulu
Sea

INDONESIA

BRUNEI
MALAYSIA
INDONESIA

200 M limit

China's Nine Dash Line

36 M

34 M

12°N

Part Two

Significance of the Award on Access to Resources for the Philippines

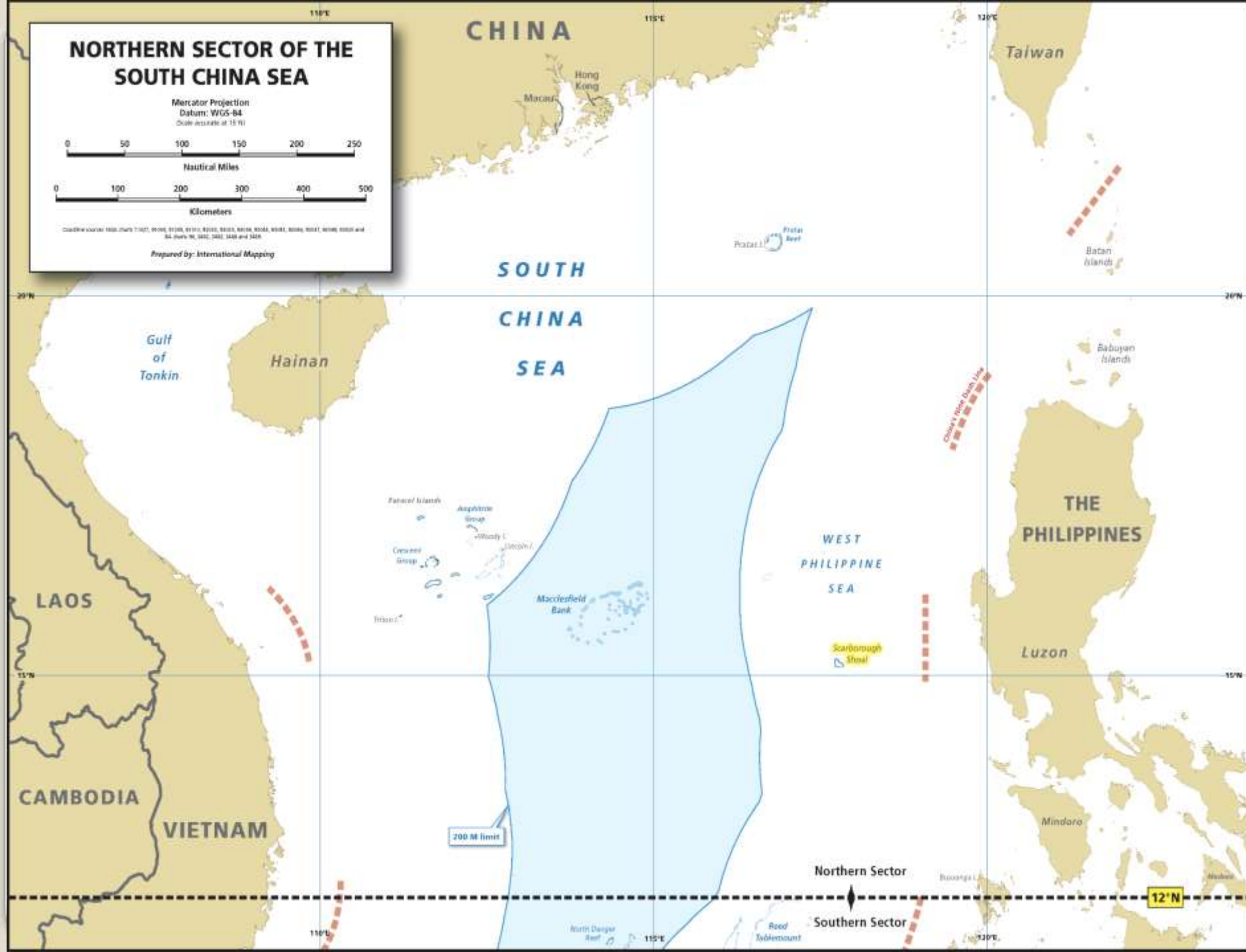
NORTHERN SECTOR OF THE SOUTH CHINA SEA

Mercator Projection
Datum: WGS-84
Scale accurate at 15°N



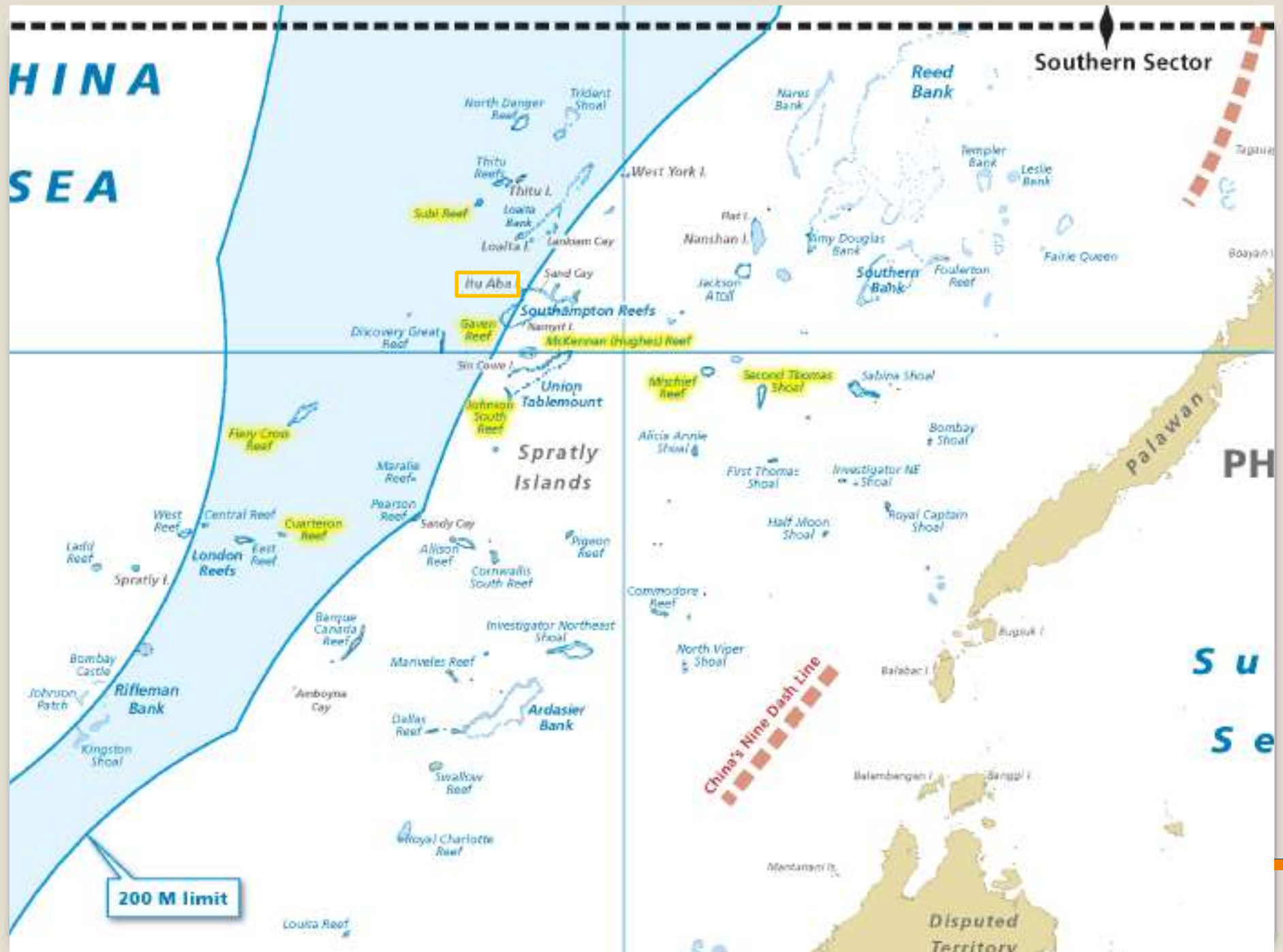
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**HINA
SEA**

Southern Sector

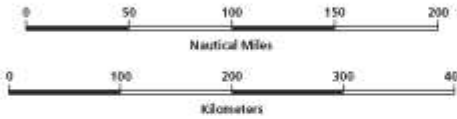


Iru Aba

200 M limit

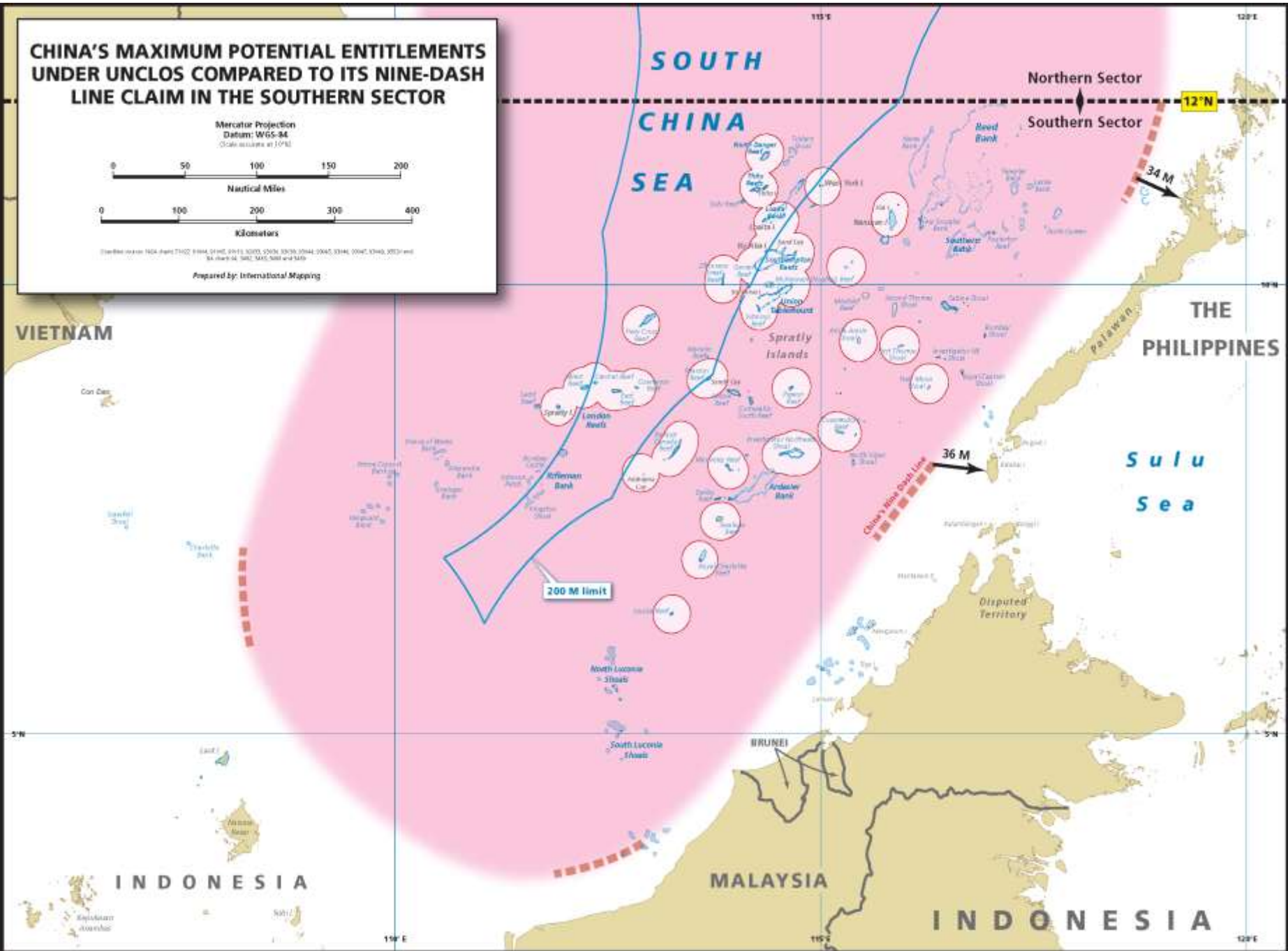
CHINA'S MAXIMUM POTENTIAL ENTITLEMENTS UNDER UNCLOS COMPARED TO ITS NINE-DASH LINE CLAIM IN THE SOUTHERN SECTOR

Mercator Projection
Datum: WGS-84
Scale accurate at 1:1M



Coordinates: 102°40'00"E, 103°00'00"E, 103°20'00"E, 103°40'00"E, 104°00'00"E, 104°20'00"E, 104°40'00"E, 105°00'00"E, 105°20'00"E, 105°40'00"E, 106°00'00"E, 106°20'00"E, 106°40'00"E, 107°00'00"E, 107°20'00"E, 107°40'00"E, 108°00'00"E, 108°20'00"E, 108°40'00"E, 109°00'00"E, 109°20'00"E, 109°40'00"E, 110°00'00"E, 110°20'00"E, 110°40'00"E, 111°00'00"E, 111°20'00"E, 111°40'00"E, 112°00'00"E, 112°20'00"E, 112°40'00"E, 113°00'00"E, 113°20'00"E, 113°40'00"E, 114°00'00"E, 114°20'00"E, 114°40'00"E, 115°00'00"E, 115°20'00"E, 115°40'00"E, 116°00'00"E, 116°20'00"E, 116°40'00"E, 117°00'00"E, 117°20'00"E, 117°40'00"E, 118°00'00"E, 118°20'00"E, 118°40'00"E, 119°00'00"E, 119°20'00"E, 119°40'00"E, 120°00'00"E, 120°20'00"E, 120°40'00"E, 121°00'00"E, 121°20'00"E, 121°40'00"E, 122°00'00"E, 122°20'00"E, 122°40'00"E, 123°00'00"E, 123°20'00"E, 123°40'00"E, 124°00'00"E, 124°20'00"E, 124°40'00"E, 125°00'00"E, 125°20'00"E, 125°40'00"E, 126°00'00"E, 126°20'00"E, 126°40'00"E, 127°00'00"E, 127°20'00"E, 127°40'00"E, 128°00'00"E, 128°20'00"E, 128°40'00"E, 129°00'00"E, 129°20'00"E, 129°40'00"E, 130°00'00"E, 130°20'00"E, 130°40'00"E, 131°00'00"E, 131°20'00"E, 131°40'00"E, 132°00'00"E, 132°20'00"E, 132°40'00"E, 133°00'00"E, 133°20'00"E, 133°40'00"E, 134°00'00"E, 134°20'00"E, 134°40'00"E, 135°00'00"E, 135°20'00"E, 135°40'00"E, 136°00'00"E, 136°20'00"E, 136°40'00"E, 137°00'00"E, 137°20'00"E, 137°40'00"E, 138°00'00"E, 138°20'00"E, 138°40'00"E, 139°00'00"E, 139°20'00"E, 139°40'00"E, 140°00'00"E, 140°20'00"E, 140°40'00"E, 141°00'00"E, 141°20'00"E, 141°40'00"E, 142°00'00"E, 142°20'00"E, 142°40'00"E, 143°00'00"E, 143°20'00"E, 143°40'00"E, 144°00'00"E, 144°20'00"E, 144°40'00"E, 145°00'00"E, 145°20'00"E, 145°40'00"E, 146°00'00"E, 146°20'00"E, 146°40'00"E, 147°00'00"E, 147°20'00"E, 147°40'00"E, 148°00'00"E, 148°20'00"E, 148°40'00"E, 149°00'00"E, 149°20'00"E, 149°40'00"E, 150°00'00"E, 150°20'00"E, 150°40'00"E, 151°00'00"E, 151°20'00"E, 151°40'00"E, 152°00'00"E, 152°20'00"E, 152°40'00"E, 153°00'00"E, 153°20'00"E, 153°40'00"E, 154°00'00"E, 154°20'00"E, 154°40'00"E, 155°00'00"E, 155°20'00"E, 155°40'00"E, 156°00'00"E, 156°20'00"E, 156°40'00"E, 157°00'00"E, 157°20'00"E, 157°40'00"E, 158°00'00"E, 158°20'00"E, 158°40'00"E, 159°00'00"E, 159°20'00"E, 159°40'00"E, 160°00'00"E, 160°20'00"E, 160°40'00"E, 161°00'00"E, 161°20'00"E, 161°40'00"E, 162°00'00"E, 162°20'00"E, 162°40'00"E, 163°00'00"E, 163°20'00"E, 163°40'00"E, 164°00'00"E, 164°20'00"E, 164°40'00"E, 165°00'00"E, 165°20'00"E, 165°40'00"E, 166°00'00"E, 166°20'00"E, 166°40'00"E, 167°00'00"E, 167°20'00"E, 167°40'00"E, 168°00'00"E, 168°20'00"E, 168°40'00"E, 169°00'00"E, 169°20'00"E, 169°40'00"E, 170°00'00"E, 170°20'00"E, 170°40'00"E, 171°00'00"E, 171°20'00"E, 171°40'00"E, 172°00'00"E, 172°20'00"E, 172°40'00"E, 173°00'00"E, 173°20'00"E, 173°40'00"E, 174°00'00"E, 174°20'00"E, 174°40'00"E, 175°00'00"E, 175°20'00"E, 175°40'00"E, 176°00'00"E, 176°20'00"E, 176°40'00"E, 177°00'00"E, 177°20'00"E, 177°40'00"E, 178°00'00"E, 178°20'00"E, 178°40'00"E, 179°00'00"E, 179°20'00"E, 179°40'00"E, 180°00'00"E

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Click on each box to view the technical coordinates of the contract areas for application.



SOUTH CHINA SEA



SULU SEA

BORNEO

Cooperative Arrangements for Reed Bank?

1. Press Reports indicate that the Philippines and China are engaged in negotiations regarding the development of hydrocarbon resources at Reed Bank
2. China is likely to want the arrangement to be a “joint development arrangement” in an area of “overlapping claims”
3. Constitutional provisions and domestic politics may prevent the Philippines from agreeing to a “joint development” arrangement

Cooperation Agreement on a “without prejudice” basis ?

- China and the Philippines could agree to “set aside” their disputes on both sovereignty and maritime claims and enter into “cooperation agreement” on a “without prejudice’ basis
 - Neither side recognizes the legitimacy of the other’s position on sovereignty or maritime claims
 - Neither side gives up its sovereignty or maritime claims
 - Without prejudice to final resolution of disputes on sovereignty & maritime claims

Part Three

Implications of the Award for Vietnam

Vietnam and the SCS Award

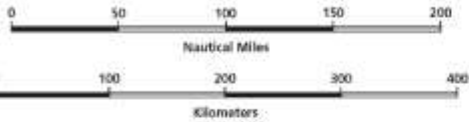


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1. Reasoning in Award favours Vietnam's position on access to resources
2. Vietnam has not claimed an EEZ from any disputed islands in Spratlys
3. Vietnam has opposed any claim by China to historic rights to resources within the nine dash line in the maritime zones of Vietnam
4. Vietnam benefits more than Philippines because there is only one disputed island in its EEZ

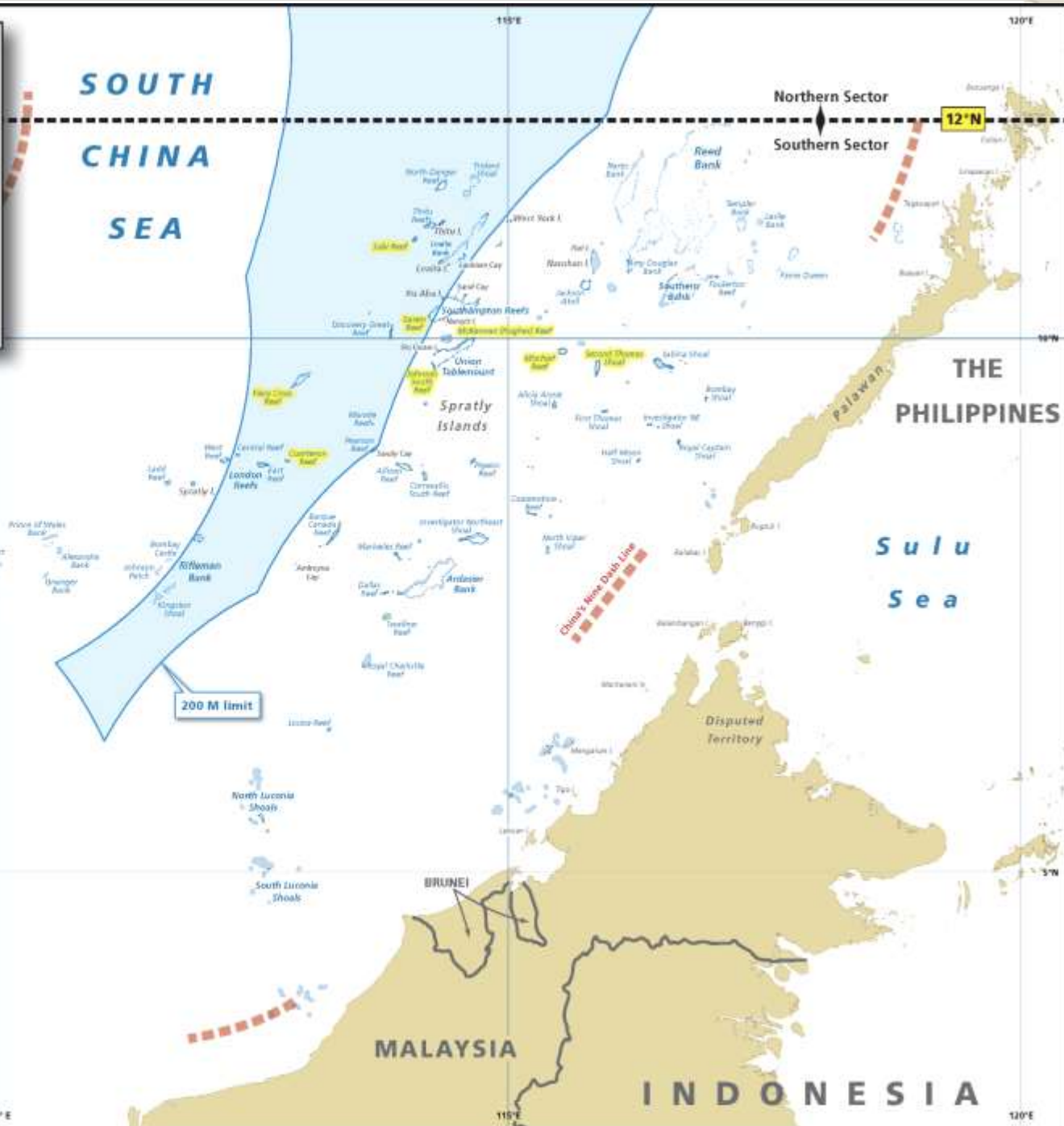
SOUTHERN SECTOR OF THE SOUTH CHINA SEA

Merator Projection
Datum: WGS-84
(Scale accurate at 10°N)



Coordinates: NGA charts 1101, 1104, 8105, 8111, 8103, 8102, 8106, 8104, 8105, 8104, 8104, 8105 and 8105-16, 162, 163, 360 and 360

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Northern Sector

Southern Sector

12°N

THE PHILIPPINES

Sulu Sea

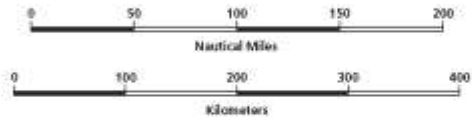
INDONESIA

MALAYSIA

INDONESIA

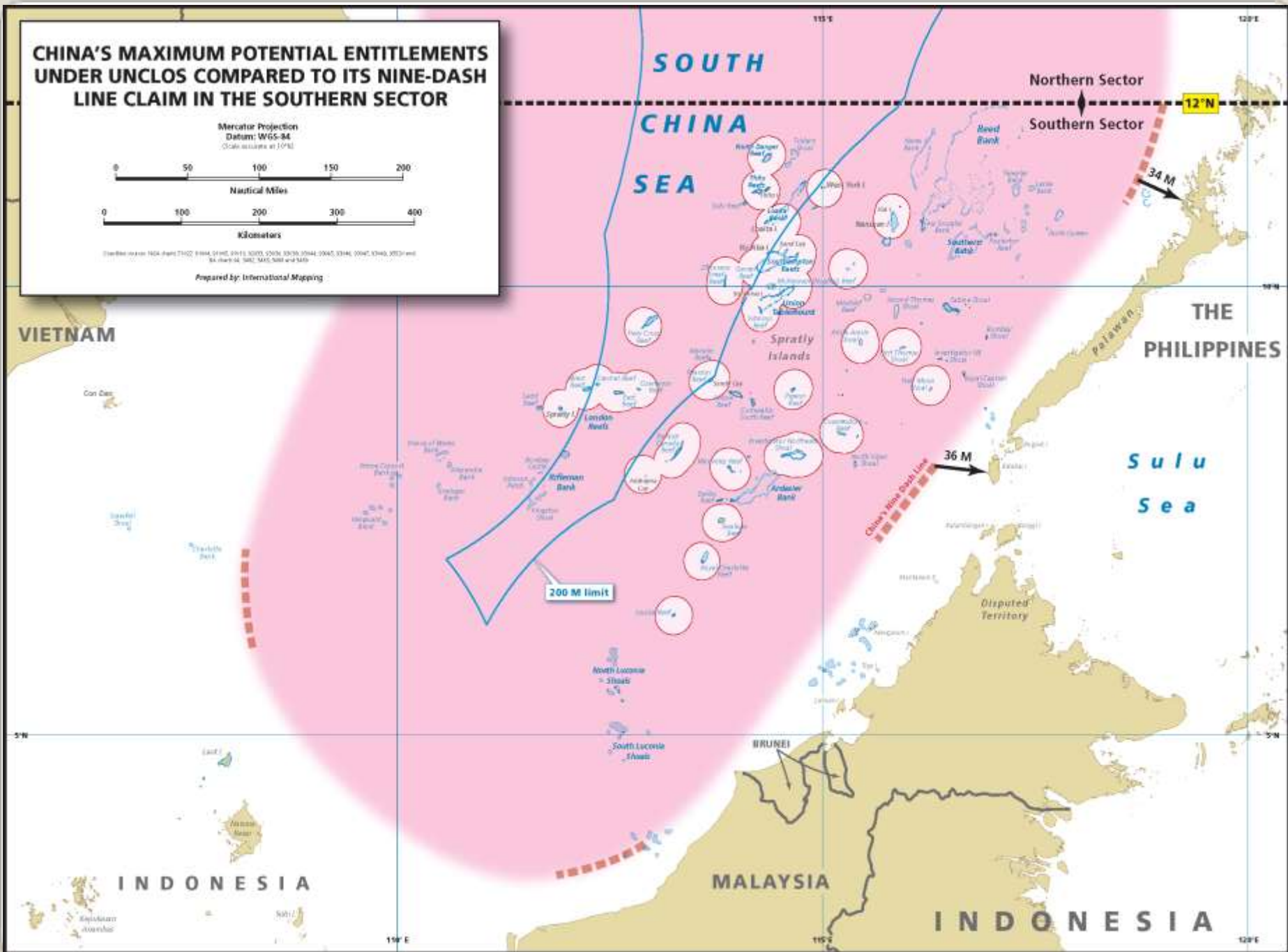
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Hydrocarbon Resources in EEZ of Vietnam



- There is only one disputed “island” in the EEZ of Vietnam off its southern coast
- Vietnam has entered into concession arrangements with foreign oil companies to explore and exploit hydrocarbon resources
- Concession agreements with companies from US, Canada, India, Russia, UAE, Spain, etc

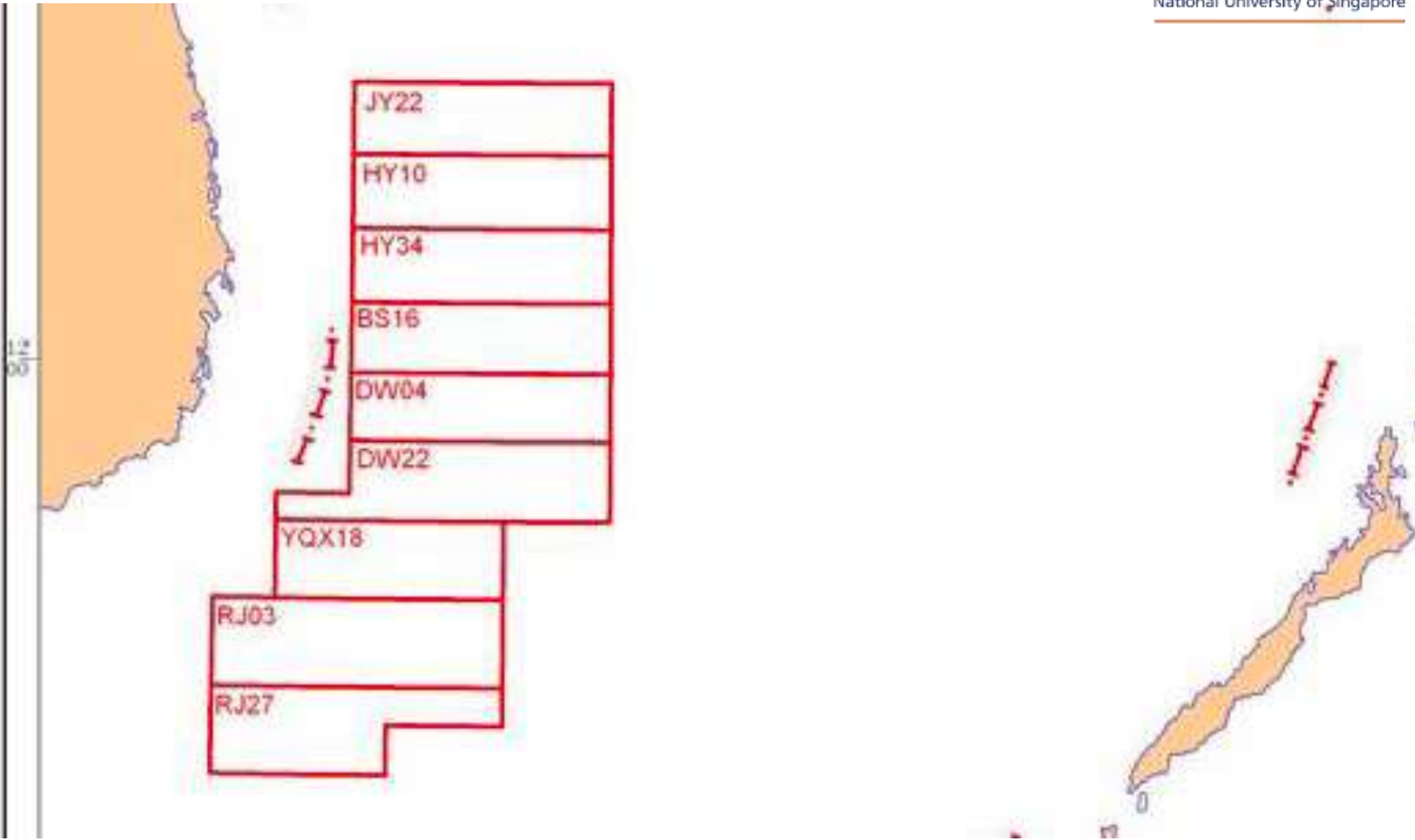
CNOOC Blocks off Vietnam



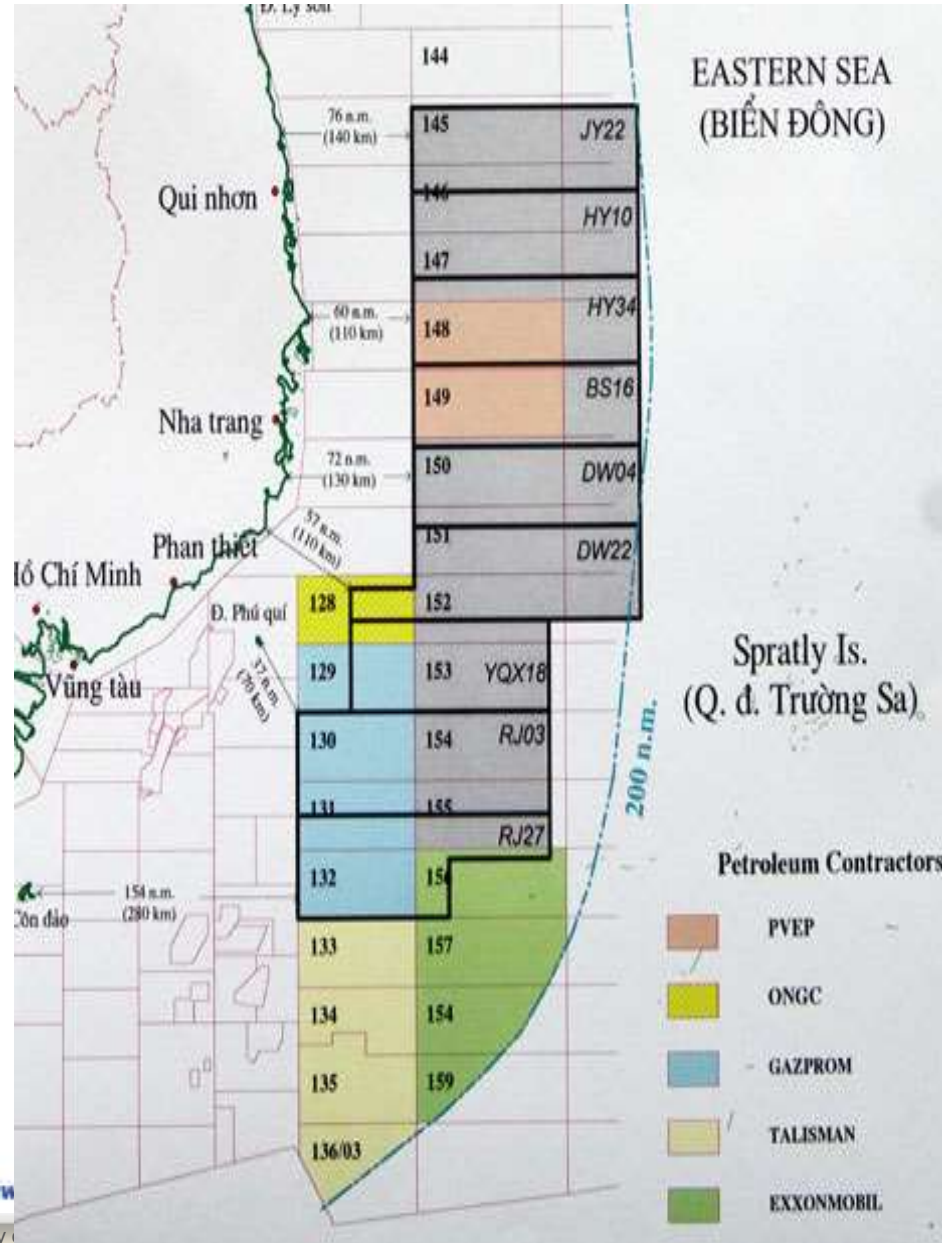
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1. In 2012 China's national oil company CNOOC declared petroleum blocks off the coast of Vietnam
2. Blocks were very close to Vietnam's coast and just within the nine-dash line
3. Arbitral Tribunal stated that this was an example of China asserting rights within the 9DL in excess of that permitted by UNCLOS
4. Not clear if China will continue to assert rights to resources in these blocks

CNOOC Oil Blocks 2012



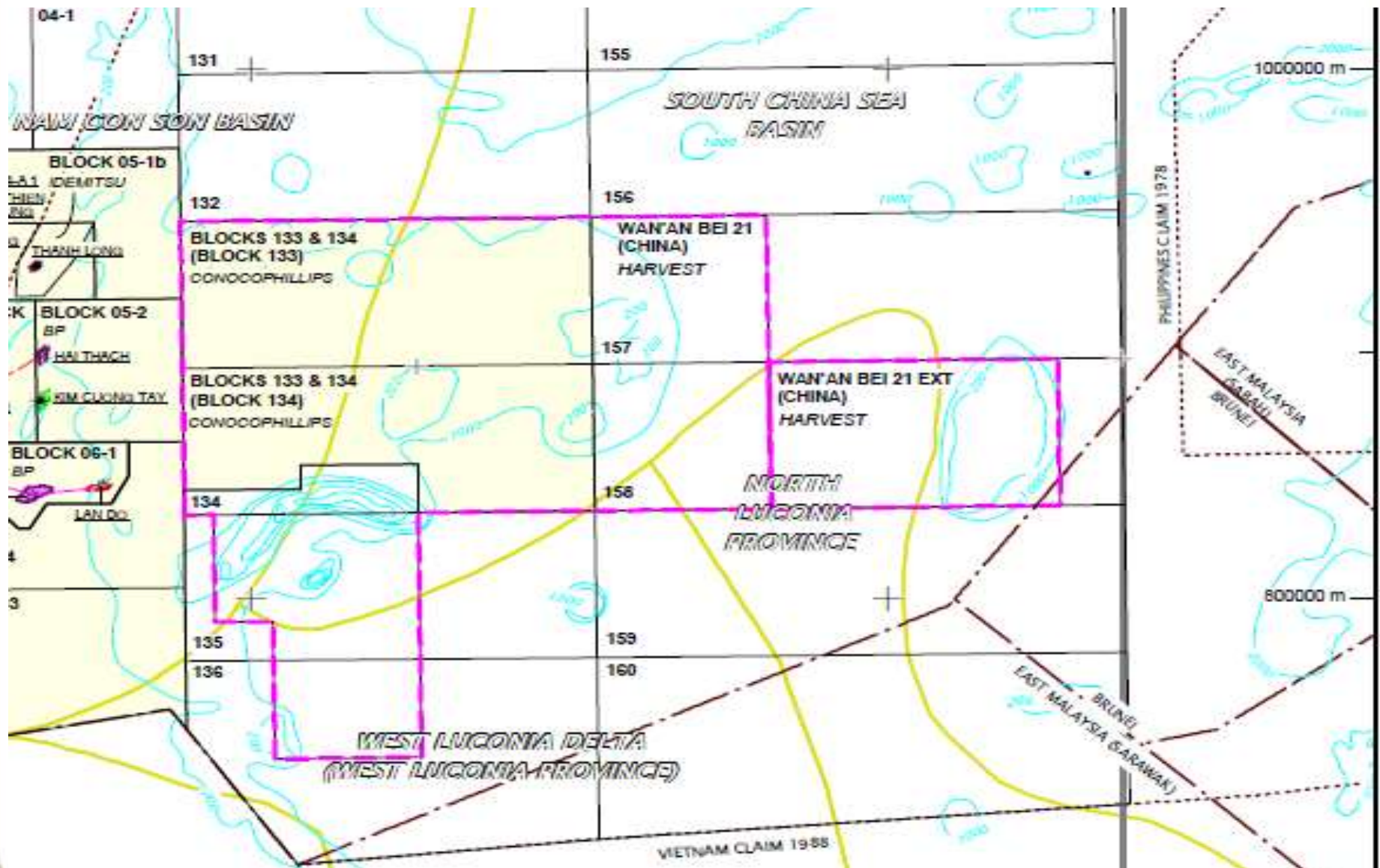
Overlapping Petroleum Blocks



Vanguard Bank Dispute

- This area has been a source of friction since the early 1990s
- Both Vietnam and China declared petroleum blocks in the area which overlapped with each other
- Vietnam's blocks are now with Spanish company Repsol
- Exact location of Block 136/03 in relation to the outer limit of Vietnam's EEZ is not clear as various maps seem to conflict

Vanguard Bank Overlapping Blocks



Vanguard Bank : Tension from 1990's



Vanguard Bank Dispute

- In late July 2017 it was reported that Spain's Repsol has been told by Vietnam to suspend appraisal drilling in Vietnam's Block 136-03 in the South China Sea after China issued threats to Vietnam over the activities in the area
- The Spanish operator had been drilling an appraisal well since mid-June on the 2014 CKD-1X gas discovery

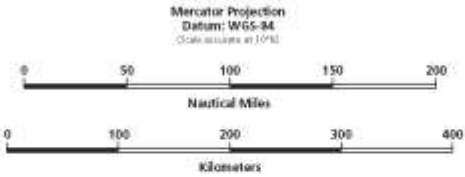
China and Vanguard Bank



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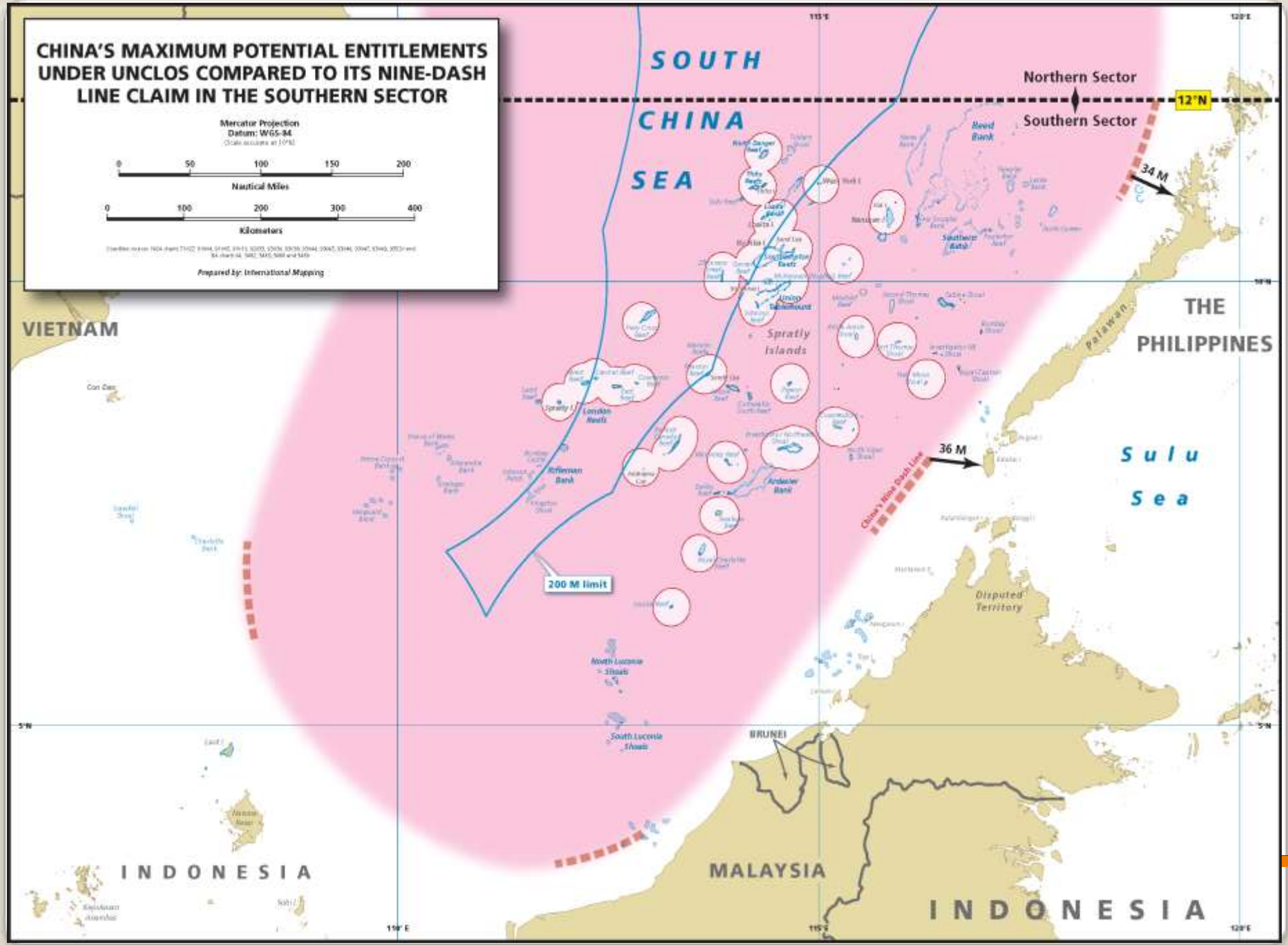
1. Basis of China's claim to hydrocarbon resources in Vanguard Bank is not clear
2. Status and entitlement of features in Vanguard Bank was not clear when dispute arose in 1990s
3. SCS Award favours the legal position of Vietnam, especially if the area concerned is within the its EEZ
4. SCS Award states that all of the features in Vanguard Bank are submerged and not subject to appropriation
5. The only island in the vicinity is Spratly Island, which the Tribunal ruled is a Article 121(3) "rock" entitled only to a 12 nm territorial sea

CHINA'S MAXIMUM POTENTIAL ENTITLEMENTS UNDER UNCLOS COMPARED TO ITS NINE-DASH LINE CLAIM IN THE SOUTHERN SECTOR



Coordinates from 102° East 110° 51' 00" 110° 51' 30" 110° 52' 00" 110° 52' 30" 110° 53' 00" 110° 53' 30" 110° 54' 00" 110° 54' 30" 110° 55' 00" 110° 55' 30" 110° 56' 00" 110° 56' 30" 110° 57' 00" 110° 57' 30" 110° 58' 00" 110° 58' 30" 110° 59' 00" 110° 59' 30" 120° East

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Issue for Vietnam-China



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1. Vanguard Bank is highly sensitive for both China and Vietnam and the position of both States is influenced by domestic pressures
2. Can the dispute over hydrocarbon resources in Vanguard Bank be treated as a “special case” because it arose in the 1990’s before legal status of features in the area was clear?
3. Could Vietnam terminate the Repsol concession and enter into discussions for a without prejudice cooperative agreement with China?

CONCLUSIONS

- Arbitral Award has strengthened the legal claims of the Philippines and Vietnam to resources in SCS
- China cannot be expected to recognize or implement the Award
- Philippines and Vietnam cannot be expected to officially abandon its rights under the Award
- Issue is whether it is possible to enter into cooperative agreements to develop the resources without either side giving up its legal claims or recognizing the claims of the other side

CONCLUSIONS

- Bilateral agreements establishing economic cooperation for Reed Bank and Vanguard Bank are permitted under general international law and under article 311 of UNCLOS
- Article 311 permits States parties to conclude agreements modifying or suspending the operation of provisions of the Convention in relations between them
- Could Vietnam and the Philippines except such a compromise if it is limited to the Vanguard Bank and Reed Bank areas?

CONCLUSIONS

- Current disputes cannot be resolved if positions continue to be military and economic “might” vs legal “right”
- It is in the national interest of all three countries and in the region’s interest for the three States to “set aside” their historic positions and negotiate compromise solutions to develop the resources and protect the marine environment
- Political compromise should be possible so long such agreements are done on a completely “without prejudice” basis

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THANK YOU

Robert Beckman