

**CIL Course on Law of the Sea**  
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# **Law of the Sea Cases**

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# Outline of Presentation

1. General Principles on Settlement of Disputes
2. Pre-UNCLOS Law of the Sea Cases
3. Law of the Sea Cases heard by ITLOS
4. Law of the Sea Cases heard by Annex VI  
Arbitral Tribunals
5. Recent Modes of Dispute Settlement under  
UNCLOS
6. South China Sea Arbitration

# PART I.

# GENERAL PRINCIPLES ON SETTLEMENT OF DISPUTES BETWEEN STATES

# “Consent Principle”

- Disputes between States on issues of law of the sea cannot be resolved by a court or tribunal unless both States consent
  - Modes of Consent:
    1. Ad hoc agreement for a particular dispute
    2. Optional Clause Declaration under Article 36 of the ICJ Statute
    3. Dispute Settlement Clause in a Treaty
-

# Ad Hoc Agreement



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1. Agreement between Indonesia and Malaysia to refer dispute on sovereignty over islands of Sipidan and Ligitan to the ICJ
2. Agreement between Malaysia and Singapore to refer dispute on sovereignty over Pedra Branca, Middle Rocks and South Ledge to ICJ

# Optional Clause Declaration

## Article 36(2) of ICJ Statute

- Article 36(2) The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
  - (a) the interpretation of a treaty;
  - (b) any question of international law; . . .
- More than 60 States have made declarations under Article 36(2)

# Dispute Settlement Clause in Treaty

## 1948 Bogota Treaty on Pacific Settlement

- When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof.

The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of said Statute.

# Dispute Settlement Clause in Treaty

- **Article 286, 1982 UNCLOS**
- ***Application of Procedures under This Section***
- Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.



## PART 2.

# PRE-UNCLOS CASES ON LAW OF THE SEA

# Corfu Channel Case (ICJ, 1949)

## UK v Albania, Special Agreement

- Albania accepted jurisdiction by communication to ICJ
- Issues concerning passage of British warships through Corfu Channel and act of British in sweeping channel for mines after one of its ships hit a mine
- The Albanian claim to make the passage of ships conditional on a **prior authorisation** conflicts with the **generally admitted principle** that States, in time of peace, **have a right to send their warships through straits used for international navigation** between two parts of the high seas, **provided that the passage is innocent.**

# Anglo-Norwegian Fisheries Case (UK v Norway, ICJ, 1951)

- Jurisdiction based on Optional Clause Declarations
- Issue was the straight baselines used by Norway along its deeply indented coast
- ICJ upheld legality of Norway's baselines
- Much of language from the case was codified in the Article 4 of the 1958 Convention on the Territorial Sea and Contiguous Zone
- Almost the same language is in Article 7 of UNCLOS on straight baselines

# North Sea Continental Shelf Cases, Germany v Denmark & Netherlands, 1969

- Jurisdiction: Optional Clause Declarations
- Issues was what principles governed the delimitation of maritime boundaries
- ICJ held that equidistance-special circumstances rule in 1985 Convention not binding on Germany because Germany was not party & provision was not CIL
- Court emphasized “equitable principles” and natural prolongation of land territory
- Result was two “camps” and great difficulty reaching agreement on language in Article 74(1) & 83(1) in UNCLOS

# Fisheries Jurisdiction Case (ICJ, UK v Iceland, 1974)

- Jurisdiction based on clause in Exchange of Notes
- Issue was legality of Fishing Zone declared by Iceland in area between 12 NM and 50 NM
- Court held that as the coastal State Iceland had “preferential rights”, but that it had to recognize the “historic rights” of the UK
- Case was decided at start of Third UN Conference, but reasoning was rejected by conference – it decided that coastal States would have “sovereign right” to explore and exploit the natural resources in 200 nm EEZ”

# PART 3

# LAW OF THE SEA CASES HEARD BY ITLOS

# CASES ON PROMPT RELEASE OF VESSELS & CREW

- After the establishment of ITLOS, its most common case was on the prompt release of vessels under Article 292 of UNCLOS
- Article 292 provides that the flag State can bring proceedings if detaining State has not complied with UNCLOS provisions for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security
- If no arbitral tribunal established, can initiate proceedings before UNCLOS

# 9 of first 15 ITLOS Cases were “Prompt Release” Cases

No 1. – The M/V “Saiga” Case (Saint Vincent & Grenadines v Guinea) 1997

No 5 - The “Camouco” Case (Seychelles v France) 2000

No 6 - The “Monte Confurco” Case (Sychelles v France) 2000

No 8 - The “Grand Prince” Case (Belize v France) 2001

No 9 - The “Chaisiri Reefer 2” Case (Panama v Yemen) 2001

No 11 - The “Volga” Case (Russian Federation v Australia) 2002

No 13 - The “Juno Trader” Case (Saint Vincent & Grenadines v. Guinea-Bissau) 2004

No 14 - The “Hoshinmaru” Case (Japan v Russian Federation) 2007

No 15 - The “Tomimaru” Case (Japan v Russian Federation) 2007



# 6 ITLOS Cases from 2011-2016 on Arrest & Detention of vessels & crew

- Case No. 25: **The “Nordstar” Case (Panama v Italy)** – challenge to arrest of Panamanian vessel oil supply vessel in EEZ of Italy
- Case No. 24: **The “Enrica Lexie” Incident (Italy v India)**, Provisional Measures – challenge to arrest of Italian military armed guards on Italian ship who accidentally killed Indian fisherman in EEZ of India, Case No.
- Case No. 22: **The “Arctic Sunrise” Case (Netherlands v Russian Federation)**, Provisional Measures - Challenge legality of arrest and detention of Greenpeace ship and demonstrators

# 6 ITLOS Cases from 2011-2016 on Arrest & Detention of Vessels & Crew

- Case No. 20: ***The “ARA Libertad” Case (Argentina v Ghana)***, Provisional Measures, Challenged legality of detention by Ghana of Argentinian warship
- Case No.19: **The M/V “Virginia G” Case (Panama/Guinea-Bissau)** Challenge to arrest of Panamanian vessel carrying out fueling operations for fishing vessels in EEZ of Guinea-Bissau
- Case No.18: **The M/V “Louisa” Case (Saint Vincent and Grenadines v Spain)** Challenge to arrest of vessels & crew by Spain for violation of laws on underwater cultural heritage

# ITLOS Cases on Environmental Obligations and Fisheries

1. Cases Nos. 3 & 4. Southern Bluefin Tuna Cases (New Zealand & Australia v Japan) (1999)
2. Case No. 7. Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union) (2000-2009)
3. Case No. 10. The MOX Plant Case (Ireland v UK) Provisional Measures (2001)
4. Case No. 12. Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v Singapore) (2003)

# ITLOS Part XV and Maritime Boundary Cases

- Bangladesh was the first country to institute compulsory proceedings under Part XV of UNCLOS for maritime boundary disputes
- In 2014 Bangladesh instituted proceedings against both India and Myanmar
  - Case with India was decided by an Annex VII Tribunal
  - Case with Myanmar was referred to ITLOS on agreement of both parties

# ITLOS Advisory Opinions



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- Case No. 17. Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area; (Request for an Advisory Opinion submitted to the Seabed Disputes Chamber) 2010
- Case No. 21. Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC); (Request for an Advisory Opinion submitted to ITLOS) 2014

# PART 3

## LAW OF THE SEA CASES HEARD BY ANNEX VII ARBITRAL TRIBUNALS

# Annex VI Arbitration Cases



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1. [1998-00] Southern Bluefin Tuna (Australia & New Zealand v Japan)
2. [2002-01] *MOX Plant Case (Ireland v. United Kingdom)*
3. [2004-05] *Land Reclamation by Singapore in of Johor (Malaysia v. Singapore)*
4. [2004-02] Barbados v. Trinidad and Tobago
5. [2004-04] Guyana v. Suriname
6. [2010-16] Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India
7. [2011-03] Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)

# Annex VII Arbitration Cases



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8. [2013-11] *The ARA Libertad Arbitration (Argentina v. Ghana)*
  9. [2013-19] The South China Sea Arbitration (Philippines v. China)
  10. [2013-30] Atlanto-Scandian Herring Arbitration (Denmark for Faroe Islands v. EU)
  11. [2014-02] The Arctic Sunrise Arbitration (Netherlands v. Russia)
  12. [2014-07] The Duzgit Integrity Arbitration (Malta v. São Tomé and Príncipe)
  13. [2015-28] The "Enrica Lexie" Incident (Italy v. India)
  14. [2017-06] Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation)
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## PART 4

# RECENT MODES OF DISPUTE SETTLEMENT UNDER UNCLOS

# COMPULSORY NON-BINDING CONCILIATION

- Timor Leste v Australia – Compulsory Non-binding Conciliation for Maritime Boundary Dispute that was excluded from compulsory binding procedures because of Declaration by Australia under Article 298
- Advantages:
  - Can consider arrangements to develop resources as well as delimit the boundary
  - Conciliation commission can encourage both sides to modify their historic position
  - One year time limit encourages settlement

# Special Chamber of ITLOS in Ghana v Côte d'Ivoire

- Case brought by Ghana would have been heard by Annex VII tribunal under default procedure
- Both parties agreed to refer case to a special tribunal of ITLOS
  - Ad hoc judge for each party paid by ITLOS
  - Parties agree on 3 ITLOS judges paid by ITLOS
  - Case administered by ITLOS – no cost to parties
- Best of both worlds for parties to the case?

# PART 5

## LOS CASES HEARD BY ICJ AFTER 1994

# CASES ON LOS TO ICJ AFTER NOV 1994

1. 1995: Fisheries Jurisdiction (Spain v. Canada) – Canada not party to UNCLOS
2. 1999: Nicaragua v Honduras – Nicaragua not a party to UNCLOS until 2000
3. 2001: Nicaragua v Columbia (Maritime Boundary) – Columbia not party to UNCLOS
4. 2004: Romania v Ukraine (Maritime Boundary) – Ukraine 298 Declaration
5. 2008: Peru v Chile (Maritime Dispute) – Peru not party to UNCLOS

# CASES ON LOS TO ICJ AFTER NOV 1994

6. 2010: Australia & NZ v Japan (Whaling) – dispute not on UNCLOS
7. 2013: Bolivia v Chile (Access to Ocean) – Pact of Bogata
8. 2013: Nicaragua v Columbia (CS Boundary) – Columbia not party to UNCLOS
9. 2013: Nicaragua v Columbia (sovereign rights) - Columbia not party
10. 2014: Costa Rica v Nicaragua (maritime boundary) – Art 36(2)
11. 2014: Somalia v Kenya (maritime boundary) – Art 36(2)

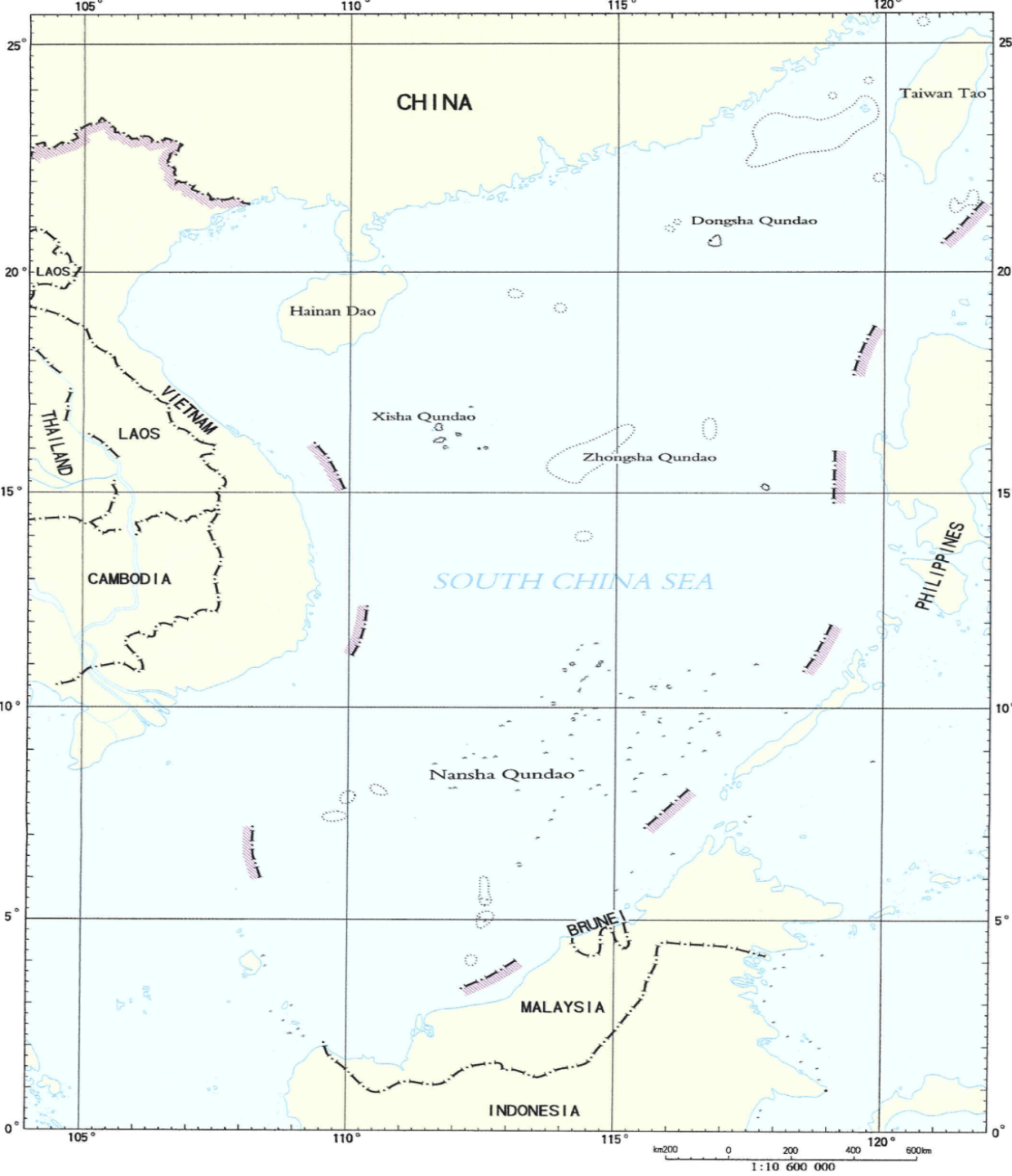
# PART 6

## SOUTH CHINA SEA ARBITRATION

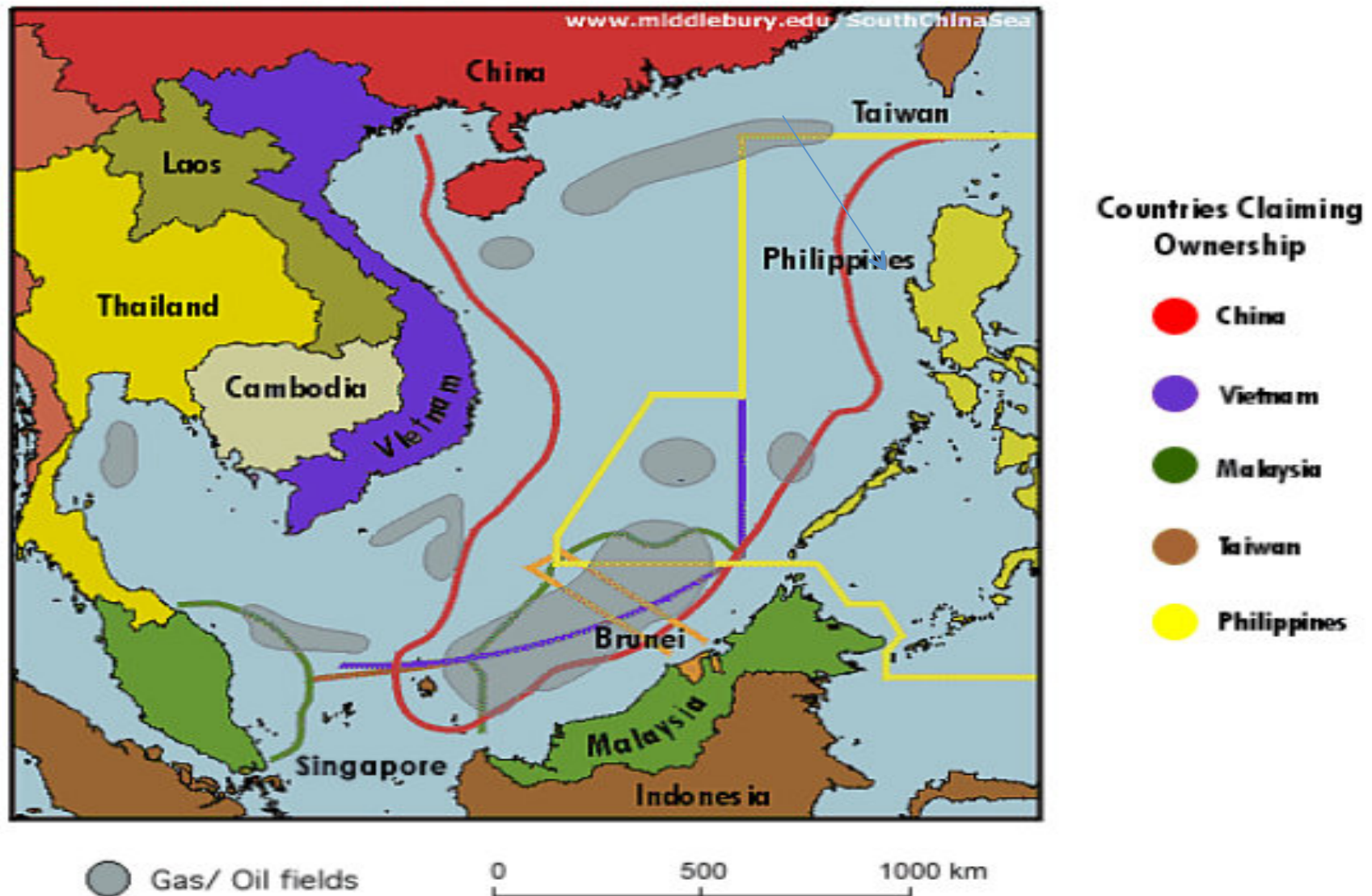
# Significance of Case

- Most important case in terms of the interpretation of provisions in UNCLOS
- Significance in question because China adopted policy of nonparticipation, nonappearance and noncompliance
- Case may nevertheless become the most important precedent on UNCLOS





# Ambiguity of Maritime Claims



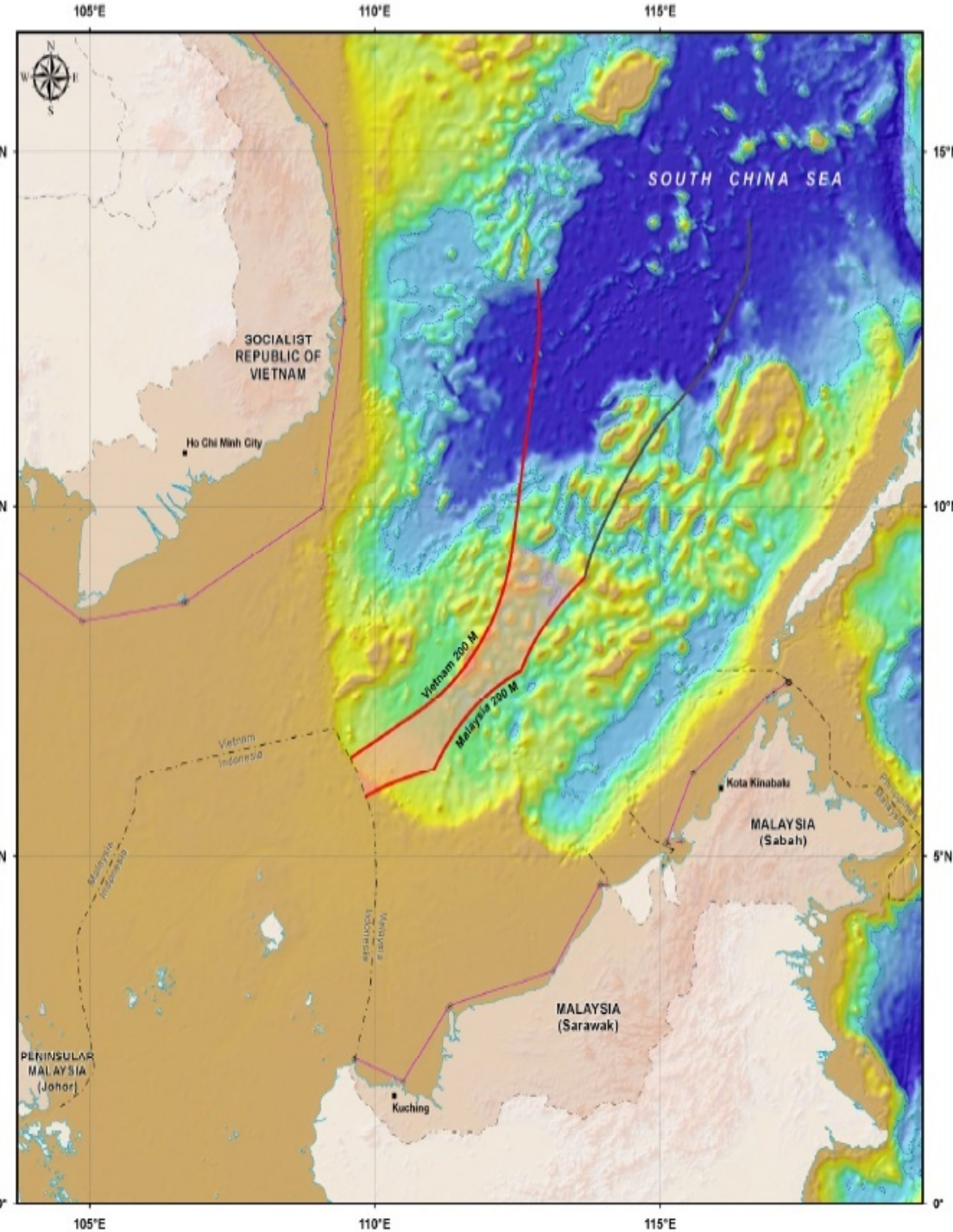
Map 3.

# China / Philippines / Vietnam / Taiwan / Malaysia





- Joint Submission of Vietnam and Malaysia to CLCS
- 6 May 2009



# Significance of Submission to CLCS

- Vietnam & Malaysia clarified EEZ claim
- Claimed 200 nm EEZ only from mainland territory
- Implied that none of disputed islands entitled to EEZ of its own
- Practical result: Most fisheries and hydrocarbons in lower half of SCS within sovereign rights of ASEAN States
- Result: China official objection

# China's Objection of 7 May 2009

- The day after the Joint Submission of Malaysia and Vietnam, China officially filed an objection, 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).
- This was first time that China had made map available to international community



# China's claim ambiguous

- **Sovereignty** over the islands and their ADJACENT WATERS
- **Sovereign rights and jurisdiction** in the RELEVANT WATERS as well as in the seabed and subsoil
  - Within EEZ and Continental Shelf from ISLANDS that can sustain human habitation?
  - Within EEZ and Continental Shelf measured from all islands, rocks and other features?
- **Historic rights** to resources in and under waters within the nine-dash line?



### Legend

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



# Key Dates in Case

- 22 Jan 2013 Institution of Case
- 19 Feb 2013 China rejected proceedings
- 30 Mar 2014 Philippine Memorial
- 01 Dec 2014 China MOFA Position Paper
- 21 Apr 2015 Decision to Bifurcate case
- 7-13 July 2015 Hearing on Jurisdiction
- 29 Oct 2015 **Award on Jurisdiction**
- 24-30 Nov 2015 Hearing on Merits
- 12 Jul 2016 **Award on Merits**

# Philippine Requests for Relief

Two most important submissions of Philippines:

1. Declare that China's rights to maritime entitlements are those established by UNCLOS
2. Declare that China's maritime claims based on its 9-dash line are contrary to UNCLOS and invalid

# Historic Rights within 9DL

- 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
  - They are in the EEZ of the Philippines and subject to its jurisdiction and control

# Scarborough Shoal

- A sovereignty dispute over Scarborough Shoal became serious in the 1990s after the Philippines Coast Guard arrested Chinese fisherman
- The dispute escalated after the Philippines Archipelagic Waters Act stated that Scarborough Shoal was governed by the Regime of Islands, that is, by article 121 of UNCLOS
- The dispute came to a head in 2012 when China took control of the Shoal and prevented Filipino fisherman from entering – it resulted in a 6 month stand-off from April to September
- Attempted mediation by US failed – report is that both sides agreed to withdraw their forces - but China returned and took control

# Status of Scarborough Shoal

- Scarborough shoal is a large reef in the northern part of the South China Sea within the EEZ of the Philippines
- It is very rich in fisheries, especially inside the lagoon
- Most of the reef is below water at high tide, but there are 4-6 rocks that are “islands” under Article 121 because they are above water at high tide
- Scarborough Shoal cannot support human habitation so it is not entitled to an EEZ and continental shelf of its own
- China’s only possible claim to waters beyond 12 nm from the reef is that they are within the Nine-Dash line





# Scarborough Shoal

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# Dispute over Status of Reed Bank

- There has been an ongoing dispute since the late 1990s between China and the Philippines over whether Reed Bank is solely within the EEZ of the Philippines or whether it is an area of overlapping maritime claims
- Philippines position was that Reed Bank is located within its EEZ and that China has no legitimate claim for 2 reasons
  1. China has no rights to resources inside the Nine Dash Line
  2. There are no disputed islands near Reed Bank that are entitled to an EEZ of their own, so there is no area of overlapping claims



ed by

■ Philippines

○ Taiwan

nam

Philippine (Kalayaan) claim line

Southwest Cay Northeast Cay

South Reef

West York Island

Thitu Island

Subi Reef

Flat Island

Loaita Nan

Lankiam Cay

Loaita Island

Nanshan Island

Sand Cay Petley Reef

Itu Aba Island Eldad Reef

Gaven Reefs Namyt Island

Discovery Great Reef

Chigua Reef Union Atoll

Sin Cowe Island Sin Cowe East Island

Collins Reef Johnson Reef

Len Dao

Mischief Reef

Fiery Cross Reef

SPRATLY ISLANDS

REED BANK

Pearson Reef

Pigeon Reef

Alison Reef

Cornwallis South Reef

Commodore Reef

Central Reef

Cuarteron Reef

East Reef

Barque Canada Reef

Investigator Shoal

Amboyna Cay

Mariveles Reef

Ardasier Reefs

Swallow Reef

Royal

Pulau Balambangan

Pulau Banggi

Balabac Strait

Buguk Island

Balabac Island

Malabungan

Quezon

Aborian

Puerto Princesa

Palawan

PHILIPPINES

Sulu Sea

200-meter depth

Southern Reefs

Reed Tablemount

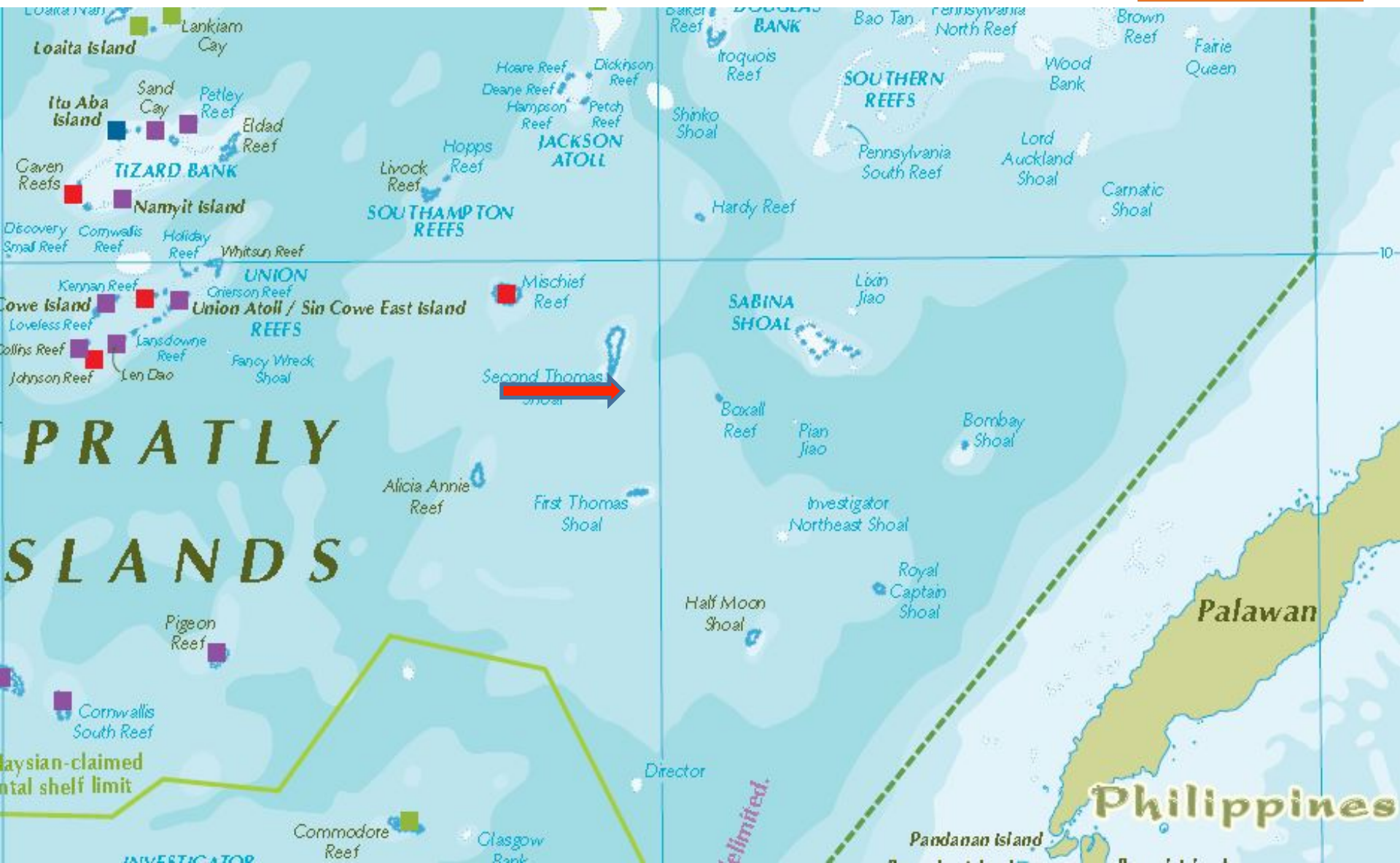
Iroquis Reef

South



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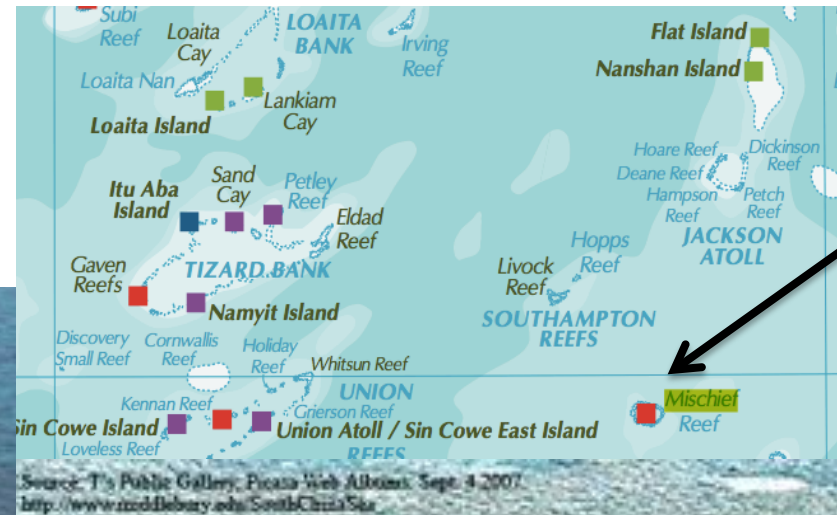
# Mischief Reef

- Mischief Reef is large atoll located 130 nm off the island of Palawan, in the EEZ of the Philippines
- China occupied it beginning in 1995, first by constructing stilt houses as “refuge for fisherman”, then permanent facilities
- The Philippines has maintained that it is under its jurisdiction and control because it is a low tide elevation within in its EEZ, and more than 12 nm from any island
- Mischief Reef is one of the features on which China has engaged in major construction activities

# Mischief Reef

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27 May, 2015



9 June, 2015

Mischief Reef, South China Sea

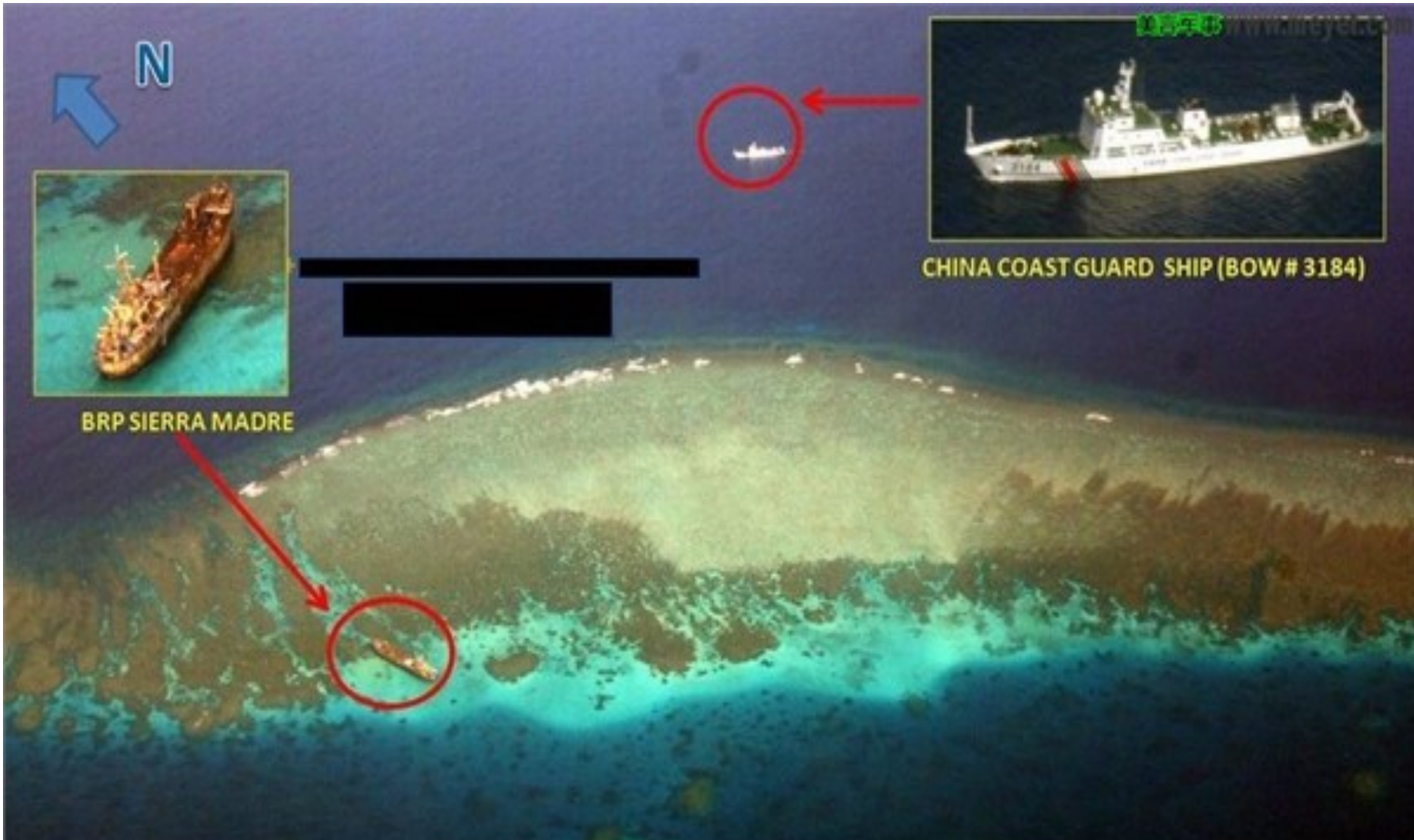


# Second Thomas Shoal

- After China occupied Mischief Reef in 1995, the Philippines intentionally stranded an old warship on Second Thomas Shoal in 1999
- A small military contingent lives on the stranded ship to prevent China from occupying the shoal
- Tensions rose in 2014 when Chinese Coast Guard vessels attempted to prevent Filipino supply vessels from landing at the shoal

# Second Thomas Shoal

Low-Tide Elevation with Philippine garrison on scuttled naval vessel



# China's Arguments that Tribunal had no Jurisdiction

1. The underlying dispute was about who has the better claim to **sovereignty** over the features, and this issue is outside the Tribunal's jurisdiction as is not governed by UNCLOS
  - Which State has sovereignty must be determined before the status and entitlement of a feature can be determined
2. The underlying disputes was about **maritime boundary delimitation**, and disputes concerning maritime boundary delimitation are excluded by China's Declaration under Article 298
  1. Determining status and entitlement of a feature is one the necessary steps in determining maritime boundaries, so this is essentially a dispute on maritime boundary delimitation

# Article 298. Optional Exceptions to Applicability of Section 2

- 1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:
- **(a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, . . .**
- **(b) disputes concerning military activities**, including military activities by government vessels and aircraft engaged in non-commercial service, . . .

# Award on Status & Entitlement v. Sovereignty & Delimitation

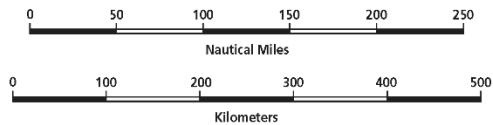
- A dispute exists on the interpretation or application of the provisions in UNCLOS
  1. The matters submitted to arbitration by the Philippines do not require the Tribunal to decide sovereignty over the islands either explicitly or implicitly, and they will not advance the position of the Philippines with respect to sovereignty
  2. The claims submitted by the Philippines do not concern a sea boundary delimitation.
  3. A dispute concerning whether a State possesses entitlement to a maritime zone from a feature is distinct from delimiting maritime zones in areas of overlapping claims

# Relief Sought on Scarborough Shoal

- It is a “rock” within Article 121(3) and entitled to no EEZ or continental shelf of its own – only a 12 nm territorial sea
- Area outside 12 nm territorial sea of the Shoal is EEZ of Philippines
- China’s activities and other activities in waters outside 12 nm from Scarborough Shoal are illegal because they are contrary to Philippine’s sovereign rights and jurisdiction in its EEZ

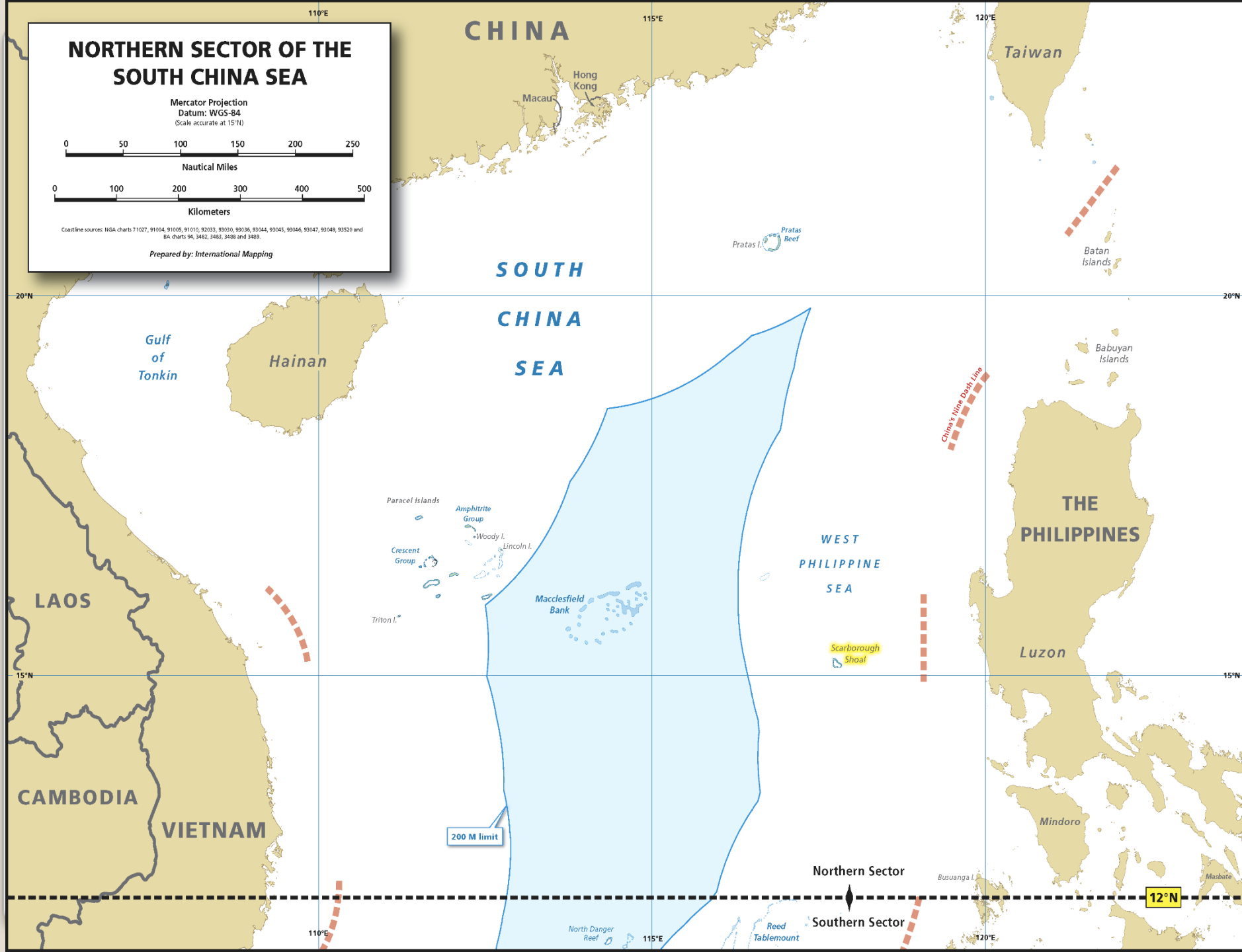
# NORTHERN SECTOR OF THE SOUTH CHINA SEA

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



Coastline sources: NGA charts 71027, 91004, 91005, 91010, 92033, 93030, 93036, 93044, 93045, 93046, 93047, 93049, 93520 and BA charts 94, 3482, 3483, 3488 and 3489.

Prepared by: International Mapping





# Scarborough Shoal

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# Scarborough Shoal

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# 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.

. . .

3. **Rocks** which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

# Status & Entitlement of Features in Spratly Islands

- Philippines argued that 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
  - They are in the EEZ of the Philippines and subject to its jurisdiction and control



# Itu Aba / Taiping (Taiwan)

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Image © 2011 DigitalGlobe

© 2011 MapIt

Imagery Date: 2/17/2006

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

©2010 Google

Eye alt 3885 ft

# Decision of Tribunal on 121(3)

- The Tribunal noted that Article 121(3) was closely linked to the expansion of coastal State jurisdiction with the creation of the exclusive economic zone and was intended to prevent insignificant features from generating large entitlements to maritime zones that would infringe on the entitlements of inhabited territory or on the high seas and the area of the seabed reserved for the common heritage of mankind.

# Interpretation of Article 121(3)

- The Tribunal concluded that the entitlements of a feature depend on  
the objective capacity of a feature,  
in its natural condition,  
to sustain either  
a stable community of people or  
economic activity that is neither dependent on outside  
resources nor purely extractive in nature.
- This interpretation has been criticized by some academics who  
argue that the conditions imposed by the Tribunal go beyond  
the actual wording in Article 121(3)

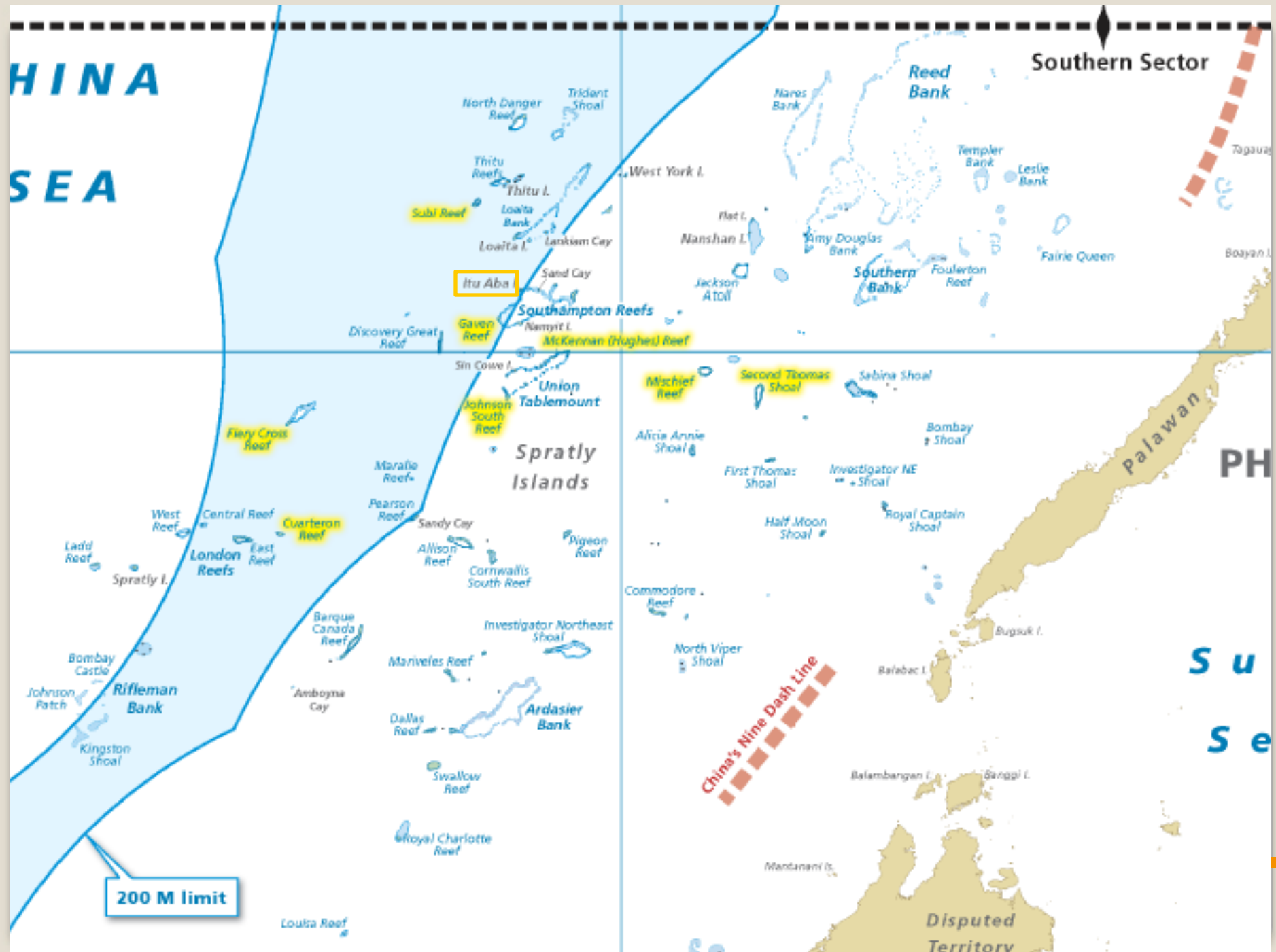
# Effect of Ruling on “Disputed Areas”

1. The Award significantly reduced the disputed maritime areas in the South China Sea
2. Only maritime areas in dispute 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”



**CHINA**  
**SEA**

**Southern Sector**



**200 M limit**



# Was there a dispute under UNCLOS on historic rights within 9DL?

- Main submission of Philippines was that UNCLOS governs China's rights and obligations in the SCS and that the claims of China based on "historic rights" within the nine-dash line are invalid under UNCLOS
- The MFA of China issued a Position Paper in July 2014 in which it gave it reasons why the Tribunal had no jurisdiction, but the paper was silent on the issue of whether China believed it had "historic rights" which continued to exist after it became a party to UNCLOS

# Tribunal ruled that China's position on "historic rights" was ambiguous

- As far as the Tribunal is aware . . the most insightful formulation by China of its claims in the SCS, beyond its claim to sovereignty over the islands and their adjacent waters, is a claim to “**relevant rights in the SCS, formed in the long historical course**” (MFA Statement, 30-10-15) [para 206]
- China's repeated invocation of rights “formed in the long historical course” and its linkage of this concept with the ‘nine-dash line’ indicates that **China understands its rights to extend, in some form, beyond the maritime zones expressly described in the Convention** (para 207)

# Tribunal Ruling on historic rights

- Tribunal held that the issue of whether a dispute existed was a matter to be determined objectively, and that the existence of a dispute could be inferred from:
  - (1) the conduct of a State or
  - (2) its Silence in circumstances where response expected
- Tribunal examined actual conduct of China and concluded that there was a dispute on the interpretation or application of UNCLOS despite China's policy of not clarifying exactly what rights, including historic rights, it was claiming in the SCS

# Ruling on whether dispute on historic rights

- There is a dispute concerning the source of maritime entitlements in the SCS and the interaction of China's claimed "historic rights" with the provisions of UNCLOS (para 163)
- The existence of a dispute over these issues is not diminished by the fact that China has not clarified the meaning of the nine-dash line or elaborated on its claim to historic rights (para 167)
- This is not a dispute about the existence of specific historic rights, but rather a dispute about historic rights in the framework of the Convention (para 168)

# Distinction between “historic titles” and “historic rights”

- ‘historic rights’ is general in nature and can describe any rights that a State may possess that would not normally arise under the general rules of international law, absent particular historical circumstances
- ‘historic titles’ in Article 298(1)(a)(i) is a reference to claims of sovereignty over maritime areas derived from historical circumstances
- China’s conduct showed that it was not claiming sovereignty over the waters in the SCS, but that it was claiming a constellation of historic rights (such as fishing rights)
- Therefore, the dispute on whether China’s claim to “historic rights” inside the nine-dash line was consistent with UNCLOS was not excluded by China’s declaration under Article 298

# No “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

# Significance of the 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

# Significance to Parties & Non-Parties



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- The Award is final and binding upon the Parties and no appeal is possible
- The Award is important for other States bordering the SCS because it is an authoritative interpretation on how UNCLOS applies to the issues in the SCS
- Award is important for all States that believe it is the common interest to have a rules-based legal order for the oceans



# Status & Entitlement of Features

- Award clarified the status & entitlement of the largest features in the Spratly Islands
- The Award clarified that certain features are not islands entitled to a claim of sovereignty
- The Award did not make any determination on who has the better claim to sovereignty over any disputed island
- Because the Tribunal ruled that none of the islands are entitled to an EEZ of their own, there are no overlapping EEZ claims, and no EEZ boundaries to delimit

# Award and Overlapping Claims

- Award greatly reduced the area of overlapping maritime claims:
  1. There is no overlapping EEZ between Philippines main archipelago and the offshore features in the Spratly Islands
  2. There are no areas where China's historic rights overlap with the EEZ of Philippines
  3. The only “disputed maritime areas” are the 12 nm of territorial sea surrounding the disputed islands
  4. The Award has not diminished China's claim to sovereignty over those features which meet the definition of an island under UNCLOS

# THANK YOU

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