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**Promoting Cooperation in Overlapping Maritime Areas**  
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**SESSION 4:**  
**Exploration and Exploitation in Overlapping Maritime Areas**

**JOINT ARRANGEMENTS IN THE SOUTH CHINA SEA:  
PROBLEMS & PROSPECTS**

**Robert Beckman**

Head, Ocean Law and Policy Programme,  
Centre for International Law, NUS

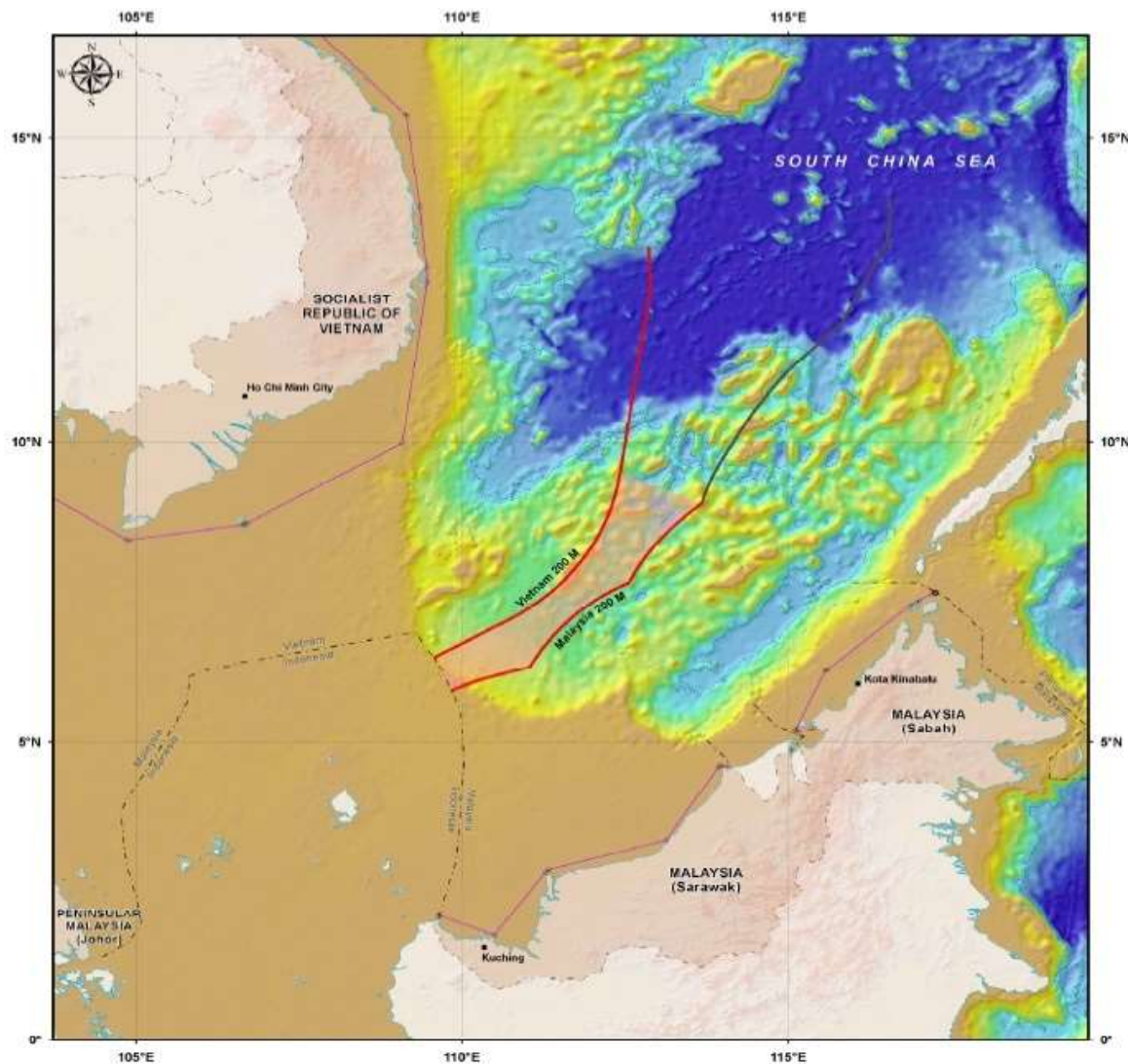
# Outline of Presentation

1. South China Sea Disputes
2. Award of Tribunal in *South China Sea Case*
3. “Joint Development” in South China Sea ?
4. Joint Arrangements between China & Philippines ?
5. Joint Arrangements between China & Vietnam ?
6. Issues in Joint Arrangements
7. Conclusions

# Part 1.

# South China Sea Disputes





Malaysia – Vietnam  
Joint Submission  
to CLCS  
6 May 2009

Clarified EEZ claim

Claimed EEZ only  
from mainland, not  
from islands

# China's Objection

## Note Verbale 7 May 2009:

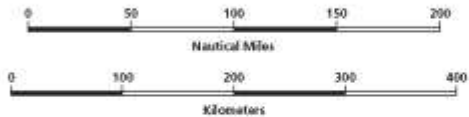
- China has indisputable **sovereignty** over the **islands** in the SCS and the **adjacent waters**, and enjoys **sovereign rights and jurisdiction** over the **relevant waters** as well as the seabed and subsoil thereof (see attached map).

MAP ATTACHED TO CHINA'S NOTES VERBALES  
Nos. CML/17/2009 & CML/18/2009  
(7 May 2009)



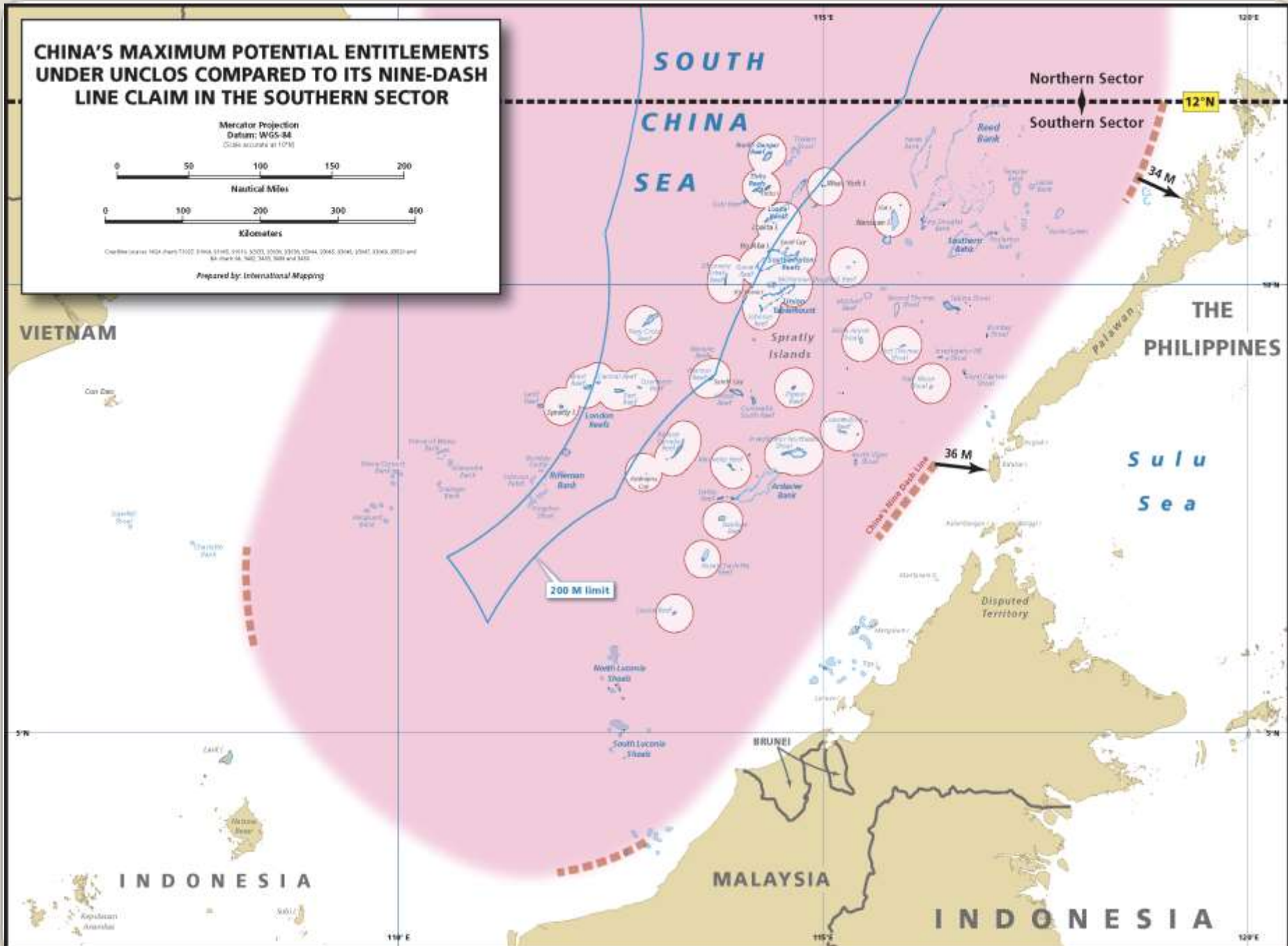
# CHINA'S MAXIMUM POTENTIAL ENTITLEMENTS UNDER UNCLOS COMPARED TO ITS NINE-DASH LINE CLAIM IN THE SOUTHERN SECTOR

Mercator Projection  
Datum: WGS-84  
Scale accurate at 12°N

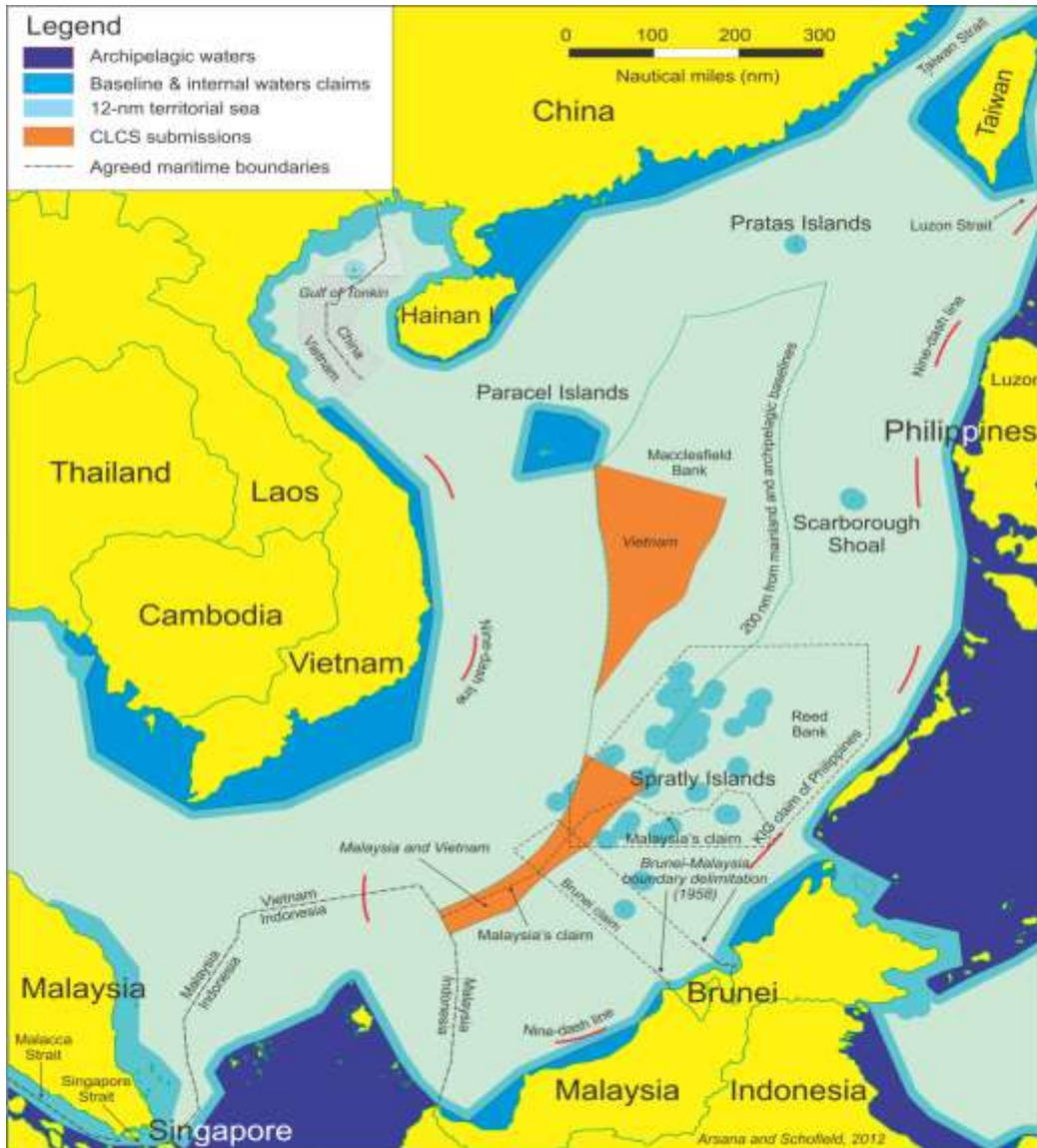


Coordinates: 115° East 115°E, 116°E, 117°E, 118°E, 119°E, 120°E, 121°E, 122°E, 123°E, 124°E, 125°E, 126°E, 127°E, 128°E, 129°E, 130°E, 131°E, 132°E, 133°E, 134°E, 135°E, 136°E, 137°E, 138°E, 139°E, 140°E, 141°E, 142°E, 143°E, 144°E, 145°E, 146°E, 147°E, 148°E, 149°E, 150°E, 151°E, 152°E, 153°E, 154°E, 155°E, 156°E, 157°E, 158°E, 159°E, 160°E, 161°E, 162°E, 163°E, 164°E, 165°E, 166°E, 167°E, 168°E, 169°E, 170°E, 171°E, 172°E, 173°E, 174°E, 175°E, 176°E, 177°E, 178°E, 179°E, 180°E  
12° North 12°N, 13°N, 14°N, 15°N, 16°N, 17°N, 18°N, 19°N, 20°N, 21°N, 22°N, 23°N, 24°N, 25°N, 26°N, 27°N, 28°N, 29°N, 30°N, 31°N, 32°N, 33°N, 34°N, 35°N, 36°N, 37°N, 38°N, 39°N, 40°N, 41°N, 42°N, 43°N, 44°N, 45°N, 46°N, 47°N, 48°N, 49°N, 50°N, 51°N, 52°N, 53°N, 54°N, 55°N, 56°N, 57°N, 58°N, 59°N, 60°N, 61°N, 62°N, 63°N, 64°N, 65°N, 66°N, 67°N, 68°N, 69°N, 70°N, 71°N, 72°N, 73°N, 74°N, 75°N, 76°N, 77°N, 78°N, 79°N, 80°N, 81°N, 82°N, 83°N, 84°N, 85°N, 86°N, 87°N, 88°N, 89°N, 90°N

Prepared by: International Mapping



# Disputes in SCS



- Sovereignty over islands
- Status & Entitlement of Features
- Overlapping EEZ Claims
- Historic Rights to resources inside Nine-Dash Line



## Part 2.

# Award of Tribunal in *South China Sea Case*

# 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

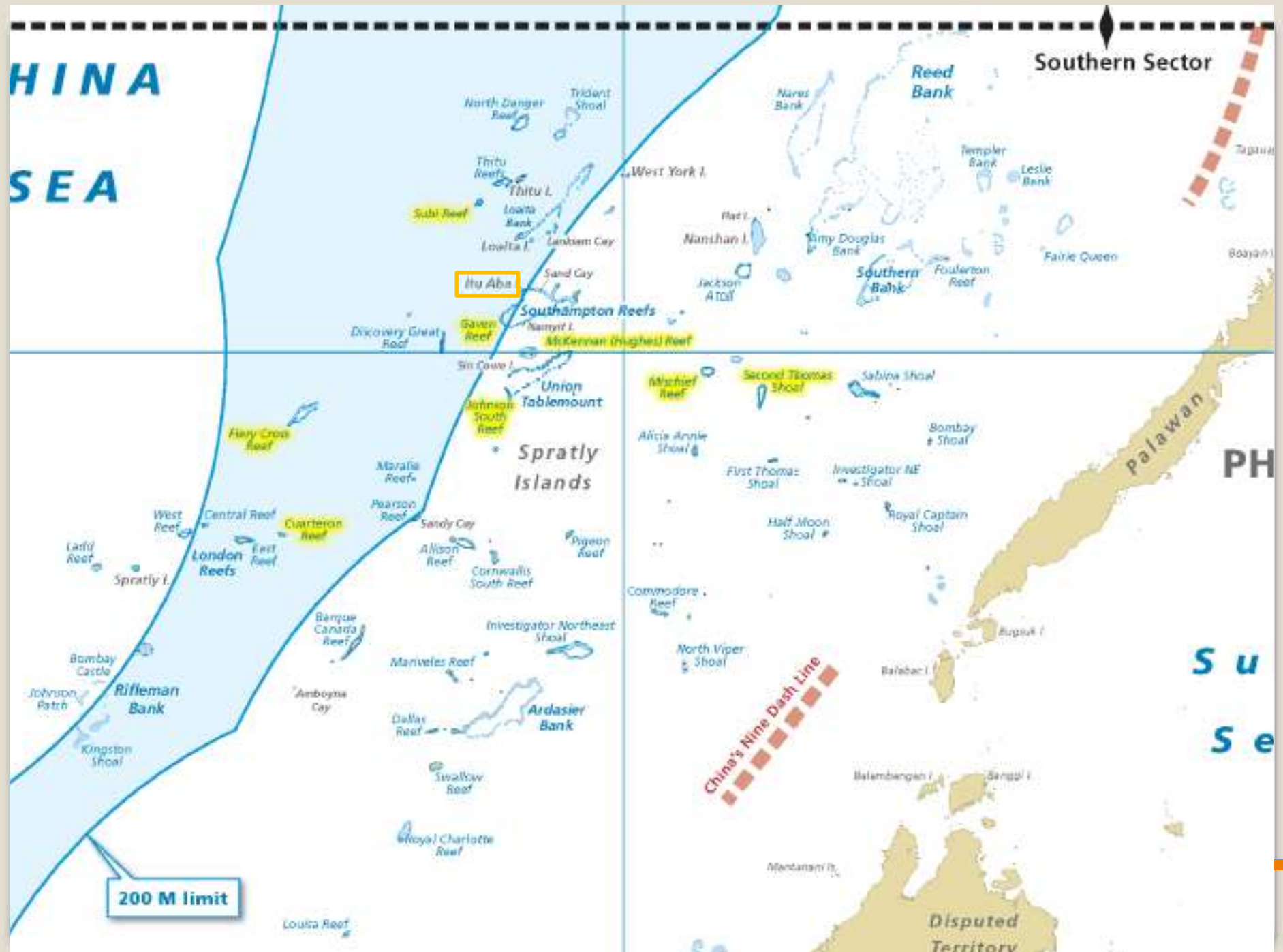
# Entitlement of Features & “Disputed Areas”

1. 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)
2. The Award significantly reduced the disputed maritime areas in the South China Sea
  - Only maritime areas in dispute are the 12nm territorial sea around the disputed islands
  - 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”



**HINA  
SEA**

**Southern Sector**



## Part 3

# Joint Development in the South China Sea?

# Not “Joint Development” in Traditional Sense

- Deng XiaoPing” : “Set Aside the sovereignty disputes and pursue Joint Development”
  - Assumes that Joint Development area is:
    - (1) in the EEZ claimed from disputed islands or
    - (2) in an area where the EEZ claimed from disputed islands overlaps with EEZ claims from the mainland
- Articles 74 and 83 of UNCLOS – Joint Development is “Provisional Arrangement of Practical Nature” in area of overlapping EEZ or CS claims
  - **But there are no overlapping EEZ claims in SCS**

# Award Simplified the Disputes in some respects

- Tribunal ruled that there are no disputed islands entitled to an EEZ or CS. Therefore:
  1. No need to set aside the “sovereignty disputes” over the islands
  2. No overlapping EEZ or CS claims with multiple claimants



# Biggest Legal Obstacle to Joint Arrangements

- Under the Award the ASEAN Claimants have the exclusive right to explore and exploit the natural resources in the EEZ from their main coast
- However, China claims rights and jurisdiction over the resources in EEZ of other States
- Basis of China's claim is "ambiguous":
  1. 'Historic rights' to resources inside nine-dash line?
  2. EEZ claim from archipelagos as a whole?
  3. EEZ claim from individual islands?

# Fundamental Issue

- Philippines and China seem willing to consider an arrangement on “joint exploration” and “joint exploitation” of the resources in the EEZ of the Philippines
- **Issue:** Is it possible for the two States to “set aside” the disputes on rights and jurisdiction over resources and enter into a joint arrangement to share the resources?

# Bilateral Exceptions are Legally Possible under UNCLOS

## Article 311 of UNCLOS:

3. Two or more States Parties **may conclude agreements** modifying or **suspending the operation of provisions of this Convention**, applicable solely to the relations between them,

- **provided that** such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention,
- **and provided further** that such agreements shall not affect the application of the basic principles embodied herein,
- **and** that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

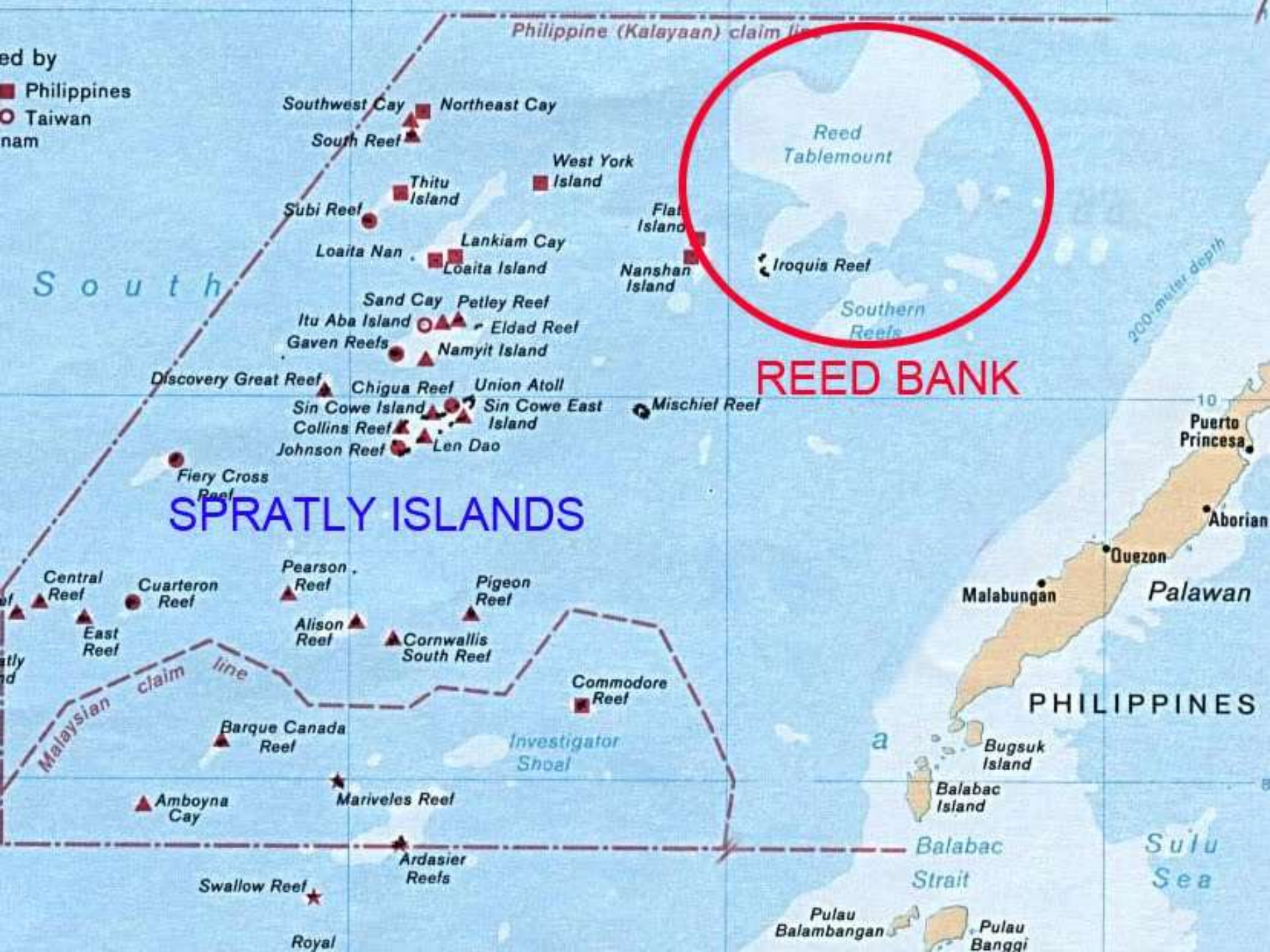
## Part 4

# Joint Arrangements between China & the Philippines?

# Dispute over Status of Reed Bank

- Dispute since the late 1990s on 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 :
  1. China has no historic rights inside 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



# 2005-2007 Joint Seismic Survey

- In 2005, China, the Philippines and Vietnam entered into an agreement to conduct a joint seismic survey in the Spratly Islands
- The survey area included Reed Bank, the area off Palawan that is reported to be most likely to contain large deposits of gas
- Survey ended after 3 years because of allegations of corruption within the Philippine Government
- Joint agreement interpreted by some in China as an acknowledgement that Reed Bank was in an area of overlapping claims

# Current Issue on Reed Bank

- Philippines put the concession licenses for Reed Bank on hold while the arbitration was pending
- In 2017 it was announced that the Government intends to allow exploratory drilling under the concession licenses
- Media reported in August 2017 that China **threatened to use force** if the Philippines permitted drilling to take place
- Philippines is currently exploring the prospect of entering into some kind of “joint arrangement” with China to explore and exploit resources in Reed Bank



# President Duterte on the Award

- He has stated that he has put the Award “on the shelf”
- He has not stated that has put the Award “in the trash”
- He has stated that he intends to bring up the Award with China at the appropriate time
- In the meantime, Philippines Government is exploring the prospects of “joint exploration” and “joint exploitation”
- Issue: Can the Philippines and China enter into a joint arrangement on a “without prejudice” basis?

# Is “Without Prejudice” Cooperation Possible?

1. Neither State is willing to give up its claim that it has a right to the resources
2. Neither State is willing to recognize that the other State has a legitimate claim to the resources
3. Both States believe that it is better to share the resources than remain indefinitely in a stalemate
4. Both States are willing to “set aside” the maritime disputes for a certain period of time and to enter into an “arrangement” during that period to share the resources, without giving up their claim and without recognizing the legitimacy of the claim of the other

# When Joint Arrangements Possible

1. The two States have a good relations based on trust and confidence
2. Negotiations on joint arrangement entered into because of economic advantages
3. Leaders in both States have the “political will” necessary to make decisions that may face significant domestic criticism and opposition
4. Leaders in both States are able to “sell” the arrangement as consistent with its constitution, laws, historic position and national interests
5. Joint arrangements can sustain a change of government in one of the States

# Challenges for Philippines

1. Must convince public that it should share resources with China even though China has no legitimate legal claim to the resources under UNCLOS and the Arbitration Award
2. Must convince public that financial benefits to Philippines as good as entering into concession agreement with foreign oil company
3. Arrangement must not be in violation of the Constitution and legislation of the Philippines
4. Arrangement must be transparent - or there may be allegations of corruption as with 2005 JMSU

# Philippines Constitution, Article XII

- The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.
- The State may directly undertake such activities, or it may enter into **co-production, joint venture, or production-sharing agreements** with Filipino citizens, or corporations or associations at least **sixty per centum of whose capital is owned by such citizens.**

# Philippines Constitution, Article XII

- **The President may enter into agreements with foreign-owned corporations** involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils **according to the general terms and conditions provided by law**, based on real contributions to the economic growth and general welfare of the country.
- The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

# Challenges for China

1. Must convince its public that it must share the resources within the nine-dash line or within 200 nm from islands over which it claims sovereignty
2. Must not appear to have given up its claim to historic rights within the nine-dash line claim or its claim to sovereignty over all the disputed islands
3. Must not appear to have recognized the Award of the Arbitral Tribunal
4. Arrangement must be able to withstand a change of government in the other State
5. Arrangement must be based on trust & confidence, not coercion or threat of force

## Part 5

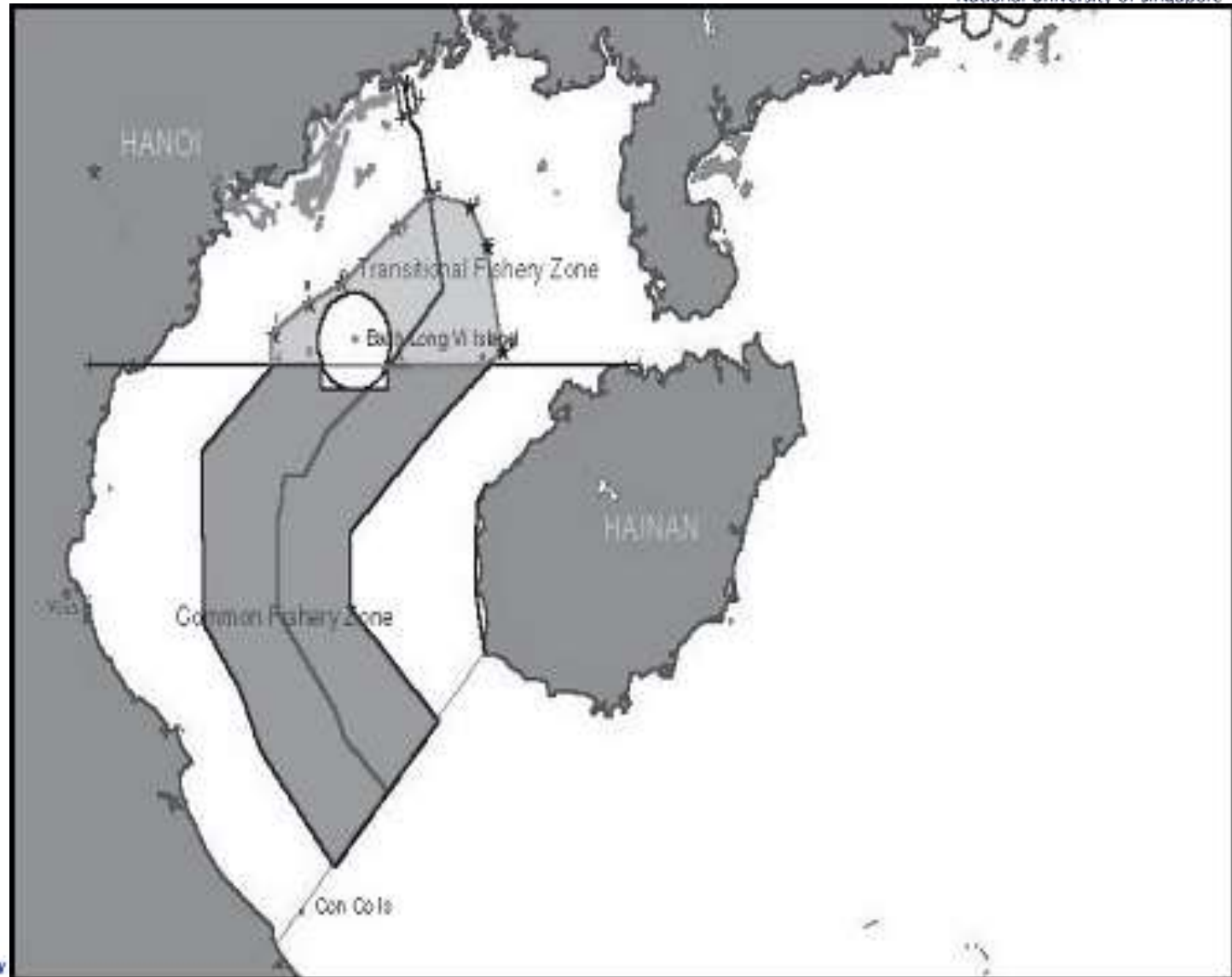
# Joint Arrangements between China and Vietnam?



# Joint Fishing Zones in Gulf of Tonkin

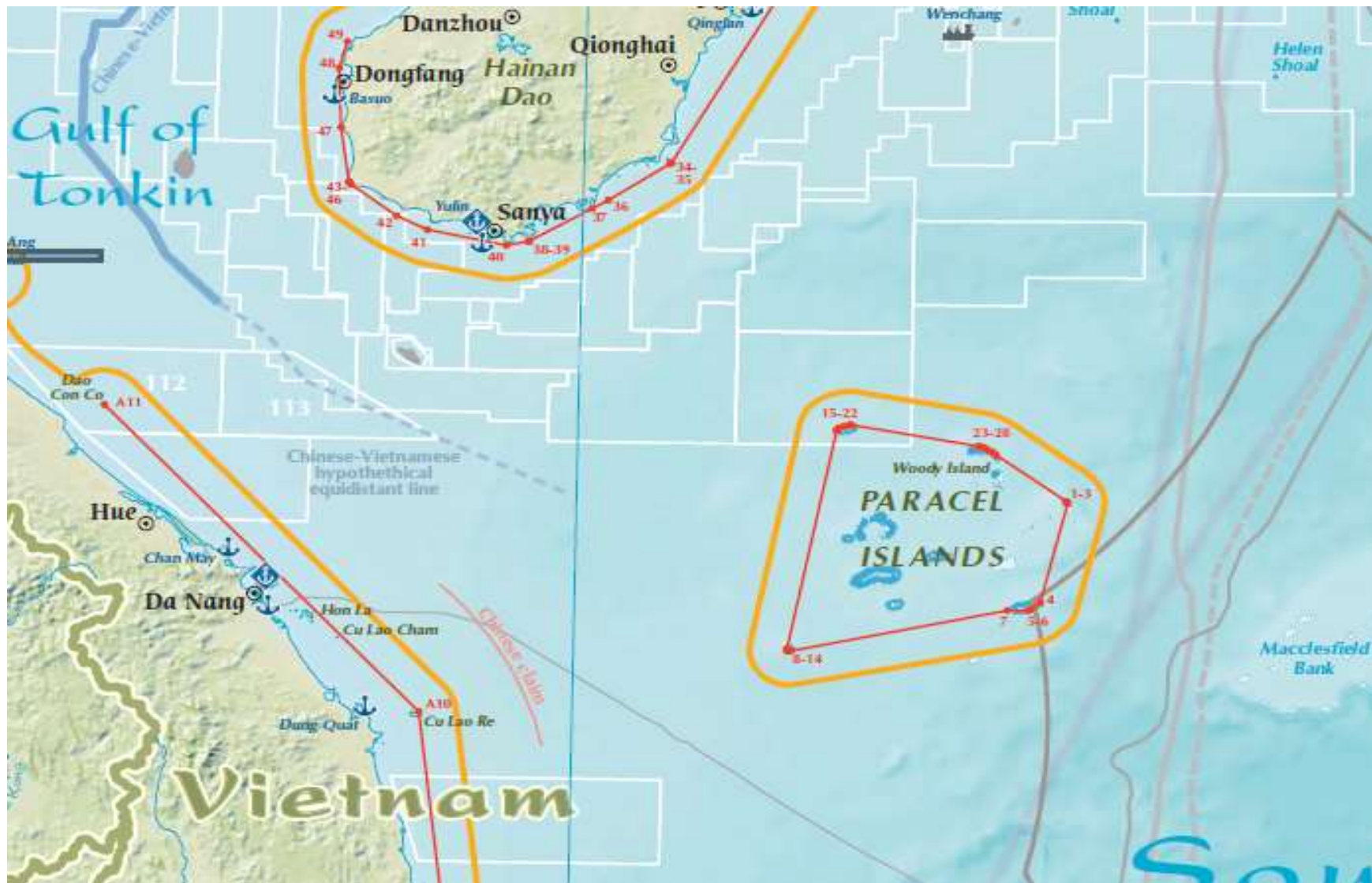
**CIL**

CENTRE FOR INTERNATIONAL LAW  
National University of Singapore

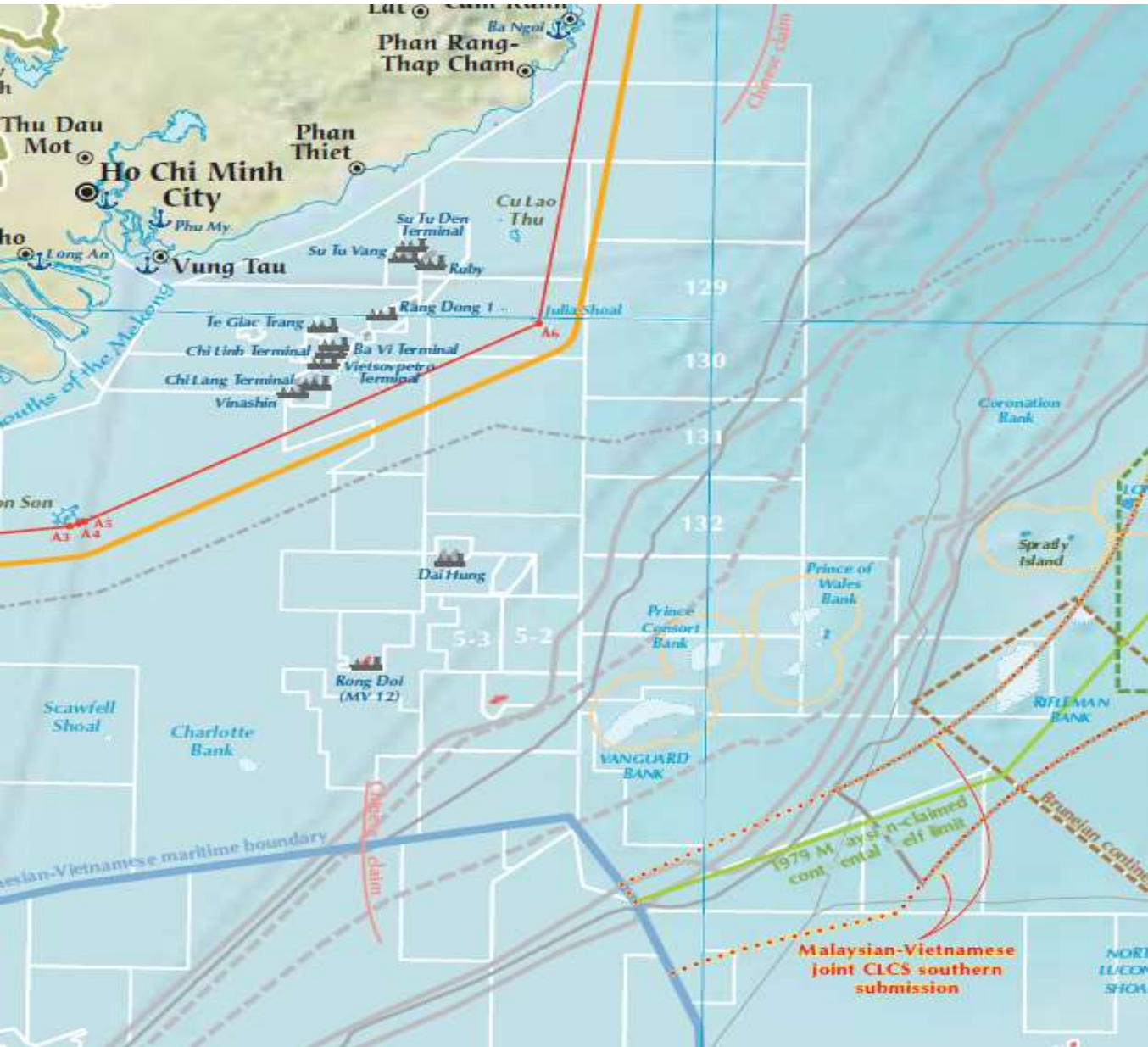


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# Gulf of Tonkin & Paracel Islands



# Vietnam Cancelled Concession of Spanish Company Repsol In Vanguard Bank

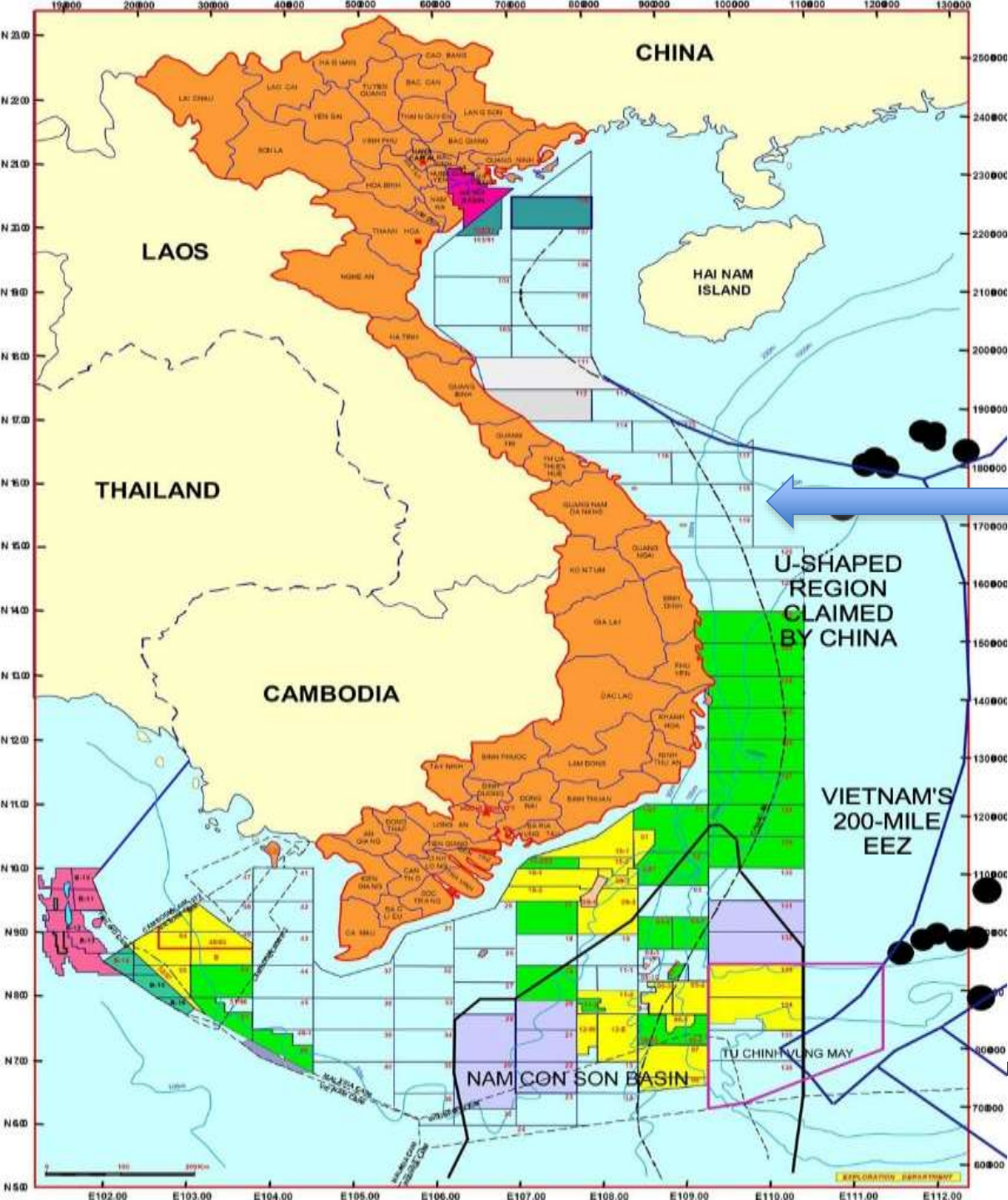


## Vanguard Bank Area

## Rosnet Concession Block 06.1



Sources: PetroVietnam; Deloitte; Centre for International Law, National University of Singapore.



Exxon  
Blue Whale  
Block 118

# Part 6

# Issues in Joint Arrangements

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1. Define area for joint exploration/development
2. What law applicable to Joint Arrangement
3. Regulatory Framework for oil & gas exploitation
4. Laws to preserve & protect marine environment
5. Laws on employment and training of workers
6. Health and Safety Laws

# Issues in Joint Arrangements

7. Jurisdiction over installations & platforms
8. Revenue Sharing / taxation
9. Control over other activities in the area (eg fishing)
10. Arrangements for pipeline or down-stream activities
11. Dispute Resolution – International Arbitral Tribunal?



# Part 7

# Conclusions

# Conclusions

1. Joint Arrangements with China to develop hydrocarbon resources in the EEZ of the Philippines or Vietnam would not be consistent with the Arbitral Award
2. However, international law does not prevent two States from freely and voluntarily entering into joint arrangements to explore & exploit resources in their EEZ
3. Joint Arrangements may be possible if they are transparent and contain a robust “without prejudice” clause
4. The biggest obstacles to joint arrangements may be domestic law, domestic politics and a lack of trust and confidence between the two Governments

# THANKS FOR YOUR ATTENTION

**Robert Beckman**

**Centre for International Law**

**National University of Singapore**

Email: [cilbeckman@nus.edu.sg](mailto:cilbeckman@nus.edu.sg)