

**8th South China Sea International Conference:
Cooperation for Regional Security & Development**

13-15 November 2016, Nha Trang City, Viet Nam

**Session 3. International Law & the South China Sea
Clarifying Areas, Defining Rights & Obligations,
and Opportunities for Cooperation**

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Outline of Presentation

- 1. Clarifying Areas**
- 2. Defining Rights and Obligations – Arbitral Award and China’s “Island-Building”**
- 3. New Realities and Prospects for Cooperation**

Part 1

Clarifying Areas:

**Areas of Overlapping Claims have
been Significantly Reduced by the
Arbitral Award**

Status & Entitlement of Features

- 1. Scarborough Shoal and 5 islands occupied by China in the Spratly Islands (Johnson Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef [North] & McKennan Reef) are “rocks” within article 121(3) that are entitled only to a 12 M territorial sea**
- 2. All of the other largest islands in the Spratly Islands, including Itu Aba, are “rocks” entitled only to a 12 M territorial sea**
- 3. There are no “islands” in the Spratlys Islands entitled to an EEZ or continental shelf of their own**

Low-Tide Elevations

- **Arbitral Tribunal ruled that four of the features in the Spratly Islands that are occupied by China (Subi Reef, Gaven Reef [South], Hughes Reef and Mischief Reef) are “low-tide elevations”**
- **Low-tide elevations are not subject to a claim of sovereignty and not entitled to any maritime zones of their own.**
- **Jurisdiction over low-tide elevations outside the territorial sea of any States lies with the state in whose EEZ or on whose continental shelf they are located.**

Historic Rights and Nine Dash Line

- **Arbitral Tribunal ruled that:**
 - **Philippines can claim an EEZ from the archipelagic baselines surrounding its main archipelago**
 - **China had no “historic rights” to the natural resources within the EEZ of the Philippines**
- **Therefore, China has no rights to the natural resources in the EEZ of the Philippines based on “historic rights” or the nine dash line**

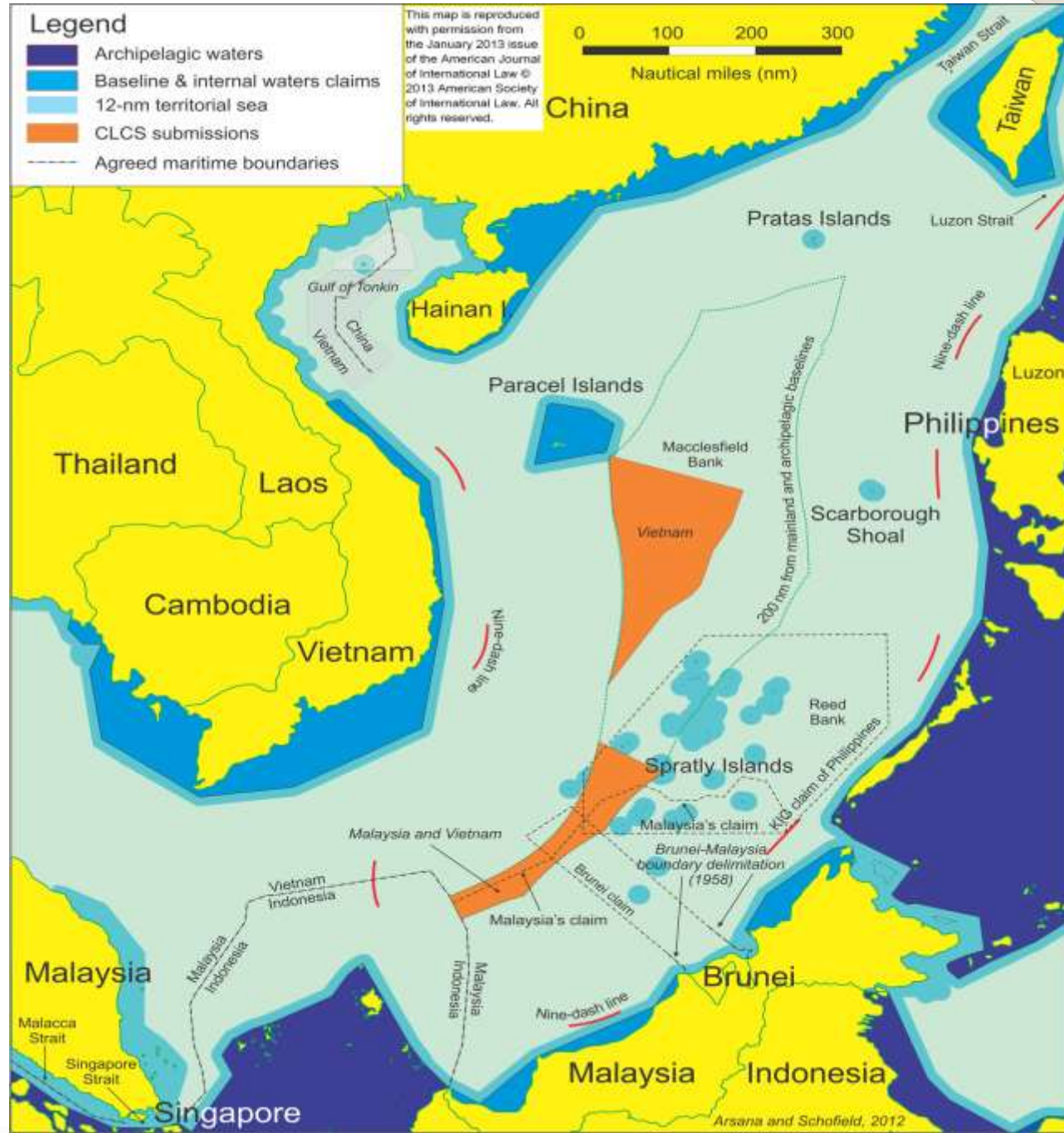
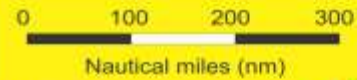
Areas of Overlapping Claims in the Spratly Islands

- The only areas of “disputed waters” in the Spratlys are the areas of 12 M territorial sea surrounding the features that are “islands” within article 121(1)
- The precise areas of disputed territorial sea claims in the Spratlys are not clear because:
 - None of the claimants have clarified which features are “islands” entitled to a 12 M territorial sea
 - None of the claimants have issued charts indicating the baselines of “reefs” within Article 6

Legend

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

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Part 2

Defining Rights & Obligations: The Arbitral Award and China's "Island-Building"

“Island-Building” in Spratly Islands

- **Since 2103 China has engaged in major land reclamation and construction activities on the reefs that it occupies**
- **It converted seven features (Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef) into large artificial islands that are several times larger than the natural islands occupied by the other claimants**
- **Island-Building has created a “new status quo” in terms of security and physical presence**

Arbitral Award on Island-Building – What it decided

- **Tribunal ruled that by engaging in these activities while the case was before the Tribunal, China had violated its obligations under UNCLOS and general international law to refrain from activities that would aggravate or extend the dispute.**
- **Tribunal also ruled that China had violated its obligations under UNCLOS to protect and preserve the marine environment**

Arbitral Award on Island-Building – What it did not decide

- **Tribunal made no ruling on whether China's reclamation activities were in principle illegal**
- **Tribunal made no ruling limiting the types of installations and structures that China could place on the islands or stating that it would be illegal for China to militarize the islands**

Part 3

New Realities and Prospects for Cooperation

New Reality 1 – Arbitral Award

- **Arbitral Award has clarified legal issues, especially on access to natural resources**
- **ASEAN claimants likely to use the award as basis for discussions**
- **China will not officially comply with the Award but will pay a price if it openly defies it**
- **International community has an interest in the Award and in UNCLOS as basic law for the oceans**

New Reality 2 – China as Rising Economic & Military Power

- **China's Island-Building has created a new status quo in terms of power projection and physical presence**
- **Other Claimants must recognize China's growing economic and military power**
- **Other Claimants must recognize that China is very serious about its claim to sovereignty over the islands**
- **All claimants must recognize that United States believes that China's island building may threaten its security interests in the SCS**

New Reality 3 – SCS Dispute has been “internationalized”

- **All claimants must recognize that the international community has an interest in all States acting in compliance with UNCLOS and the Arbitral Award**
- **All claimants must recognize the maritime security in the SCS has become a matter of international concern, and that the US and other outside powers have an interest and stake in the SCS**
- **The security issues in the SCS cannot be resolved solely through bilateral discussions between China and other claimants or by agreements between China & ASEAN**

What Cooperation is necessary

- **Cooperation between China and individual ASEAN Claimants**
- **Cooperation between China and ASEAN**
- **Cooperation between China and the USA**
- **Cooperation on certain issues (such as fisheries) must also include “other entities” that occupy features**

Cooperation between China and ASEAN Claimants

- 1. Reduce tensions and build trust & confidence**
- 2. Conserve and manage the natural resources**
- 3. Preserve & protect the marine environment**
- 4. Address matters of common interest such as combatting piracy and maritime crimes**
- 5. Minimize threat of incidents at sea**
- 6. Ensure freedom of navigation in SLOCS**
- 7. Ensure freedom of overflight**

Cooperation between ASEAN Claimants and Outside Powers & Other Entities

- **Counter perceived security threat resulting from China's island building**
- **Counter actions by China that are contrary to the Award of the Tribunal on status and entitlement of features and rights to resources**
- **Ensure that "freedoms of the seas" are maintained**

Negotiations with China: A Way Forward ?

- 1. Begin negotiations on cooperative measures in light of the new status quo**
- 2. Take the “new realities” into account in negotiations but do not demand that the other side acknowledge them or discuss them**
- 3. Focus on matters of common interest**
- 4. Agree at outset that the negotiations and any cooperative measures are “without prejudice” to the final resolution of the sovereignty and maritime disputes**

Common Interests of All States

- 1. No threat or use of force**
- 2. Either set aside or resolve the territorial sovereignty disputes**
- 3. Freedom of navigation and overflight**
- 4. Cooperation in areas of common interests, including trade, investment, environmental protection, etc**
- 5. Cooperative arrangements whereby China can share resources by providing technology & investment**

Thanks for your Attention!

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