

# THE SOUTH CHINA SEA WEST PHILIPPINE SEA DISPUTE

JUSTICE ANTONIO T. CARPIO

The views expressed in this presentation are the personal opinion of the author and do not necessarily represent the position of the Philippine Government.



# What Is at Stake for the Philippines

---

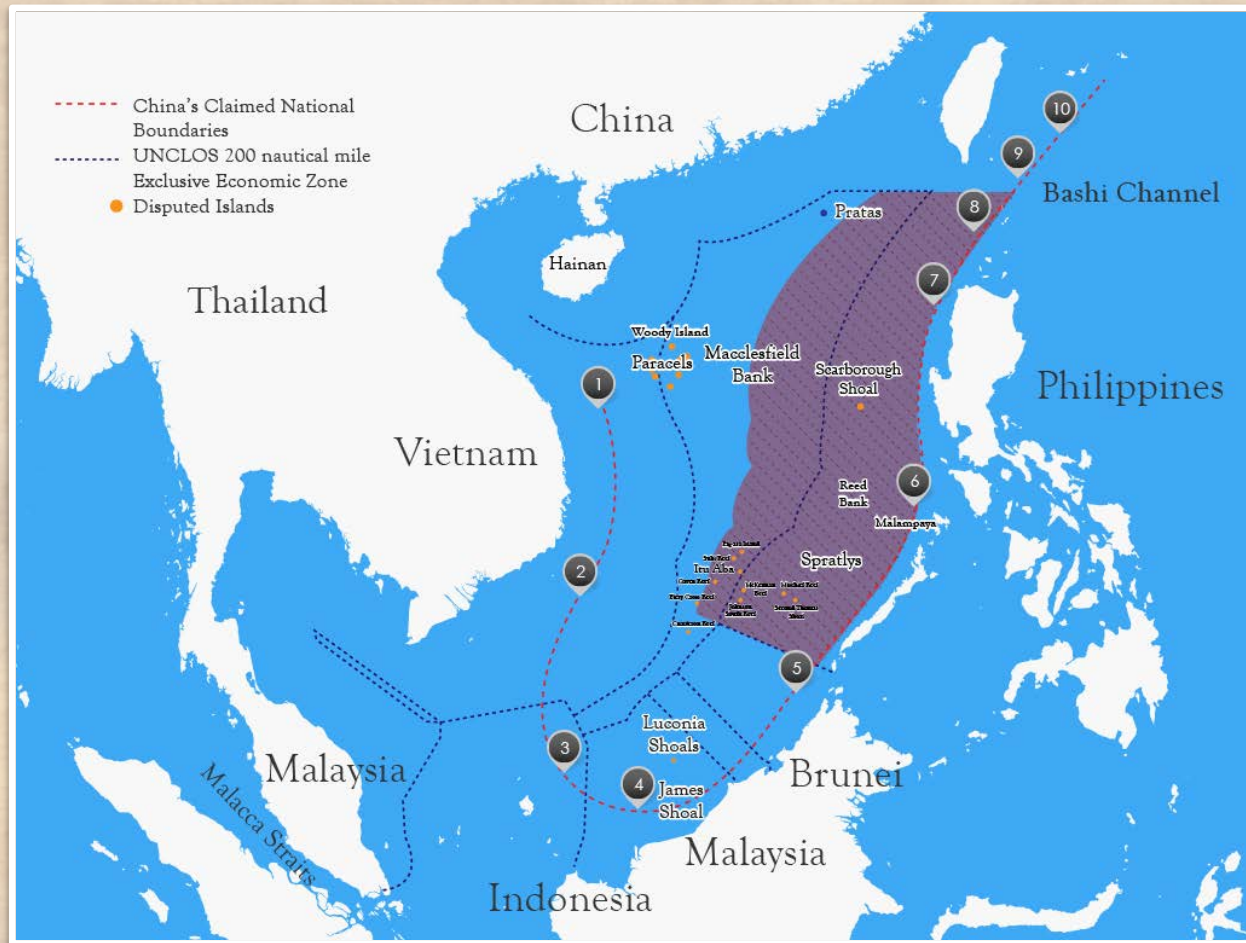
What is at stake in the West Philippine Sea dispute are:

- a. 80% of of the Philippines' exclusive economic zone (EEZ), comprising **381,000** square kilometers of maritime space, and
- b. 100% of the Philippines' extended continental shelf (ECS), estimated at over **150,000** square kilometers of maritime space,

aggregating a huge maritime area of **over 531,000** square kilometers, **larger** than the total land area of the Philippines of **300,000** square kilometers - **either the Philippines keeps this huge maritime space, or loses it to China.**



# Gravest External Threat to Philippines since WWII



The shaded area, over 531,000 square kilometers of maritime space, together with all the fisheries, oil, gas and mineral resources found within this vast area, is what China wants to grab from the Philippines. This Chinese aggression is the gravest external threat to the Philippines since World War II.

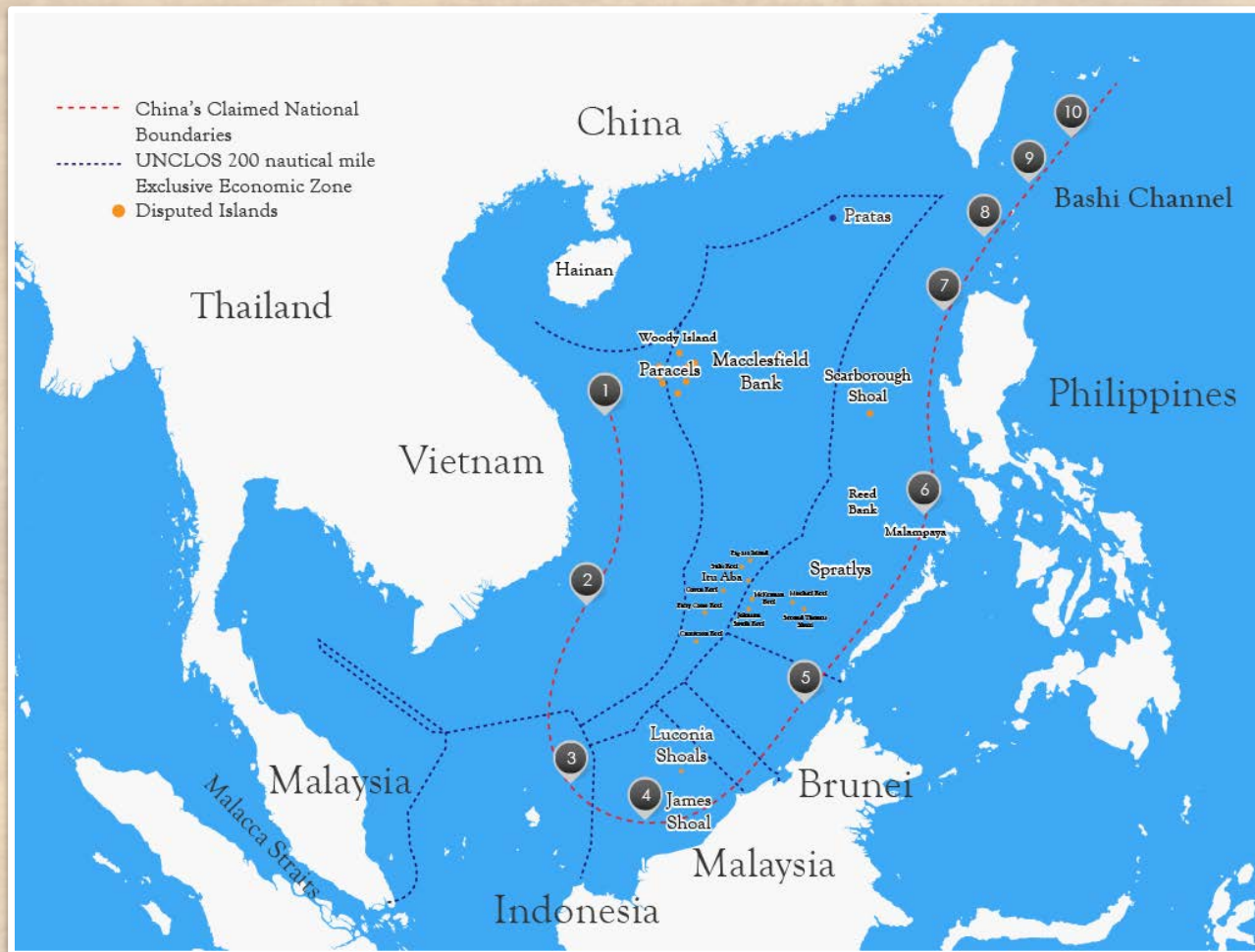
# Root Cause of South China Sea Dispute

---

The root cause of the South China Sea dispute is China's 9-dashed lines claim, which gobbles up large areas of the EEZs and ECSs of the Philippines, Vietnam, Malaysia, Brunei and Indonesia.



# China's 9-dashed Lines Gobble Up EEZs of Coastal States

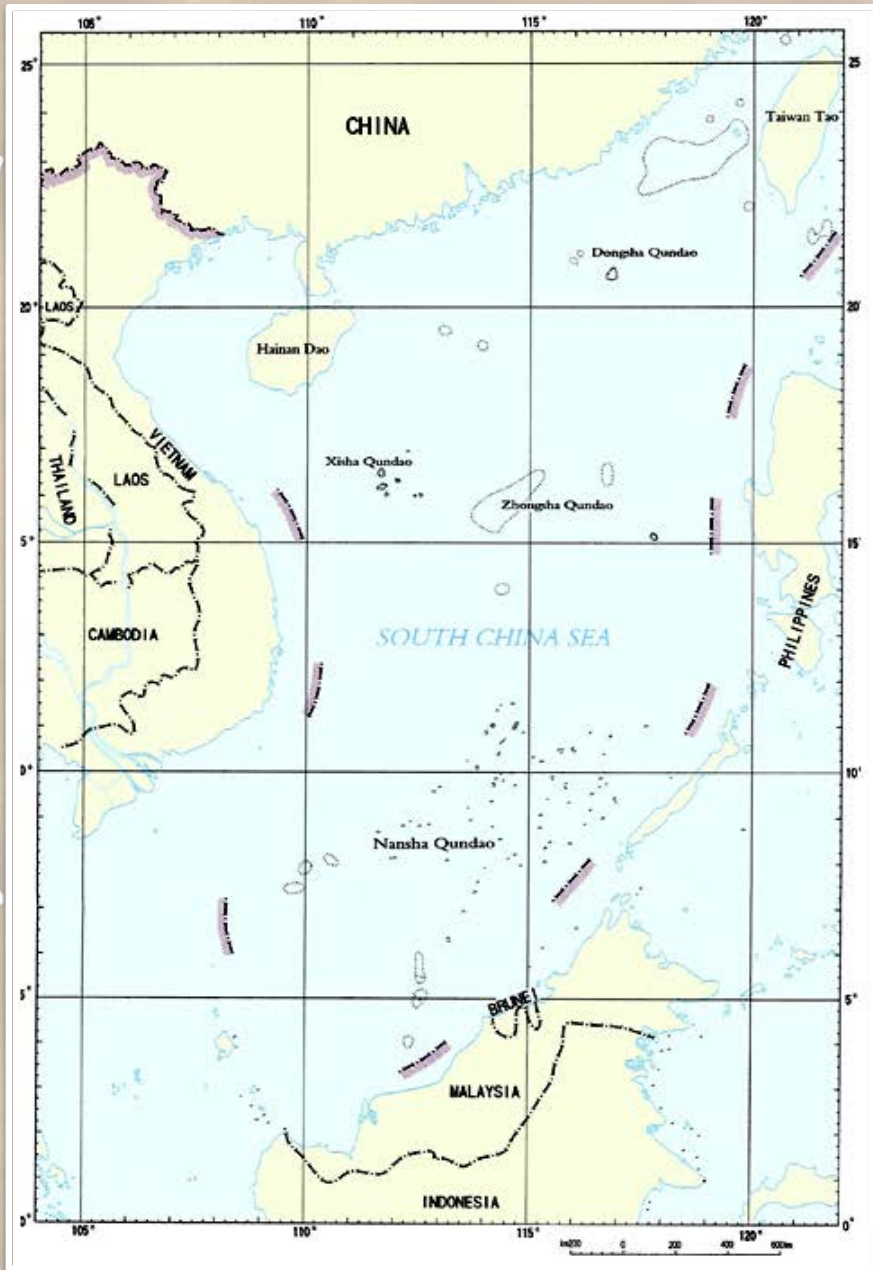


China's 9-dashed lines claim encloses 85.7% of the entire South China Sea. This is equivalent to 3 million square kilometers out of the 3.5 million square kilometers surface area of the South China Sea.

## Nine-dashed Lines Map Submitted by China to United Nations on 7 May 2009

China did not explain the legal basis for the dashes. The dashes had no fixed coordinates.

The Philippines, Vietnam, Malaysia and Indonesia protested China's claim under this 9-dashed lines map.





# China's 2009 *Note Verbale* Explaining The 9-dashed Lines Map

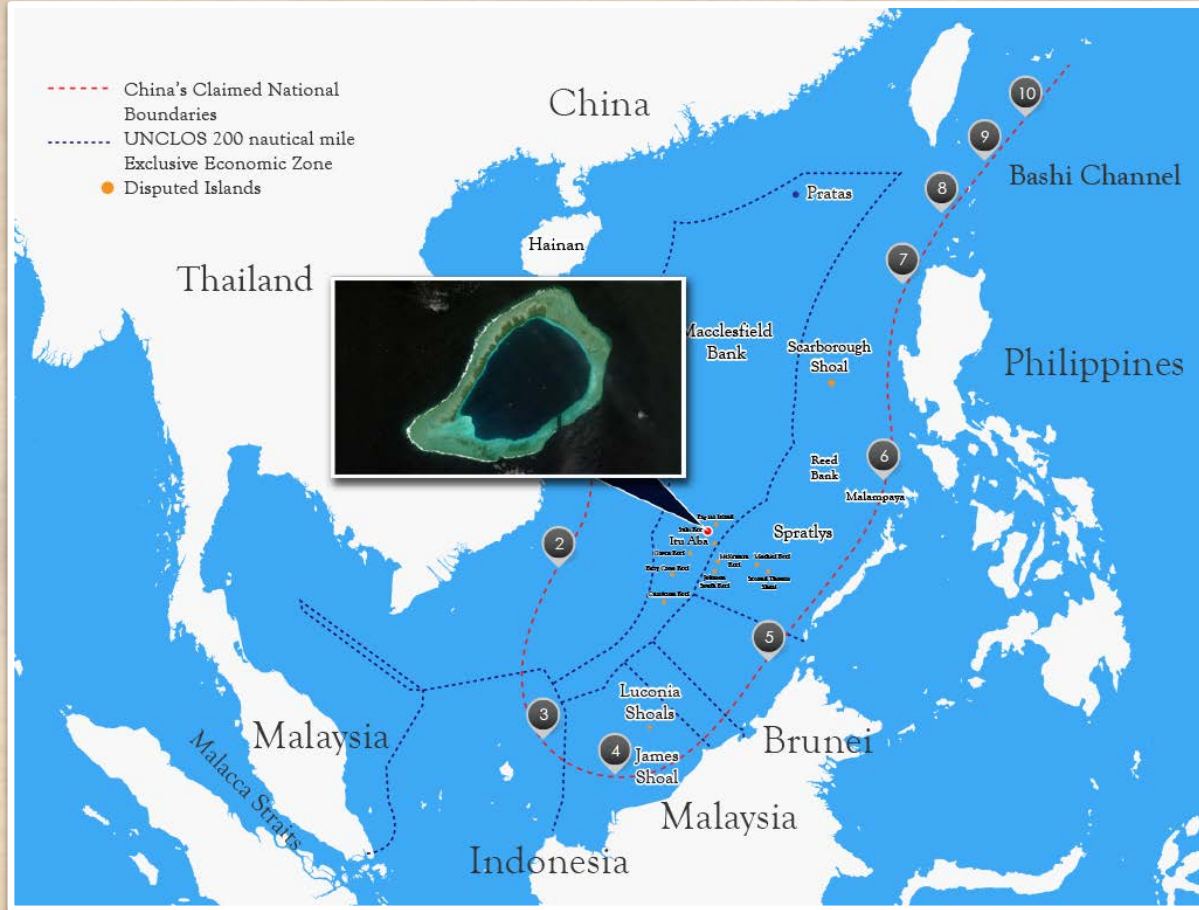
---

“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.” - China's *Note Verbale*

The terms “adjacent” and “relevant” waters are not UNCLOS terms. China refuses to explain the meaning of “adjacent” or “relevant” waters. Do these terms mean that China claims all the waters and resources enclosed by the 9-dashed lines?

We shall examine China's acts, regulations, declarations, and practices in the South China Sea to understand what China means by its 9-dashed lines claim, and how China interprets and applies the terms “adjacent” and “relevant” waters.

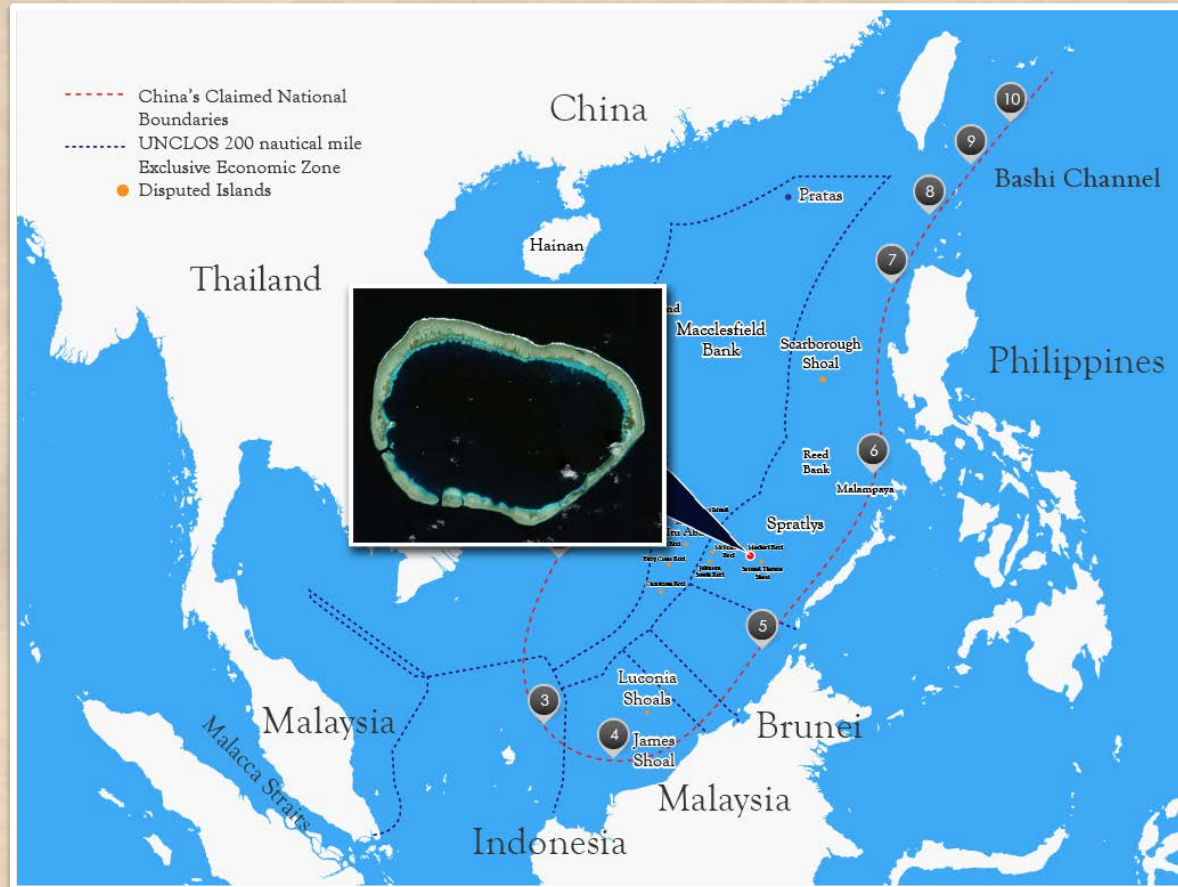
# China Seized Subi Reef in 1988



In 1988, China seized Subi Reef from the Philippines by erecting a radar structure and military facilities on the reef. Subi Reef is a Low-Tide Elevation (LTE) outside of the Philippines' EEZ but within its extended continental shelf (ECS). Subi Reef is just outside the 12 NM territorial sea of the Philippine-occupied Pagasa (Thitu) Island. Under UNCLOS, only the Philippines can erect structures or create an artificial island on Subi Reef. The waters of Subi Reef are part of the high seas of the South China Sea but the mineral resources belong to the Philippines under UNCLOS.



# China Seized Mischief (Panganiban) Reef in 1995



In 1995, China seized Mischief Reef from the Philippines. Mischief Reef, located 125 NM from Palawan, is a Low-Tide Elevation (LTE) within the Philippines' EEZ. As an LTE beyond the territorial sea of any state, it is part of the submerged continental shelf of the adjacent coastal state, which is the Philippines. Under UNCLOS, only the Philippines can exploit its natural resources or erect structures on it. All living and non-living resources within the EEZ belong exclusively to the adjacent coastal state.

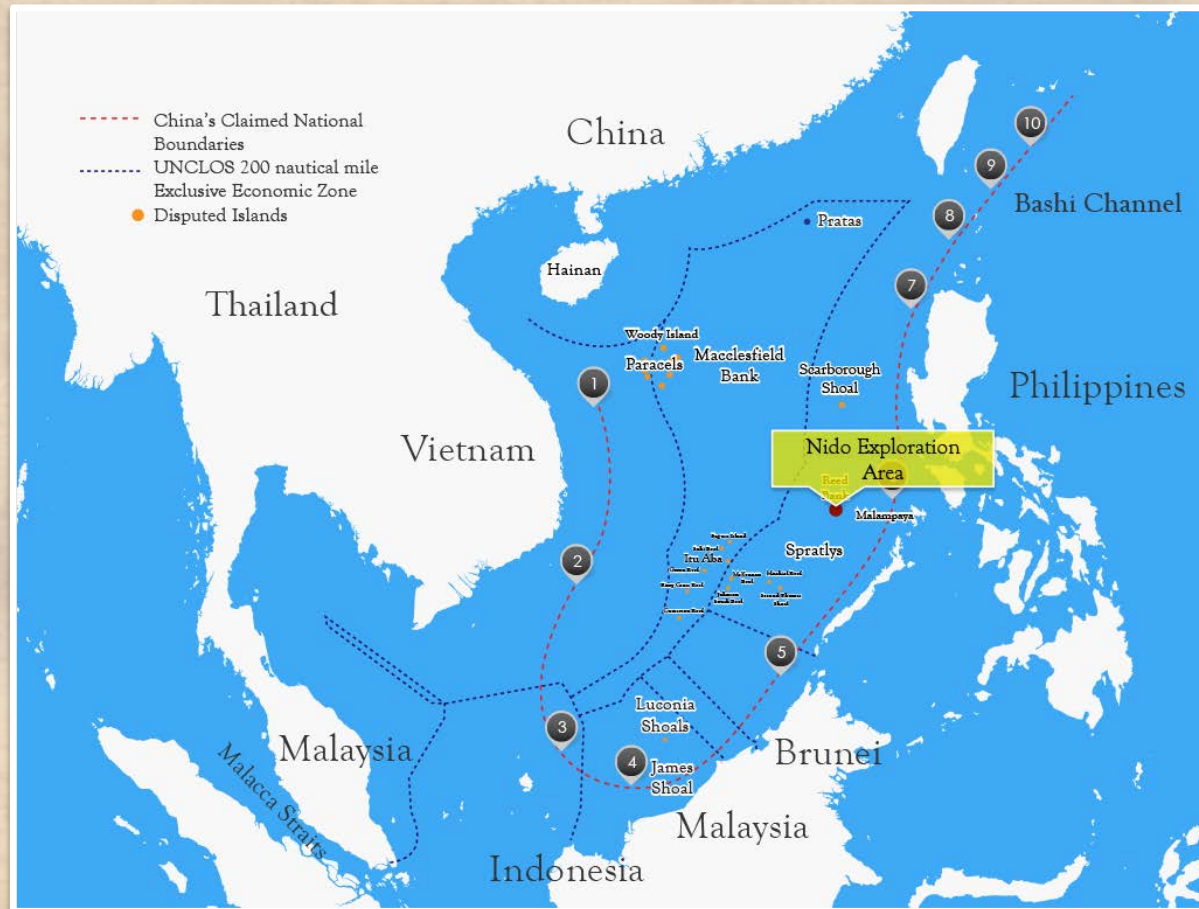
# China Claimed Reed Bank in 2010



In February 2010, the Philippines awarded a Service Contract to Sterling Energy (predecessor of Forum Energy) for Block SC 72 in the Reed Bank. China protested, sending a *Note Verbale* to the Philippines on 22 February 2010, "express[ing] its strong objection and indignation," and asserting "indisputable sovereignty, sovereign rights and jurisdiction over the Nansha Islands (Spratlys) and its adjacent waters." China demanded that the Philippines "withdraw the Service Contract immediately." China sent another *Note Verbale* on 13 May 2010 again demanding that the Philippines "immediately withdraw the decision to award the Service Contract" to Sterling Energy. Block SC 72 is 85 NM from Palawan, well within the Philippines' EEZ, and 595 NM from Hainan. The entire Reed Bank is a fully submerged area even a low-tide.



# China Interfered Directly with a Philippine Contractor for Reed Bank in 2010



On 2 August 2010, the Nido Petroleum office in Manila received an email directly from the Chinese Embassy in Manila. The Embassy requested a meeting between the Chinese First Secretary and the Nido vice-president. The meeting was held on 6 August 2010. The Chinese First Secretary showed the Nido vice-president a map depicting China's 9-dashed lines, and informed him that the area covered by Nido Petroleum's service contract (Block SC 58) was "claimed by" the People's Republic of China. Since then Nido Petroleum has not made any exploration within Block SC 58.

[Memorandum from Rafael E. Seguis, Undersecretary for Special and Ocean Concerns, Department of Foreign Affairs, Republic of the Philippines, to the Secretary of Foreign Affairs of the Republic of the Philippines (30 July 2010); Letter from Mr. Anthony P. Ferrer, Country Representative, Nido Petroleum, to the Office of the Undersecretary, Department of Energy of the Republic of Philippines (7 Oct. 2013)]

# China Reiterated its Claim to Reed Bank in 2011



In 2011, the Philippines invited bids for the exploration of Area 3 and Area 4 in the Reed Bank, well within the Philippines' EEZ. On 4 July 2011, China protested and sent a *Note Verbale* to the Philippines, stating: "The Chinese government urges the Philippine side to immediately withdraw the bidding offer in Areas 3 and 4, refrain from any action that **infringes on China's sovereignty and sovereign rights.**"



# Chinese Coast Guard Vessels Harassed A Philippine Survey Ship in Reed Bank in 2011

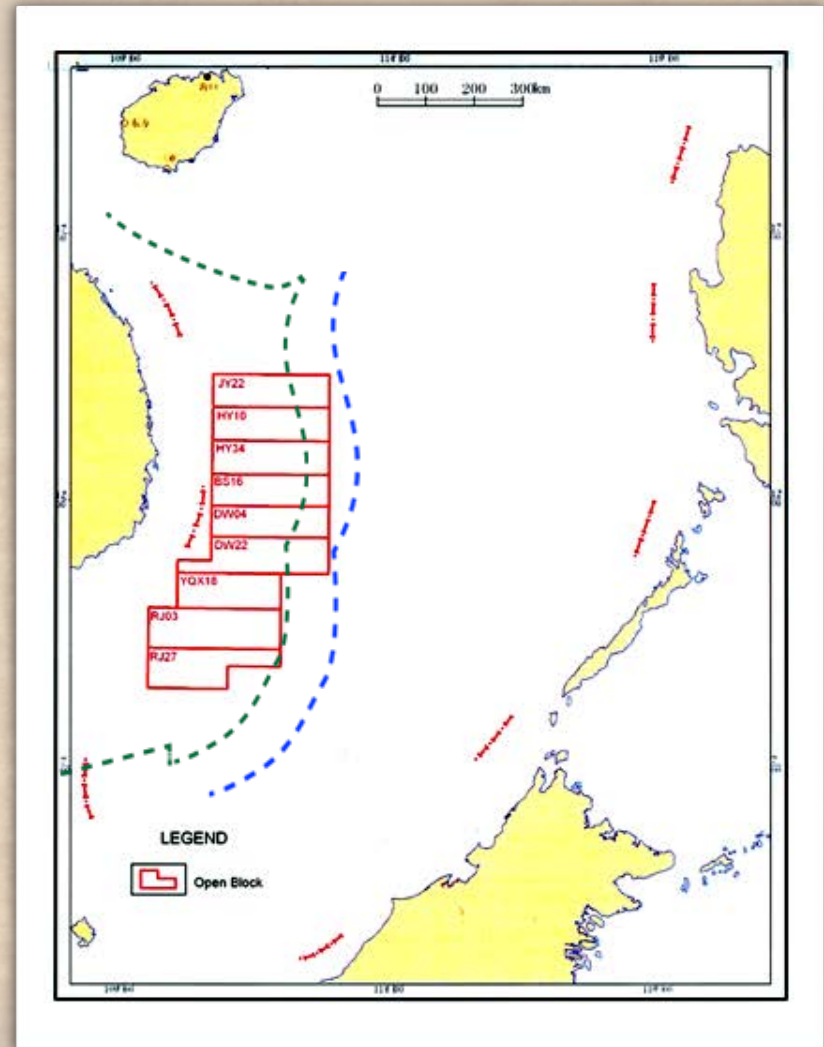


In March 2011, two Chinese coast guard vessels, the CMS-71 and CMS-75, prevented a Philippine-commissioned ship, the MV *Veritas Voyager*, from undertaking oil and gas survey in the Reed Bank, which is entirely within the Philippines' EEZ. The 9-dashed lines cut through Malampaya, the Philippines' largest operating gas field which supplies 40% of the energy requirement of Luzon. Malampaya will run out of gas in 10-12 years.

# China Auctioned off Areas within Vietnam's EEZ & ECS

In 2012, China conducted an international bidding for the exploration of areas within the EEZ of Vietnam.

China published this map, naming it “Location for part of open blocks in waters under jurisdiction of the People's Republic of China available for foreign cooperation in the year of 2012.”





## China's 2013 Map with 10-dashed Lines As “National Boundaries”

---

In 2013, China released a new map of China, adding a 10<sup>th</sup> dash on the eastern side of Taiwan. In its 2013 map, China claims the 10-dashed lines are its “**national boundaries**,” without again explaining the legal basis or giving the fixed coordinates for the dashes. The 2013 China map was published by SinoMaps Press, under the jurisdiction of China's State Bureau of Surveying and Mapping. This means the 2013 Map is an official Chinese government map.

In its *Note Verbale* of June 7, 2013 to China, the Philippines stated it “**strongly objects to the indication that the nine-dash lines are China's national boundaries in the West Philippine Sea/South China Sea.**”

China's claim that the 9-dashed lines are China's “national boundaries” contradicts its assurance to the world that there is “freedom of navigation and overflight in the South China Sea **in accordance with international law.**”



# China Claims 10-dashed Lines in 2013 Map Are China's “National Boundaries”

National Boundary



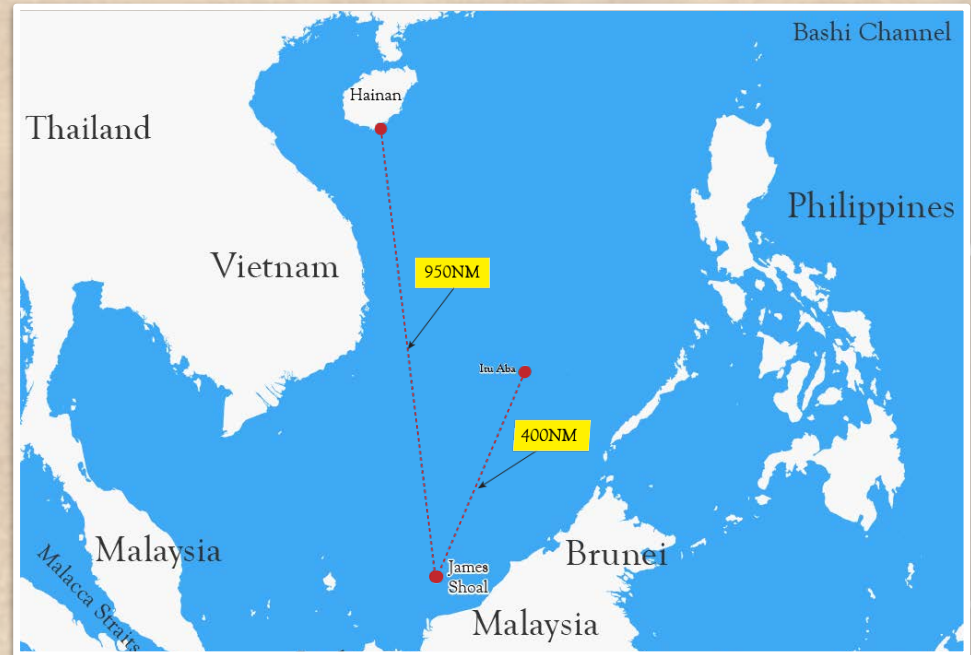
国界





# James Shoal - China's "Southernmost" Border

Since at least 2012, China has been periodically laying sovereignty steel markers on the seabed of James Shoal. China claims James Shoal as its southernmost border. James Shoal is fully submerged at 22 meters below the water surface, and is situated more than 950 NM from Hainan Island and more than 400 NM from Itu Aba. Under UNCLOS, the maximum maritime zone that a state can claim is 350 NM from baselines along its coast (or 100 NM from the 2500m isobath, a limitation which does not apply in the South China Sea based on the geology and geomorphology of the South China Sea).



Under international law, a state's border must either be a land territory, a river, or a territorial sea - which are all subject to its full sovereignty. A state cannot appropriate as its sovereign territory a fully submerged area beyond its territorial sea. James Shoal is 80 KM from Malaysia's coast in Bintulu, Sarawak, within Malaysia's EEZ.



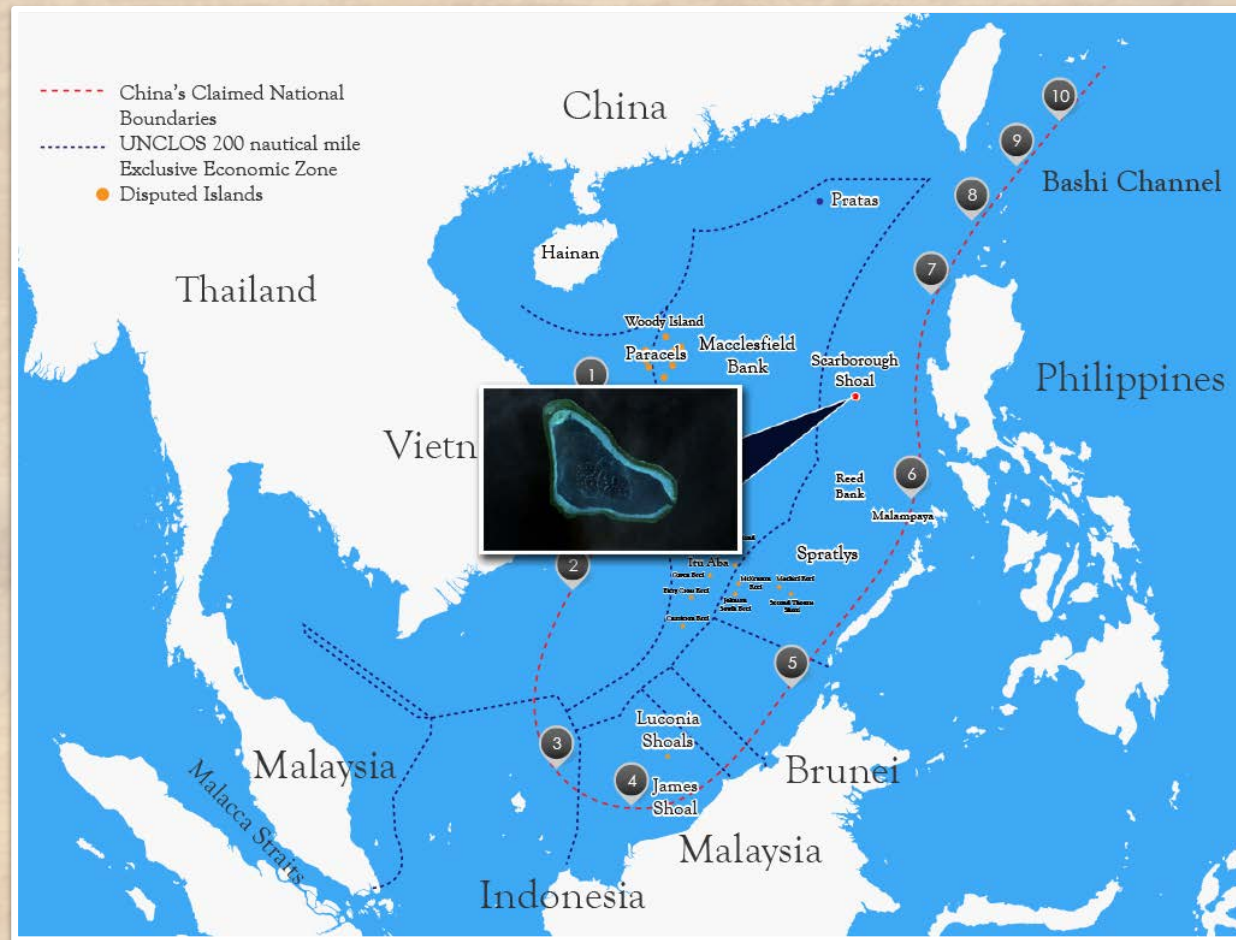
# China Holds Sovereignty Oath Swearing Ceremony at James Shoal in January 2014



A Chinese taskforce composed of three warships from the South China Sea Fleet of the Navy of the Chinese People's Liberation Army (PLAN) held a sovereignty oath-swearing ceremony on January 26, 2014 in the waters of James (Zengmu) Shoal off the coast of Sarawak, Borneo in the South China Sea. The Singapore *Straits Times* quoted China's Foreign Ministry spokesman Qin Gang that Malaysia did not lodge any protest against China. Photo: Xinhua



# China Seized Scarborough (Panatag) Shoal in 2012



In 2012, China seized Scarborough Shoal from the Philippines. In November 2012, following a three-month standoff between Philippine and Chinese vessels around the shoal, China informed the Philippines that Chinese coast guard vessels would remain permanently on the shoal. Scarborough Shoal, including its lagoon, has an area of 58 square miles or 150 square KM (15,000 hectares). Located 124 NM from Zamboanga, Scarborough Shoal is rich in fisheries and is one of the traditional fishing grounds of Filipino fishermen. The shoal is a high tide elevation, with the biggest rock protruding 1.2 meter above water at high tide. China claims that Scarborough Shoal generates a 200 NM EEZ.



# China Seized Luconia Shoals in 2013

In 2013, China seized Luconia Shoals from Malaysia. Malaysian National Security Minister Shahidan Kassim posted on *Facebook* last June 4, 2015 the location map of Luconia Shoals, 54 NM from Sarawak, with this statement: **"This small island is not a disputed territory but the foreign ship which came here has intruded into our national waters."**

That foreign ship is the Chinese Coast Guard vessel *Haijing 1123*, which anchored on Luconia Shoals since April 2013 and has remained there up to now.

Luconia Shoals, covering 100 square miles, are one of the largest reef formations in the South China Sea. Luconia Shoals, with a sandbar above water at high tide, are rich in fish, oil and gas. China claims that all geologic features in the Spratlys generate a 200 NM EEZ.





# China Installed HD 981 Oil Rig in 2014



In 2014, China placed its \$1 billion deep-water HD 981 deep water oil rig 130 NM from Vietnam's coast, well within Vietnam's EEZ. In protest, Vietnamese workers in export processing zones in Vietnam rioted, burning several Chinese factories. A Vietnamese fishing boat sank near the oil rig after being rammed by a Chinese vessel. Recent reports reveal that China is building three (3) more type HD 981 rigs for deployment in the South China Sea. Wang Yilin, chairman of China National Offshore Oil Corp., calls these oil rigs "strategic weapons" that form part of China's **"mobile national sovereignty."**

# Hainan's 2014 Fishery Regulations

---

Article 35 of the Hainan Province's 2014 Fishery Regulations, which took effect on January 1, 2014, mandate that foreign fishing vessels “entering the waters under the jurisdiction of this province (Hainan) to engage in fishery operations or fishery resource surveys shall secure approval from relevant departments of the State Council.”

The Fishery Regulations apply to Macclesfield Bank, which is part of the high seas.



# Waters Hainan Claims under its Administration



The enclosed waters under Hainan's administration comprise 2 million square kilometers out of the 3.5 square kilometers total surface area of the South China Sea. China claims a total of 3 million square kilometers or 85.7% of the waters of the South China Sea. Macclesfield Bank, which is part of the high seas, is within the enclosed waters.

# China Intrudes into Natuna's Territorial Sea & EEZ in 2016



On 19 March 2016, an Indonesian maritime enforcement vessel, the *KP Hiu 11*, arrested and put on board 8 Chinese fishermen illegally operating the fishing boat *Kway Fey* within the EEZ of the Indonesia's Natuna islands facing the South China Sea. The *KP Hiu11* towed the *Kway Fey* towards Natuna Island. A Chinese coast guard vessel followed, and within Natuna's territorial sea, rammed the *Kway Fey*, successfully prying it loose from the towing *KP Hiu 11*. The *KP Hiu 11* headed home with the 9 Chinese fishermen but without the *Kway Fey*. China later claimed that the *Kway Fey* was operating within China's "**traditional fishing grounds.**" Last 27 May 2016, the Indonesian destroyer *Oswald Siaahan-354*, after firing warning shots, seized the Chinese fishing vessel *Gui Bei Yu* in the same EEZ as a much smaller Chinese coast guard vessel nearby just watched helplessly.



## China Imposes a Unilateral Annual 3-Month Fishing Moratorium In the South China Sea

Since 1999, China thru Hainan Province has imposed unilaterally a three-month annual fishing moratorium, from mid-May to end July, on waters in and around the Paracels, Macclesfield Bank and Scarborough Shoal. Violators of the ban face fines, confiscation of fishing equipment, and even criminal charges. **Macclesfield Bank is part of the high seas.**

In a *Note Verbale* dated 6 July 2015, China demanded that the Philippines “respect China's territorial sovereignty, sovereign rights and jurisdiction, and xxx educate its own fishermen, so that they can strictly abide by the fishing moratorium xxx.” China warned that “Chinese law-enforcing authorities will strengthen their maritime patrols and other law-enforcing actions, investigate and punish the relevant fishing vessels and fishermen who violate the fishing moratorium xxx.”



# The High Seas Part of Global Commons

---

The high seas have always been part of the global commons, whether before or after UNCLOS. The high seas could not be subject to sovereignty by any state, whether before or after UNCLOS.

UNCLOS declares: “The high seas are open to all states, whether coastal or land-locked. Freedom of the high seas xxx comprises, *inter alia*, xxx freedom of fishing” (Art. 87, UNCLOS).

UNCLOS declares: “No state may validly purport to subject any part of the high seas to its sovereignty” (Art. 89, UNCLOS).



# Grand Theft of the Global Commons

---

By appropriating for itself the fishery resources in the high seas of the South China Sea, China is committing a grand theft of the global commons.

All states, coastal and landlocked, are interested parties in the South China Sea dispute because China is appropriating for itself the fishery resources in the high seas.

# The South China Sea - A Chinese Lake

---

All these acts of China, among so many others, demonstrate beyond doubt that China is claiming sovereignty, sovereign rights and jurisdiction to all the waters, fisheries, oil, gas, mineral resources, seabed and subsoil enclosed by the 9-dashed lines.



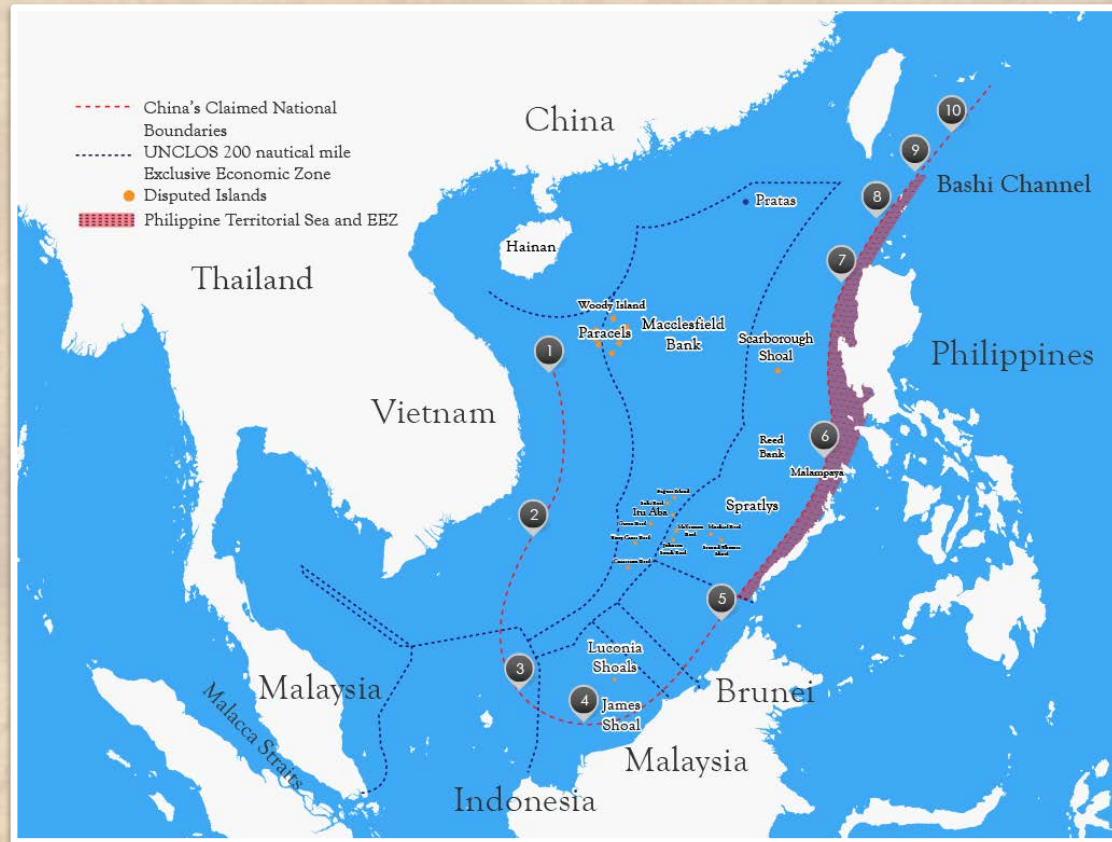
## “The First Country to Invade the South China Sea”

---

Chinese Admiral Sun Jianguo, deputy chief of general staff of the People's Liberation Army, claimed in his speech at the Shangri-La Dialogue in Singapore last 5 June 2016, that the Philippines is “**the first country to invade the South China Sea.**”

Obviously, China treats 85.7% of the South China Sea as its **national territory**. China now claims that the Philippines is the first to invade the South China Sea, even before the French, the Japanese, Vietnamese and the Malaysians.

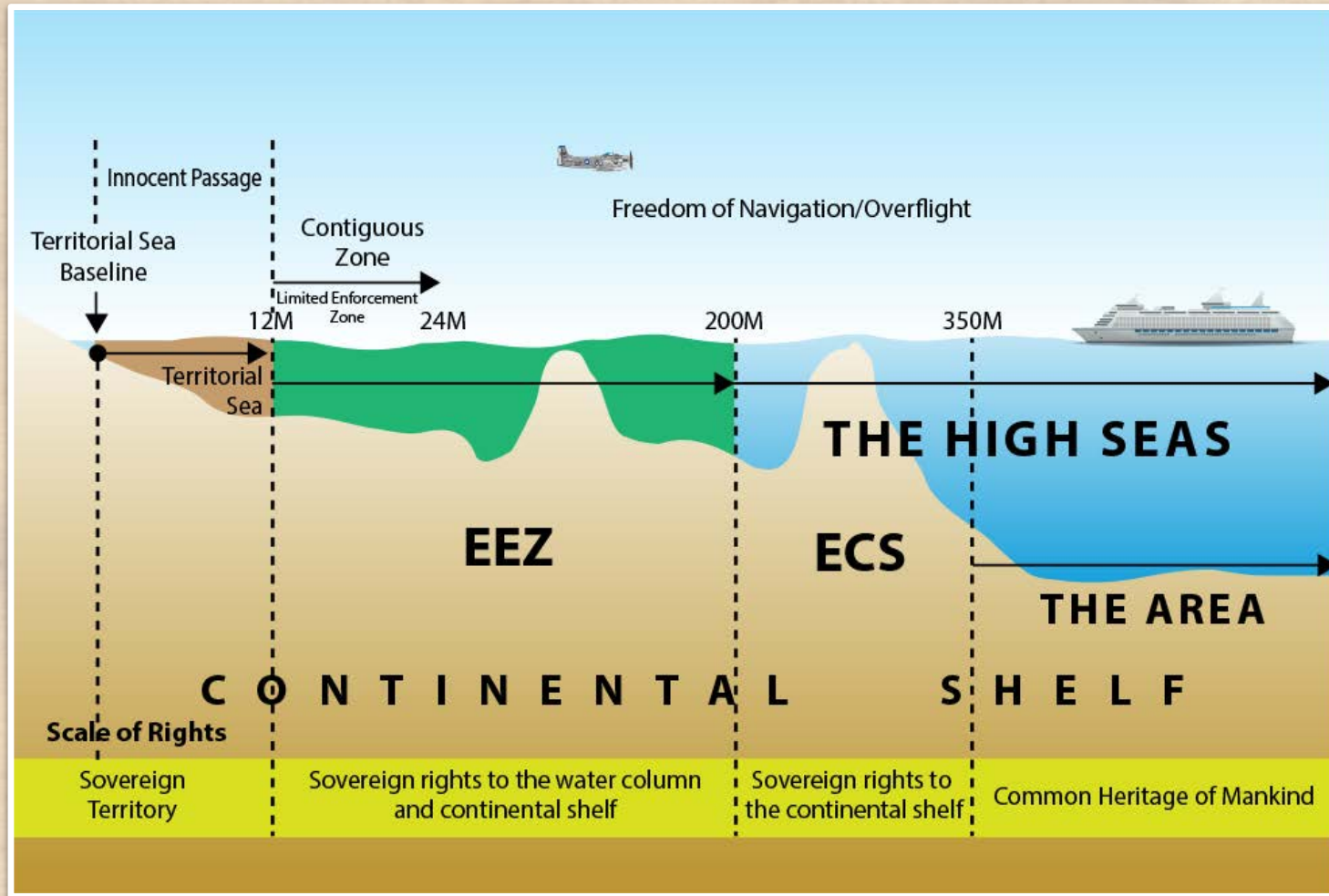
# Philippines' Sliver of Territorial Sea and EEZ



The Philippines will be left with a sliver of water as its territorial sea and EEZ. The Philippines and China will have a very long common sea border – 1,300 kms – from Balabac Island in southern Palawan to Yamin Island in northern Batanes. The dashed lines are just 64 KMs from Balabac Island, 70 KMs from the coast of Burgos, Ilocos Norte, and 44 KMs from Yami Island. Last 25 February 2016, Chinese Foreign Minister Wang Yi told his audience at the CSIS in Washington, DC: “We are neighbors (with the Philippines) just separated by a narrow body of water.” Wang Yi also declared in the same forum that the decision of Philippine officials to file the arbitration case was “irresponsible to the Filipino people and the future of the Philippines.” Wang Yi imperiously believes that Philippine officials will act responsibly if they accept as a fact that China and the Philippines are “just separated by a narrow body of water.”

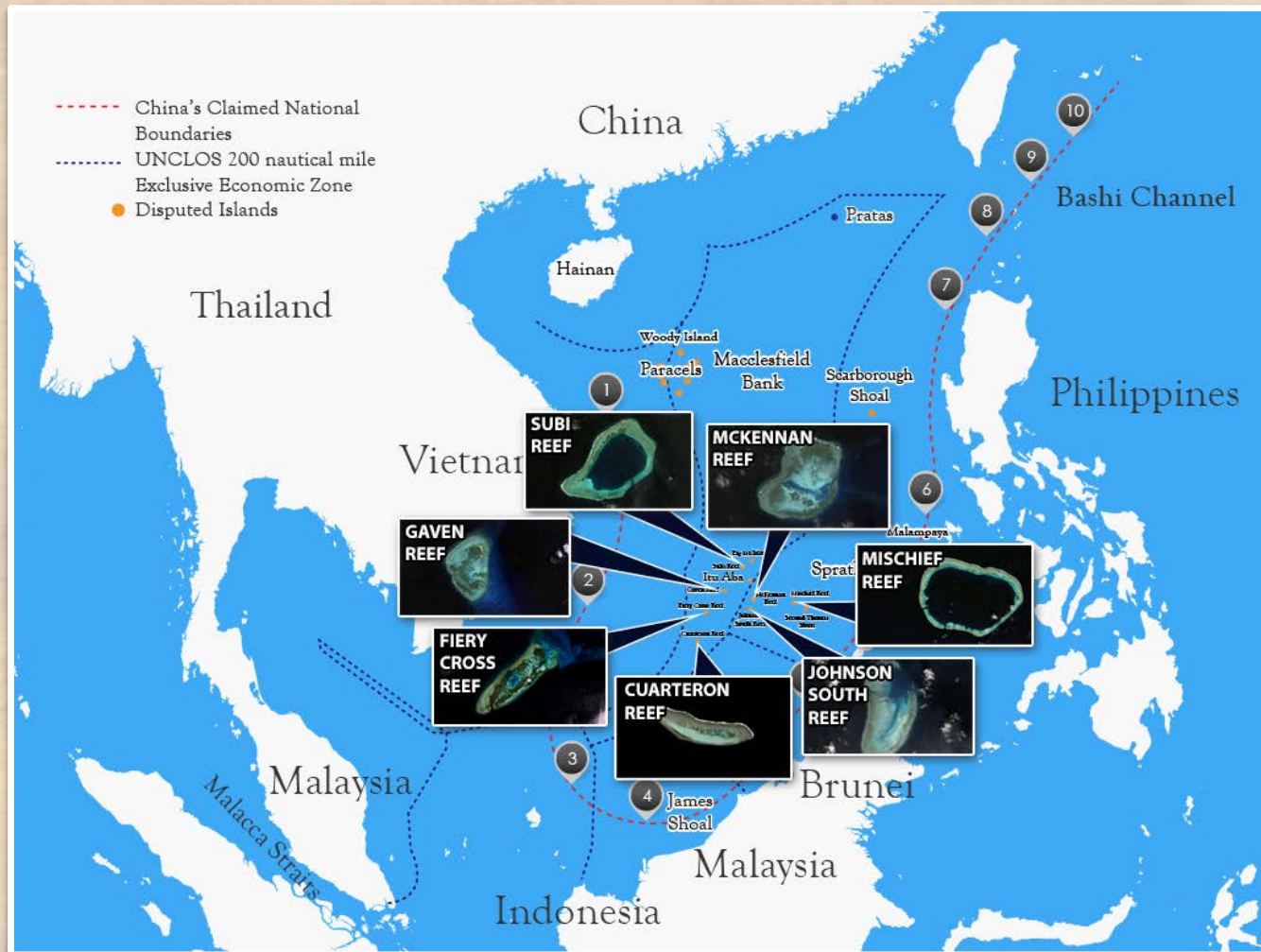


# Maritime Zones under UNCLOS



An island above water at high tide is entitled to a 12 NM territorial sea. If such island is capable of human habitation or economic life of its own, it is entitled to a 200 NM EEZ. If there is a natural prolongation of its extended continental shelf, it is entitled to an ECS up to where the natural prolongation ends, but not exceeding 150 NM from the outer limits of its EEZ. **The maximum maritime zone a coastal state can claim is 150 NM from the outer limits of its 200 NM EEZ** (or 100 NM from the 2500 meter isobath, a limitation which does not apply to coastal states in the South China Sea based on the geology and geomorphology of the South China Sea). China is claiming maritime zones more than 150 NM from the outer limits of its EEZ.

# China's Island-Building on Seven Reefs



There are about 750 small maritime features in the Spratlys. The vast majority are submerged at all times while others are exposed only at low tide. There are, at most, only 28 features that remain above water at high tide. The largest high-tide feature, Itu Aba, is only 0.43 square kilometer. The rest range in size from a high of 0.36 square kilometers (Pagasa) to a low of less than 2 square meters.



# May 1, 2016 Photo of Completed Island-Building on Fiery Cross Reef - 274 Hectare Airbase With 3 KM Runway

---



Source: <http://time.com/>

---

As Admiral Harry Harris, commander of the U.S. Pacific Command stated, “A 10,000-foot (3 KM) runway is large enough to take a B-52, almost large enough for the Space Shuttle, and 3,000 feet longer than what you need to take off a 747.” Admiral Harris also stated that China is building on Fiery Cross Reef hangars for tactical fighters.

# Subi (Zamora) Reef May 1, 2016



Source: <http://time.com/>

Under UNCLOS, Subi Reef, an LTE in the high seas, cannot be used as a military facility. Article 88 of UNCLOS mandates that **“the high seas shall be reserved for peaceful purposes.”** The total area of Subi Reef, including the lagoon and rim of the reef, is 16 sq. km. In its original state, the Subi Reef’s lagoon was 22 meters deep. Subi Reef’s location, size and depth make it ideal for a naval base with an airfield. As of December 23, 2015, China has created an artificial island of 500 hectares in Subi Reef.



# Mischief (Panganiban) Reef May 1, 2016

---

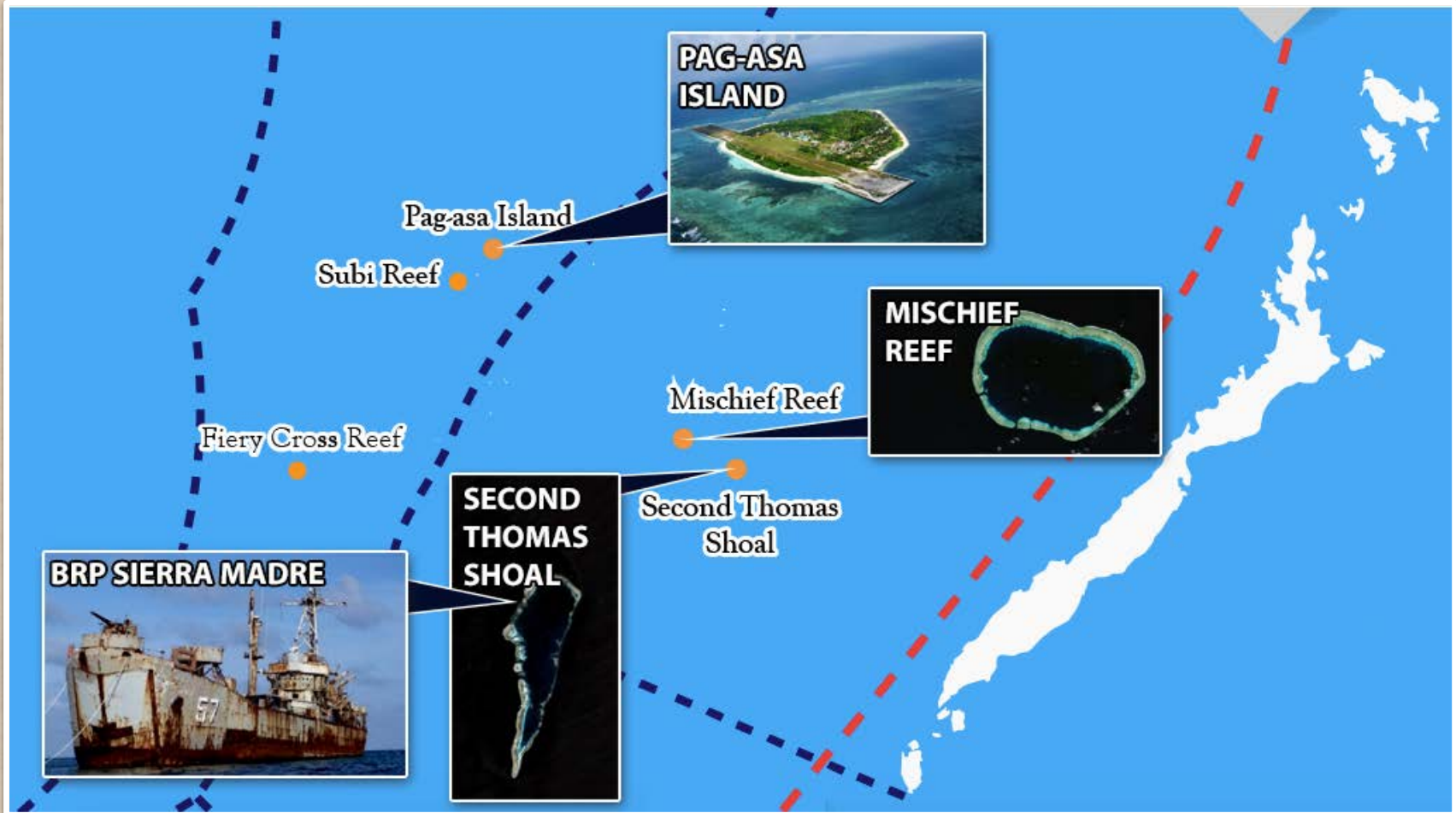


Source: <http://time.com/>

---

Mischief Reef is a circular atoll with a diameter of 7.4 KM, and its lagoon has an area of 3,600 hectares. The average depth inside the lagoon is 26 meters. As of November 2015, China has created an artificial island of 590 hectares out of a planned 800 hectares. China can garrison thousands of troops on Mischief Reef. Mischief Reef is 125 NM from Palawan and 596 NM from Hainan.

# Mischief Reef and Palawan, 125 NM Distance



Mischief Reef is an LTE that is 125 NM from Palawan, well within the 200 NM EEZ of the Philippines. As an LTE, Mischief Reef is part of the submerged continental shelf of the Philippines. With an air and naval base in Mischief Reef between Palawan and all the Philippine-occupied islands in the Spratlys, China can block Philippine ships re-supplying Philippine-occupied islands in the Spratlys.

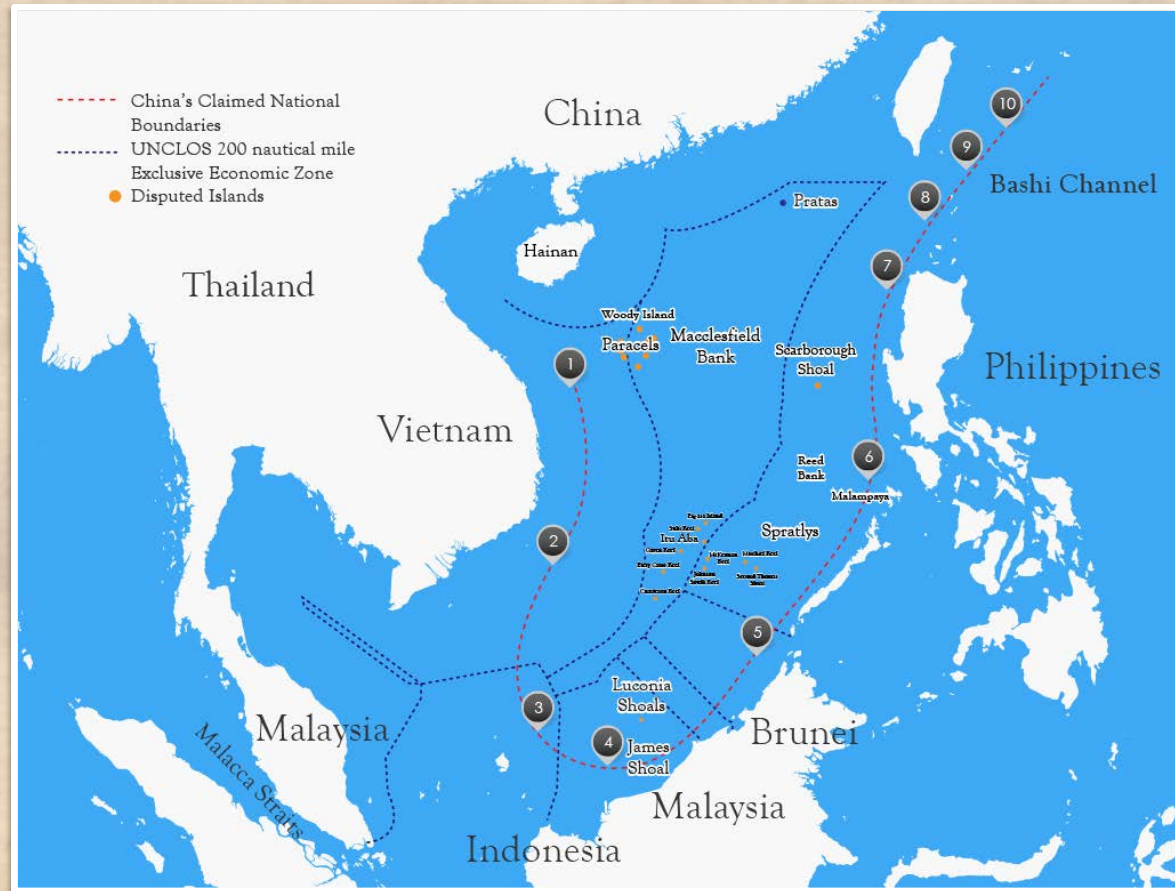


# An ADIZ in the South China Sea?



China conducted in June 2015 its first air-sea military drill in the Bashi Channel, China's outlet to the Pacific for its nuclear-armed submarines. China announced that in the future it would conduct regular air-sea military drills in the Bashi Channel. China's air and naval bases in the Spratlys can counter any attempt by other countries to block the Malacca Straits.

# 2015 China Military Strategy



Under its 2015 “China Military Strategy,” China will shift from “offshore waters defense” to the combined “offshore waters defense” and “open seas protection.” The CMS states: “The traditional mentality that land outweighs the sea must be abandoned, and **great importance has to be attached to managing the seas and oceans and protecting maritime rights and interests.**”



# China's Creeping Expansion in the SCS from 1946 to 2016

Before World War II, China's southernmost defense perimeter was Hainan Island. Before the war, China did not have a single soldier or sailor stationed in any SCS island outside of Hainan Island. In 1946, right after the war, China took over the Amphitrite Group of the Paracels and Itu Aba in the Spratlys following the defeat of the Japanese, moving China's defense perimeter southward. Due to supply problems, China vacated Itu Aba from 1950 to 1956. In 1974, China forcibly dislodged the South Vietnamese from the Crescent Group of the Paracels. In 1988, China forcibly evicted Vietnam from Johnson South Reef, moving further south China's defense perimeter in the Spratlys.



In 1995, China seized Mischief Reef from the Philippines, just 125 NM from Palawan and 594 NM from Hainan. In 2012, China seized Scarborough Shoal from the Philippines, just 124 NM from Luzon. In 2013, China seized Luconia Shoals from Malaysia, just 54 NM from Sarawak's coast. In 2014, China started island-building on rocks and submerged areas in the Spratlys to construct air and naval bases.



# China's Grand Design in the South China Sea

---

China's grand design is to control the South China Sea for economic and military purposes. China wants all the fisheries, oil, gas and mineral resources within the 9-dashed lines. China already takes 50% of the annual fish catch in the South China Sea as more than 80% of its coastal waters are already polluted. China has the largest fishing fleet in the world, with 200,000 sea-going vessels and 2,640 long-distance ocean-going vessels. China's per capita fish consumption is the highest in the world at 35.1 kg/year to feed 1.4 billion people, while the rest of Asia's per capita consumption is only 21.6 kg/year. A UN Food and Agriculture Organization study estimates that by 2030 China will account for 38% of the global fish consumption.

China is the largest net importer of petroleum in the world. The South China Sea is rich in methane hydrates - said to be one of the fuels of the future. China wants to secure all these methane hydrates for itself.

China also wants the South China Sea as a sanctuary for its nuclear-armed submarines - free from surveillance by U.S. submarine-hunting Poseidon airplanes or U.S. nuclear attack submarines.

The island-building in the Spratlys is not a knee-jerk response to the Philippines' arbitration case but part of China's long-term grand design. As Zang Jie, head of the Asia Pacific Security program at the government-linked Chinese Academy of Social Sciences, stated: **"China has wanted to do this for a long time. Now it has the dredging boats, the money and the people. So it is doing it."**



# Who can create artificial islands, or erect structures on LTEs, in the EEZ or ECS?

Article 60, Part VI of UNCLOS, on “Artificial islands, installations and structures in the exclusive economic zone,” states:

- “1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:
  - (a) artificial islands;
  - (b) installations and structures for the purposes provided in Article 56 (exploitation of non-living resources in the seabed, marine scientific research, protection and preservation of marine environment) and other economic purposes;
  - (c) xxx.”
- “2. The coastal state shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health safety and immigration laws and regulations.”

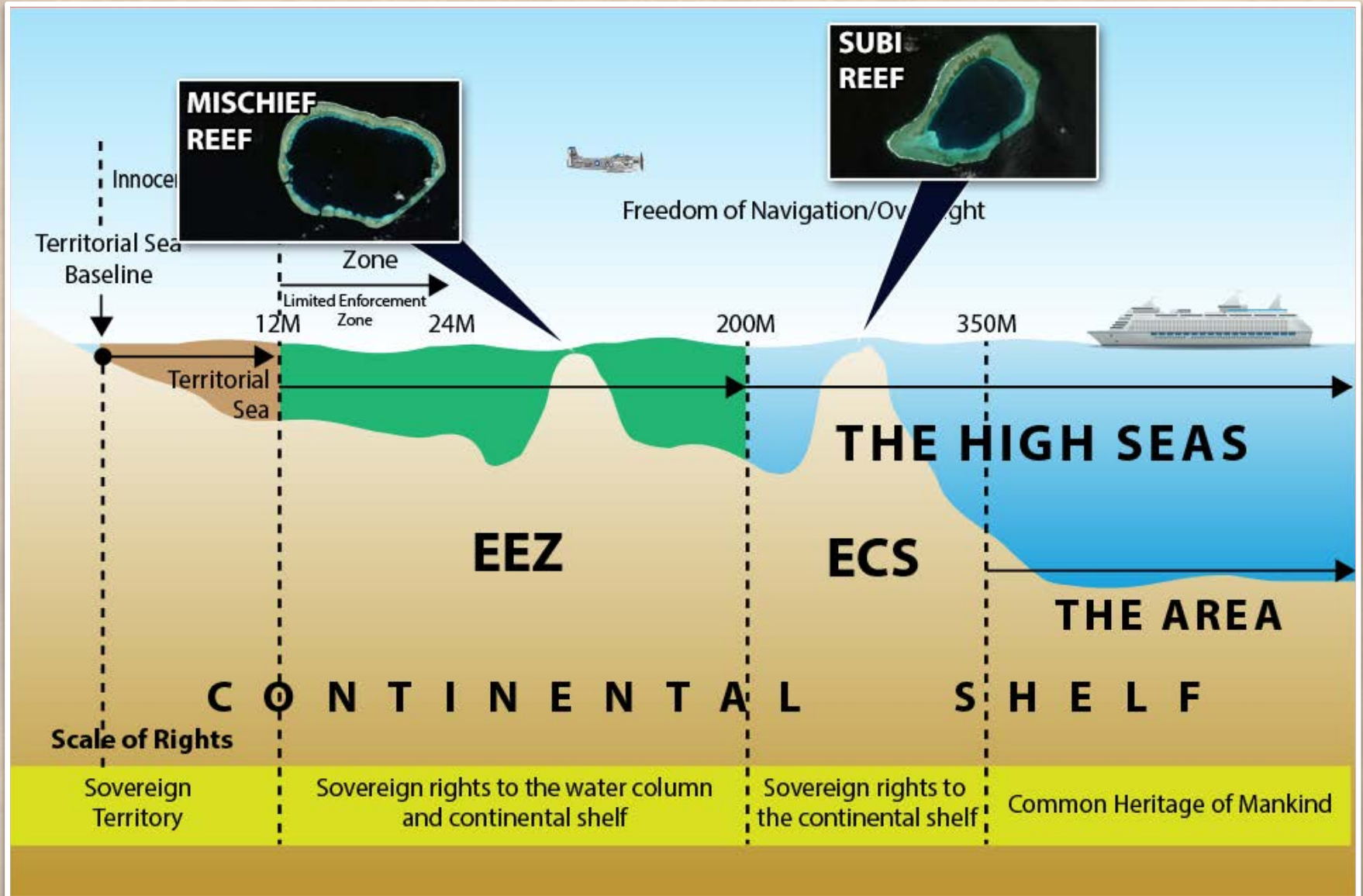
Article 80, Part VI of UNCLOS, on “Artificial islands, installations and structures on the continental shelf,” states:

“Article 60 applies *mutatis mutandi* to artificial islands, installations and structures on the continental shelf.”

Clearly, China’s island-building on LTEs in the EEZ and ECS of the Philippines violate UNCLOS and are thus illegal under international law.



# Maritime Zones under UNCLOS



# Do LTEs and artificial islands acquire a maritime zone if by island-building they are raised above water at high tide ?

---

No. UNCLOS defines an island as a “**naturally formed**” area of land, surrounded by water, and **above water at high tide**. (Art. 121, UNCLOS)

Article 60(8) of UNCLOS provides:

“8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone, or the continental shelf.”

Article 2(2) of UNCLOS states that “**sovereignty extends to the air space over the territorial sea.**” While a coastal state’s artificial structure installed within its own EEZ is entitled to 500-meter safety zone (Article 60(5), UNCLOS), an illegally installed structure by another state is not entitled to this legal 500-meter safety zone. A legal right cannot arise from an illegal act.



## Can a State Claim “Historic Rights” in the EEZ of another State?

---

Historic rights cannot be invoked to claim natural resources in the EEZ of another state. UNCLOS granted to coastal states “sovereign rights” to exploit its EEZ. “Sovereign rights” means supreme rights, superior to the rights of other states. This extinguished all historic rights or claims by other states in the EEZ of a coastal state. The word “exclusive” in the term EEZ means the economic exploitation of the zone is **exclusive** to the adjacent coastal state.

China actively participated in the negotiations of UNCLOS from 1973 to 1982. China aligned itself with the developing coastal countries which demanded a 200 NM EEZ where the coastal state has **exclusive sovereign rights** to exploit the EEZ. China never claimed that historic rights could be an exception to the exclusive sovereign rights of coastal states in the EEZ. In fact, the 200 NM EEZ was agreed upon on the clear understanding that all historic claims of other states in the EEZ of a coastal state are deemed extinguished.



# A Coastal State Has Inherent Right to its Continental Shelf

---

“The rights of a coastal state over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation” (Art. 77(3), UNCLOS). As the ICJ has explained, the rights of a coastal state “exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land.”\*

“[I]f the coastal state does not explore the continental shelf or exploit its natural resources, **no one may undertake such activities without the express consent of the coastal state**” (Art. 77[2]). This is an express prohibition to the application of historic rights claimed by other states in the continental shelf of another coastal state.

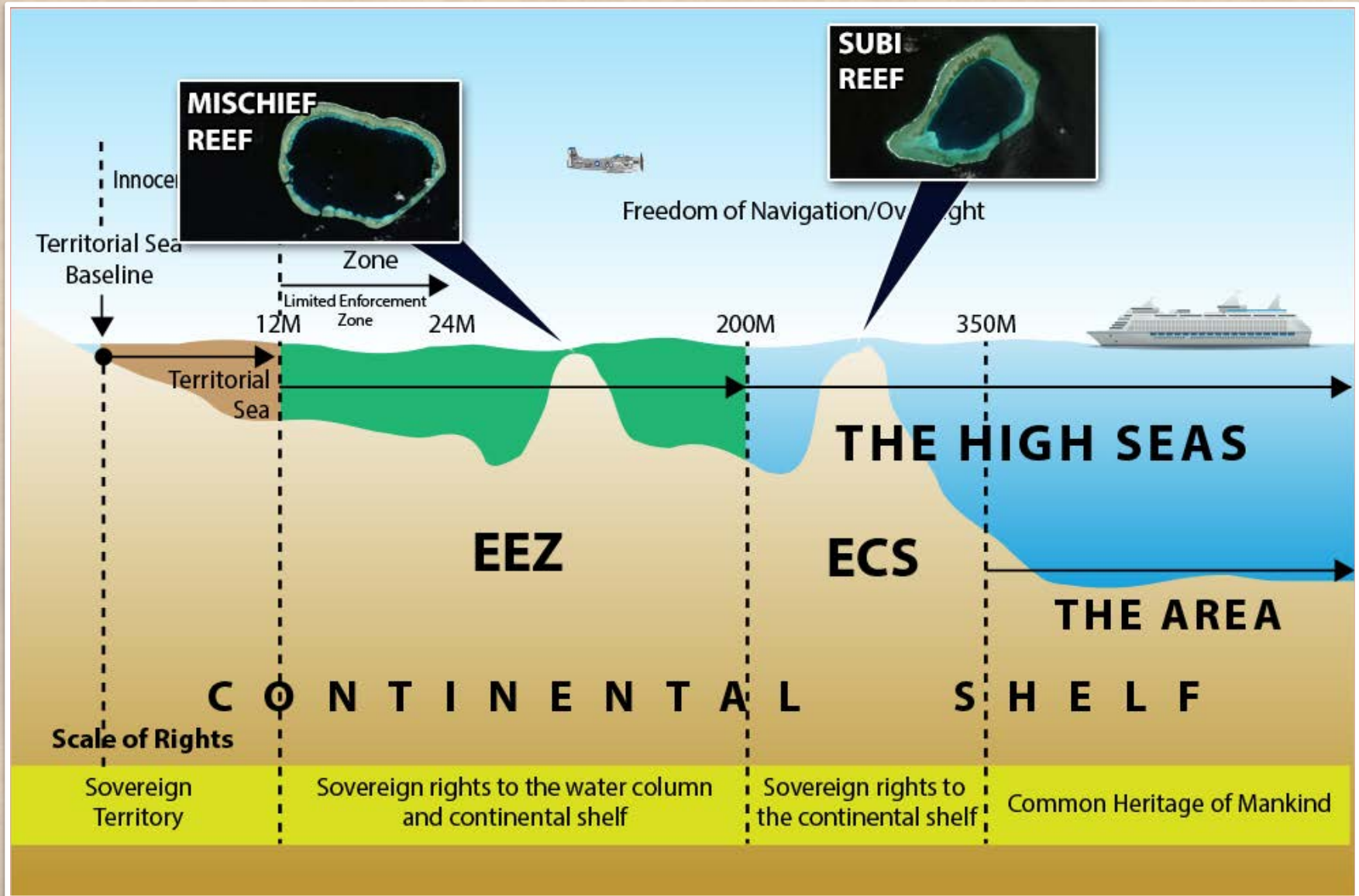
The continental shelf of a state covers its EEZ and extended continental shelf.

---

\*North Sea Continental Shelf Cases (*Federal Republic of Germany v. Denmark*; *Federal Republic of Germany v. Netherlands*), Judgment, ICJ Reports 1969, paragraph 19.



# Continental Shelf - TS, EEZ and ECS



## Itu Aba is Not Capable of Human Habitation or Economic Life of its Own

---

1. In 1994, the Taiwan Government conducted an extensive survey of Itu Aba. Taiwanese government scientists found that in Itu Aba the **“underground water is salty and unusable for drinking.”\*** Drinking water is essential, although not sufficient, for sustaining human habitation or economic life. Therefore, Itu Aba is not capable of **“sustaining human habitation or economic life of its own”** - the requirement under UNCLOS for an island to be entitled to a 200 NM EEZ. Itu Aba is entitled only to a 12 NM territorial sea. The Philippines has submitted this official Taiwanese scientific survey to the Tribunal at the Hague.

---

\* T-C Huang et. al., “The Flora of Taipingtao (Aba Itu Island)”, *Taiwania*, Vol. 39, No. 1-2 (1994), p. 1.MP, Vol. VII, Annex 254; Bill Hayton, *The South China Sea: The Struggle for Power in Asia* (2014), p. 111.



## Itu Aba is Not Capable of Human Habitation or Economic Life of its Own

2. A Taiwanese scholar and Taiwan Government consultant, Dr. Song Yann-huei, wrote in 2000: “Taiwan’s Navy and Coastal Guard send vessels regularly to the islands three to four times a year. Cargo vessels of private shipping companies also sail to Itu Aba once or two times a month **to supply the island’s daily needs.**”<sup>\*</sup> In 2008, Dr. Song also wrote that of “the 20 islands that protrude above sea level at the high tide, the largest is Taiping Island (Itu Aba), which is only 0.43 square kilometers ... The Spratly Islands **have no permanent inhabitants and are too small to sustain permanent, independent settlement.**”<sup>\*\*</sup>
3. Law Professor Chiang Huang-chih of the National Taiwan University summed up succinctly the status of Itu Aba: “**All necessities, except sunlight and air, have to be supplied from outside the island.**”<sup>\*\*\*</sup>

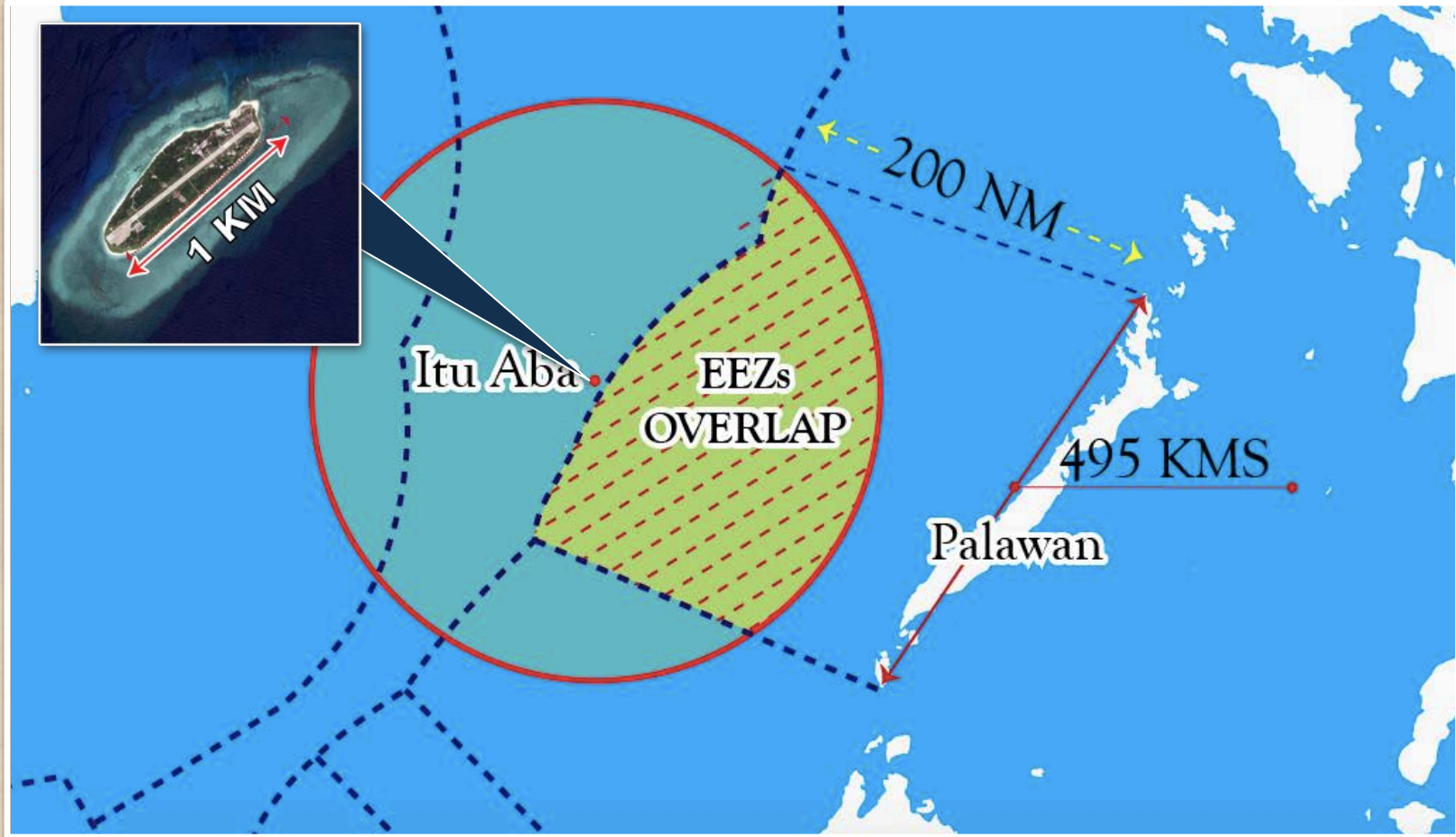
• Yann-huei Song, “The Application of Article 121(3) of the Law of the Sea Convention to the Five Selected Disputed Islands in the South China Sea,” *Chinese (Taiwan) Yearbook of International Law and Affairs*, Vol. 27 (2009), p. 61 (Emphasis supplied).

<sup>\*\*</sup> Yann-Huei Song, “The Potential Marine Pollution Threat from Oil and Gas Development Activities in the Disputed South China Sea/Spratly Area: A Role that Taiwan Can Play”, *Ocean Development & International Law*, Vol. 39, No. 2 (2008), p. 153 (Emphasis supplied).

<sup>\*\*\*</sup> <http://www.taipeitimes.com/News/editorials/archives/2015/04/02/2003614945>



# Palawan-Itu Aba EEZs Overlap



Palawan has an area of 1,464,900 hectares, and a 650 KM coast facing the West Philippine Sea, while Itu Aba has an area of 43 hectares and a 1.4 KM coast. The relevant coast for Palawan is about 495 KM, while the relevant coast for Itu Aba is about 1 KM, or a ratio of 1:495 in favor of Palawan. The relevant coast of Palawan should include Balabac Island and other nearby islands, following *Nicaragua v. Colombia*. Significantly, Taiwan is not invoking any “historic right” in claiming a maritime zone for Itu Aba.



# The Overriding Criterion in Resolving Overlapping EEZs and ECSs

---

The overriding criterion is the length of the opposing relevant coastlines in the overlapping maritime zones. In *Nicaragua v. Colombia* (ICJ Ruling, November 2012), a ratio of 1:8.2 (for every 1 KM coastline of Colombia, 8.2 KM coastline for Nicaragua) was ruled as a **substantial disparity**, leaving Colombia no EEZ facing Nicaragua.

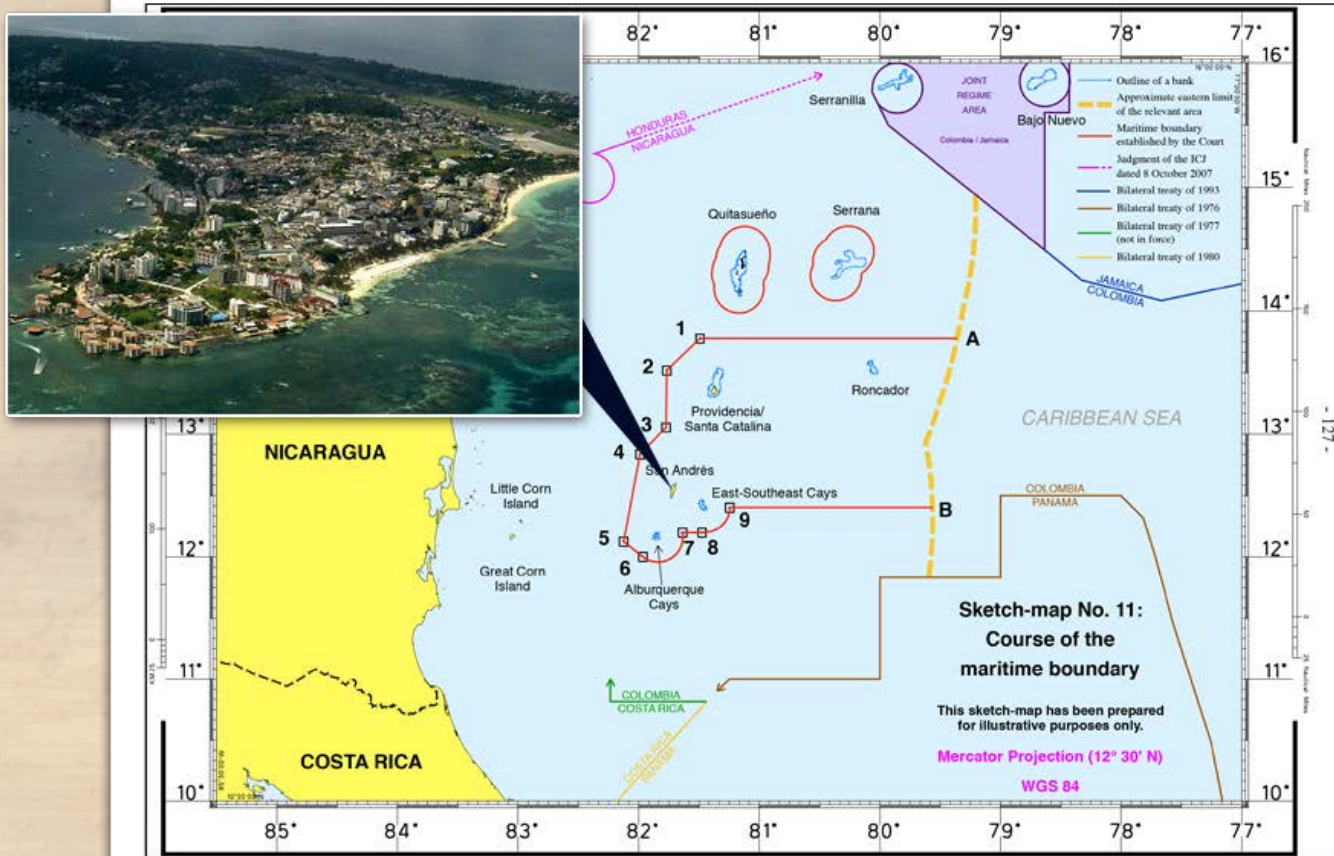
In the case of Palawan and Itu Aba, the ratio of the relevant coastlines is 1:495 in favor of Palawan. This is not only substantial disparity, but also total disparity. In the event the Philippines files a compulsory conciliation case against China, Itu Aba cannot be given any EEZ facing Palawan.

This overriding criterion will be applied in **compulsory arbitration** and in **compulsory conciliation** under UNLOS.



# Nicaragua v. Colombia (ICJ, November 2012)

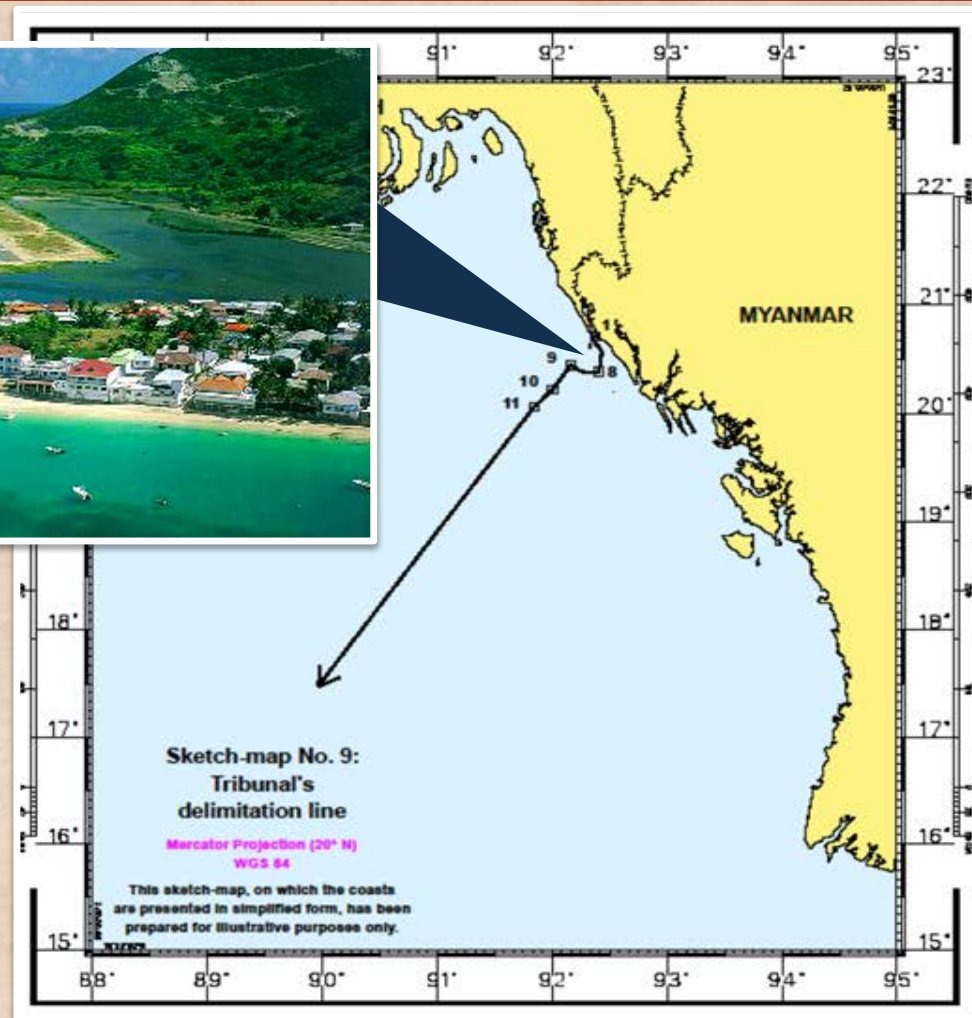
## Sketch-Map Annexed to Decision



The lengths of the relevant coasts are 531 km for Nicaragua and 65 km for Colombia's islands (San Andres, Providencia, Sta. Catalina, Albuquerque Cays, East-South Cays, Roncador and Serrana), a ratio of approximately 1:8.2 in favor of Nicaragua. San Andres Island has a land area of 2,600 hectares and a population 67,912 (2007). Nicaragua and Colombia agreed that San Andres Island is capable of sustaining human habitation or economic life of its own. San Andres Island is 56.5 times larger than Itu Aba



# Bangladesh v. Myanmar (ITLOS, March 2012)



St. Martin's Island has an area of 800 hectares (17x larger than Itu Aba) and a population of 4,000. The island was given "no effect" in the delimitation of the EEZ and ECS because giving it effect will block the seaward projection of Myanmar's EEZ and ECS. St. Martin's coast has a length of 16 KM, while Myanmar's coast has a length of 587 KM. St. Martin's is only 4.5 NM from Myanmar's coast.



# Taiwan's President Ma Ying-jeou Statement

---

In September 2014, Taiwan's then President Ma Ying-jeou, who belongs to the Kuomintang Party, which controlled the Chinese mainland government in 1947 that adopted the 9-dashed lines, clarified the extent of China's claim under the lines.

President Ma declared that the claim was **limited only to the islands and their adjacent 3 NM (now 12 NM) territorial sea**. President Ma unequivocally stated that there were “no other so-called claims to sea regions.”

This express clarification from Taiwan directly contradicts China's claim that China has “indisputable sovereignty” or historic rights over all the waters enclosed within the 9-dashed lines.



## President Ma Ying-jeou: A Law of the Sea Scholar

---

In an October 21, 2014 interview with the *New York Times*, then President Ma, who earned an S.J.D. from Harvard University with specialization in the Law of the Sea, stated:

“There is a basic principle in the Law of the Sea, that land dominates the sea. Thus, marine claims begin with land; xxx.”

The *amicus* brief submitted to the Tribunal by the Taiwan Society of International Law on 26 March 2016 did not claim any historic right to a maritime zone around Itu Aba, but claimed only maritime zones allowed under the Law of the Sea (UNCLOS).

# 2002 ASEAN-China Declaration of Conduct

---

The South China Sea dispute shall be resolved “in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea.”



# China Insists on Respect for Historical Facts

---

After the Philippines filed in January 2013 its arbitration case against China under UNCLOS, China's Foreign Minister Wang Yi declared that the South China Sea dispute should be resolved in accordance with "historical facts and international law."

## Ancient Maps of China and the Philippines

---

Official and unofficial maps of China from 1136 during the Song Dynasty until the end of the Qing Dynasty in 1912 show that the southernmost territory of China has always been Hainan Island. Official and unofficial maps of the Philippines from 1636 until 1933 show that Scarborough Shoal has always been part of the Philippines. The first name of Scarborough Shoal is “Panacot,” which appeared in the 1734 Murillo Velarde map published in Manila.

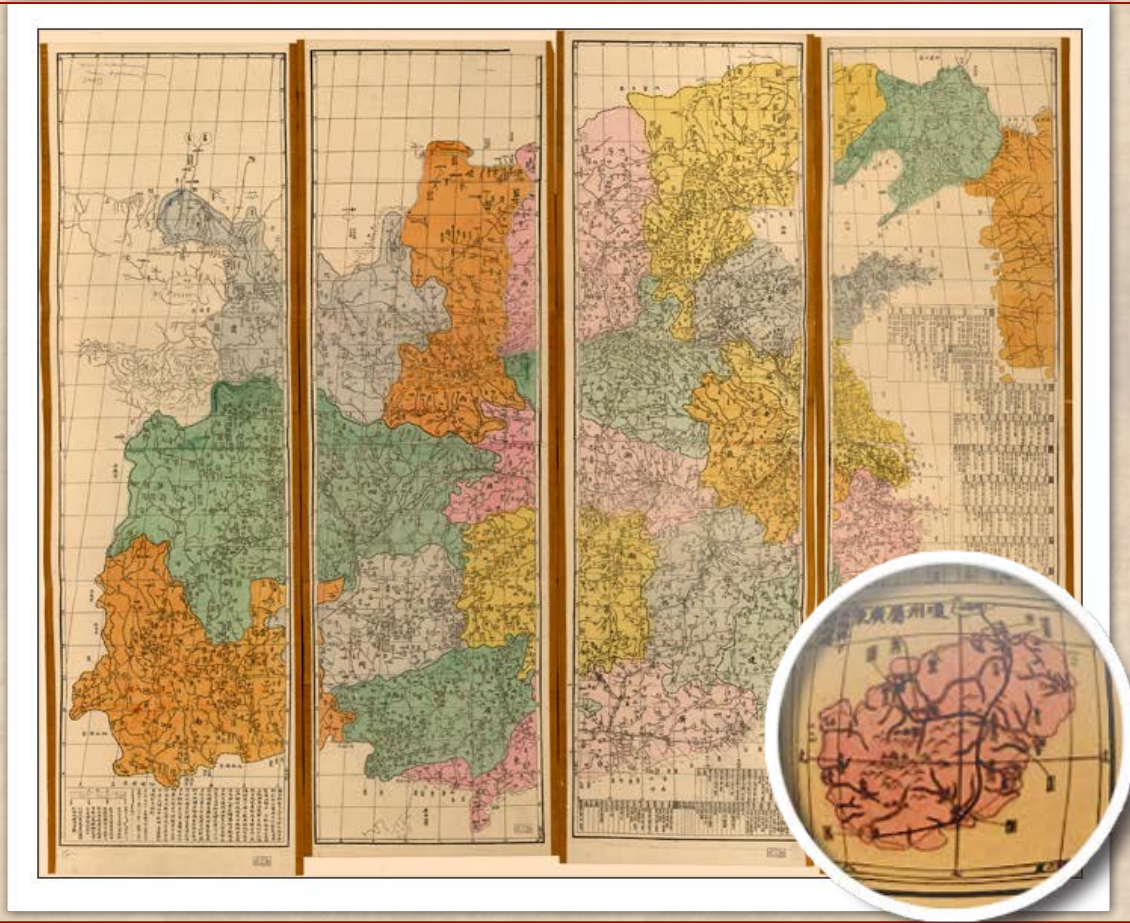


# 1136 AD “Hua Yi Tu”





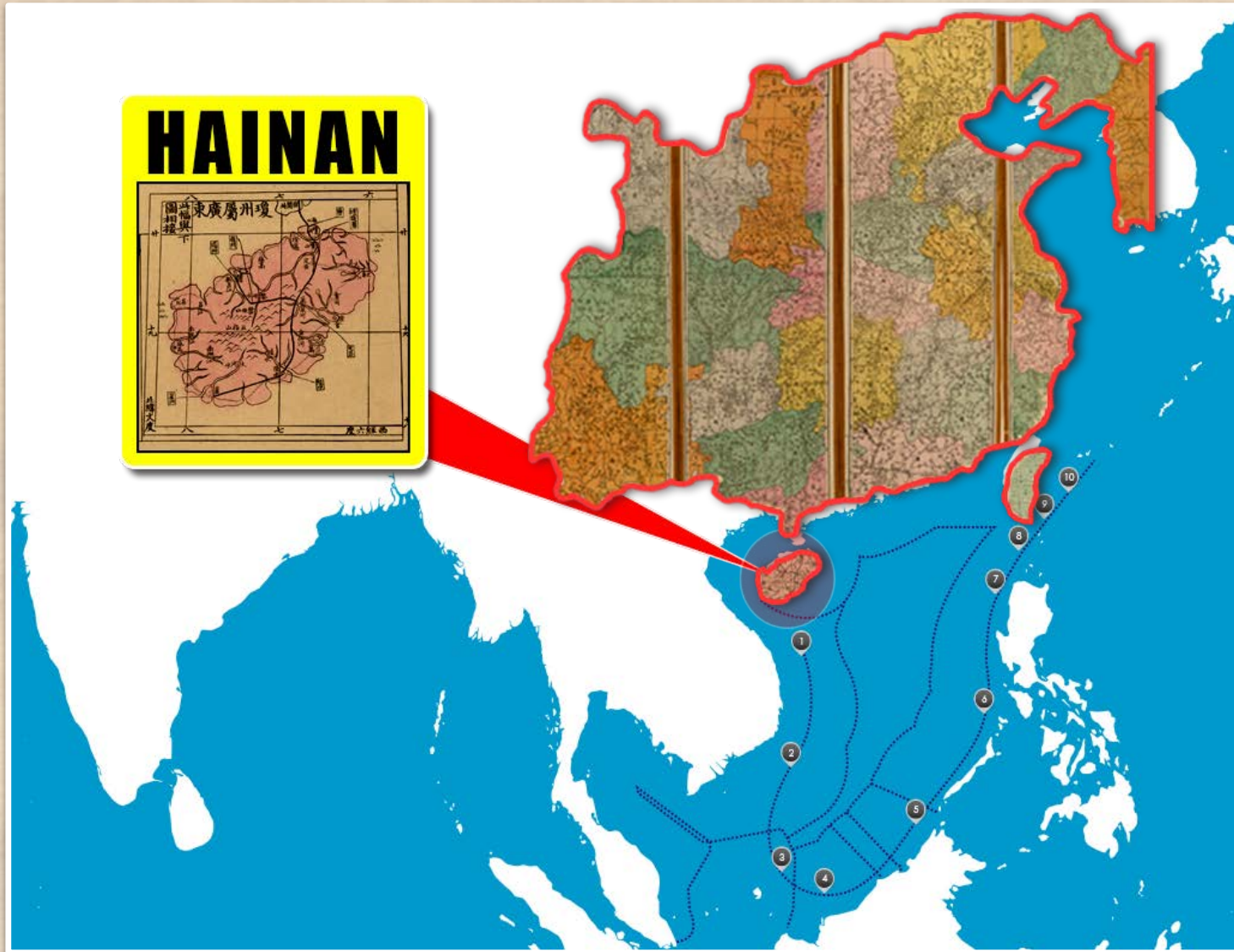
# 1896 “Huang Chao Zhi Sheng Yu Di Quan Tu” or The Qing Empire’s Complete Map of All Provinces.



During the Chinese dynasties, Hainan Island was a part of Guangdong Province. Hainan became a separate province only in 1988. The Qing Dynasty saw one of the largest expansions of Chinese territory throughout the Chinese dynasties. The Qing dynasty ceded Formosa to Japan in 1895 following the Qing's defeat in the First Sino-Japanese War (1894-1895).

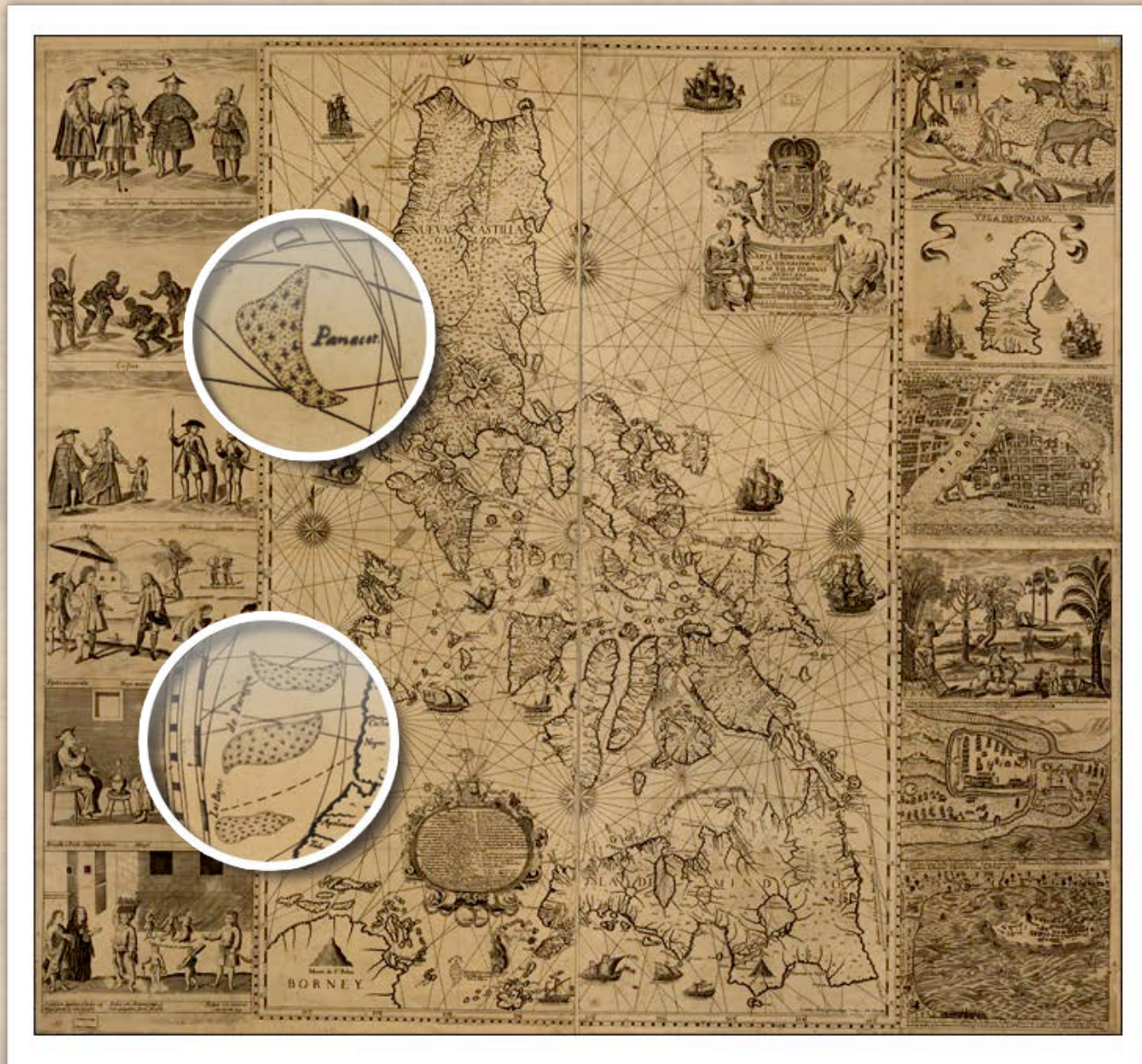


# China's Southernmost Territory Through the Dynasties – Hainan (1894)



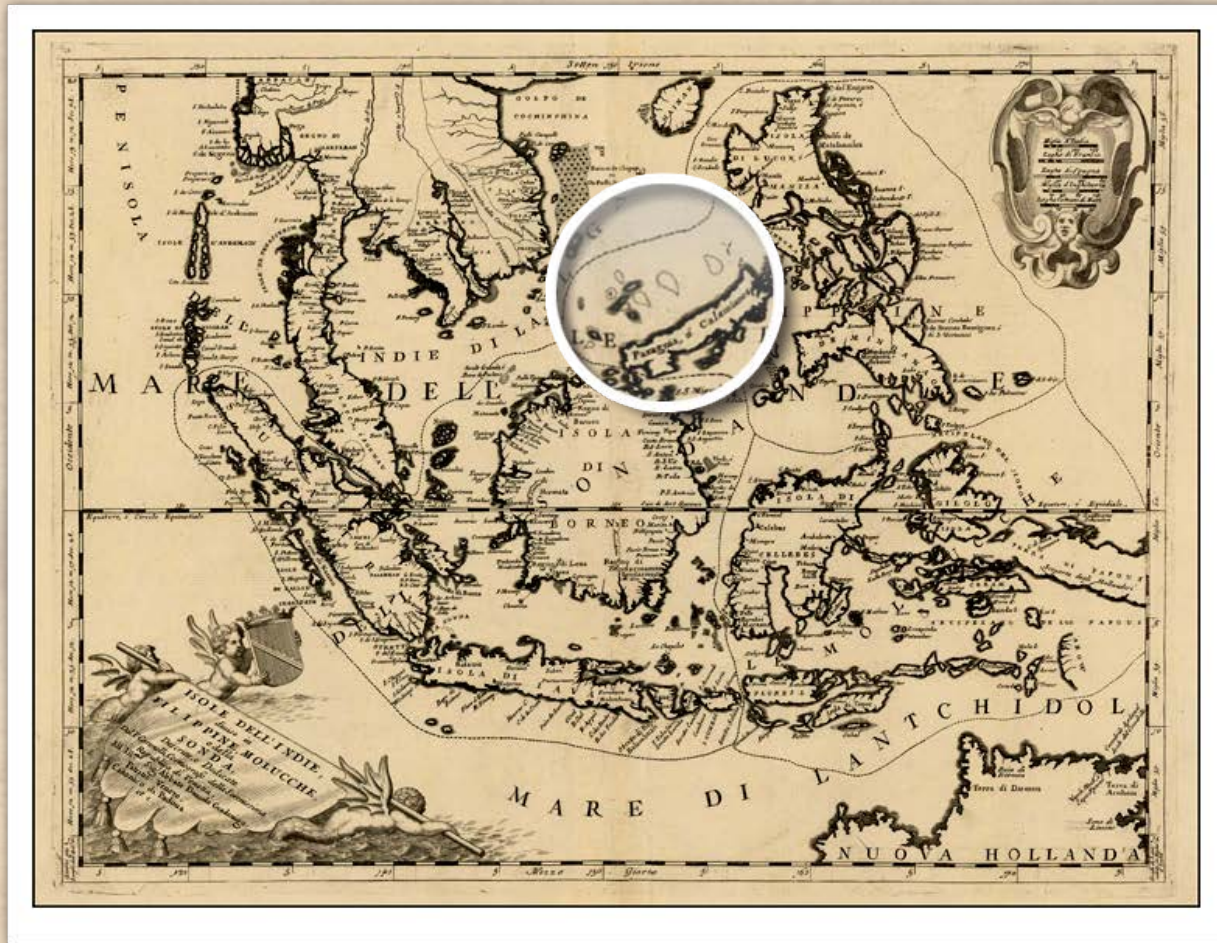


# 1734 Murillo Velarde Map





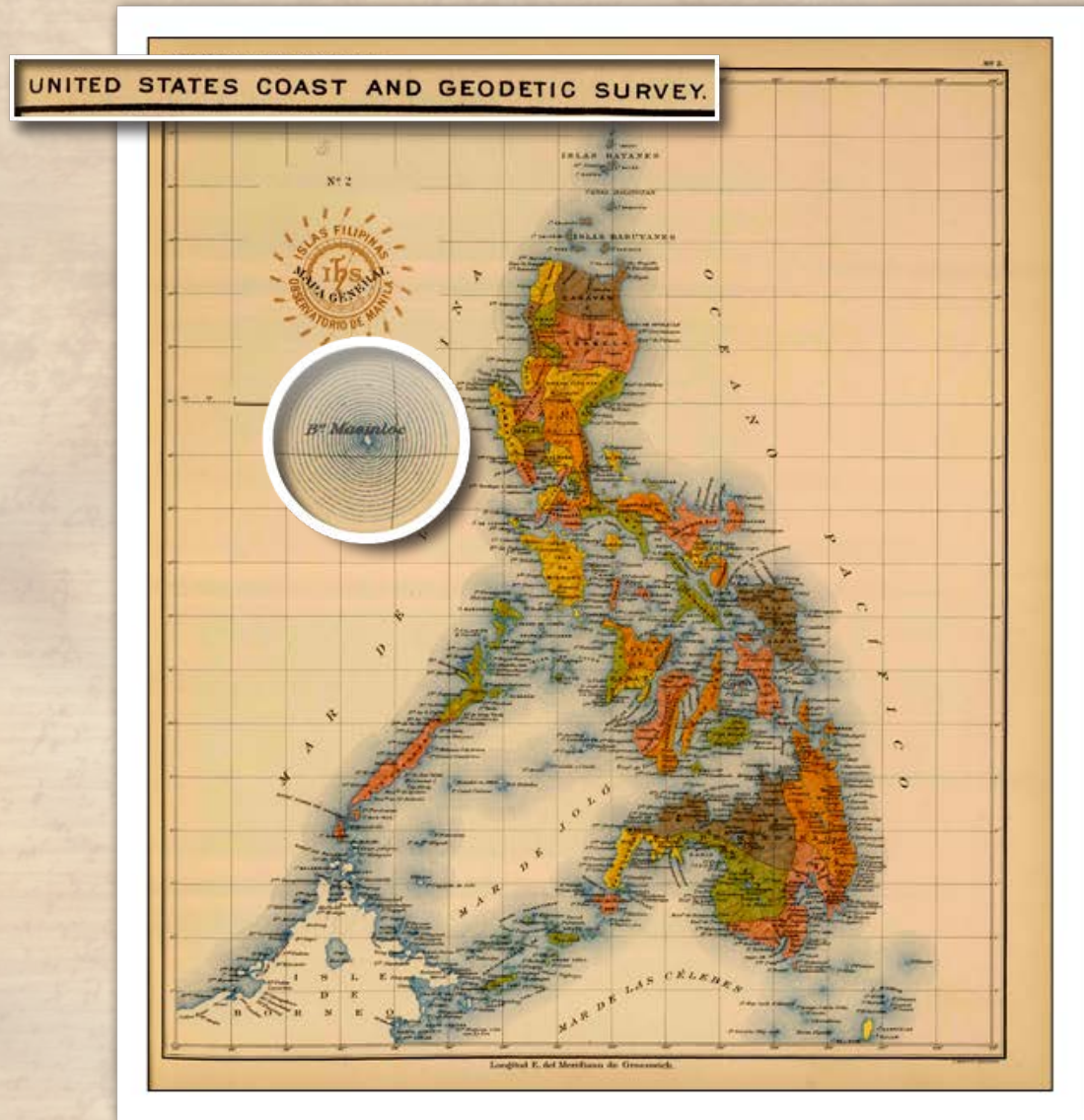
# 1695 Coronelli Map of Southeast Asia



This 1695 map, entitled *Isole dell'Indie*, shows the Spratlys as part of the Philippines. This map was created by the Venetian Vincenzo Coronelli, a Franciscan monk. The map was published in Venice in 1695. Coronelli, famous for his atlases and globes, became the Father General of the Franciscan Order. The Franciscans arrived in the Philippines in 1578.



# 1899 “Islas Filipinas, Mapa General Observatorio de Manila.”



Published in 1899 in Washington, D.C. by the U.S. Coast and Geodetic Survey.



# Expansion of Hainan Island as Southernmost Territory of China

---

As late as 1932, China has been telling the world that its southernmost border was Hainan Island, but that **Hainan Island included the Paracels**. In a *Note Verbale* to the French Government on September 29, 1932 protesting the French occupation of the Paracels, the Chinese Government officially declared:

*“Note of 29 September 1932 from the Legation of  
the Chinese Republic in France to the Ministry of  
Foreign Affairs, Paris*

On the instructions of its Government, the Legation of the Chinese Republic in France has the honor to transmit its Government's reply to the Foreign Ministry's Note of 4 January 1932 on the subject of the Paracel Islands.”

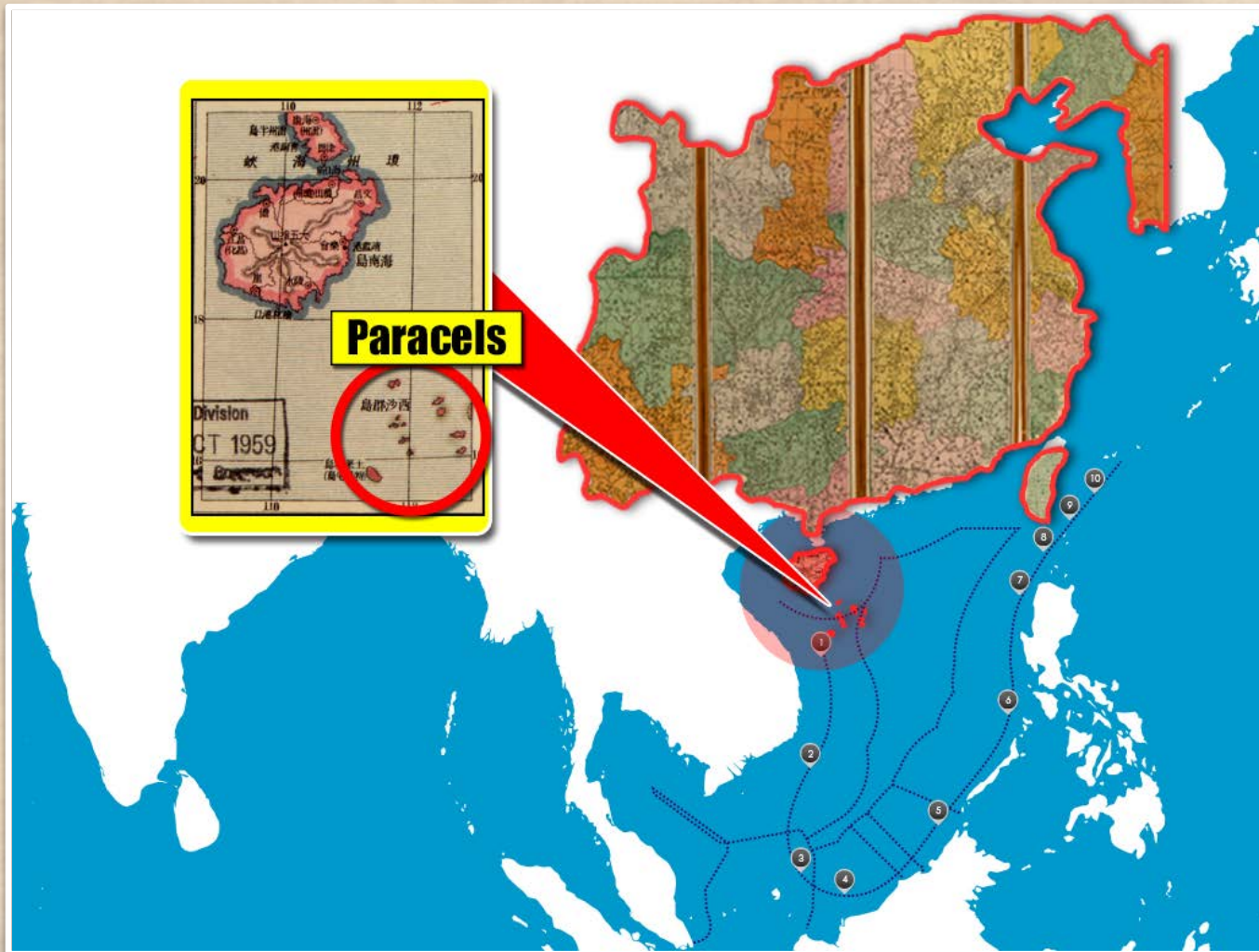
XXXX



“xxx The eastern group is called the Amphitrites and the western group the Crescent. **These groups lie 145 nautical miles from Hainan Island, and form the southernmost part of Chinese territory.**” (Emphasis supplied)

xxx [Source: *Sovereignty over the Paracel and Spratly Islands*, Monique Chemelier-Gendreau, **Annex 10**, Kluwer Law International, 2000]

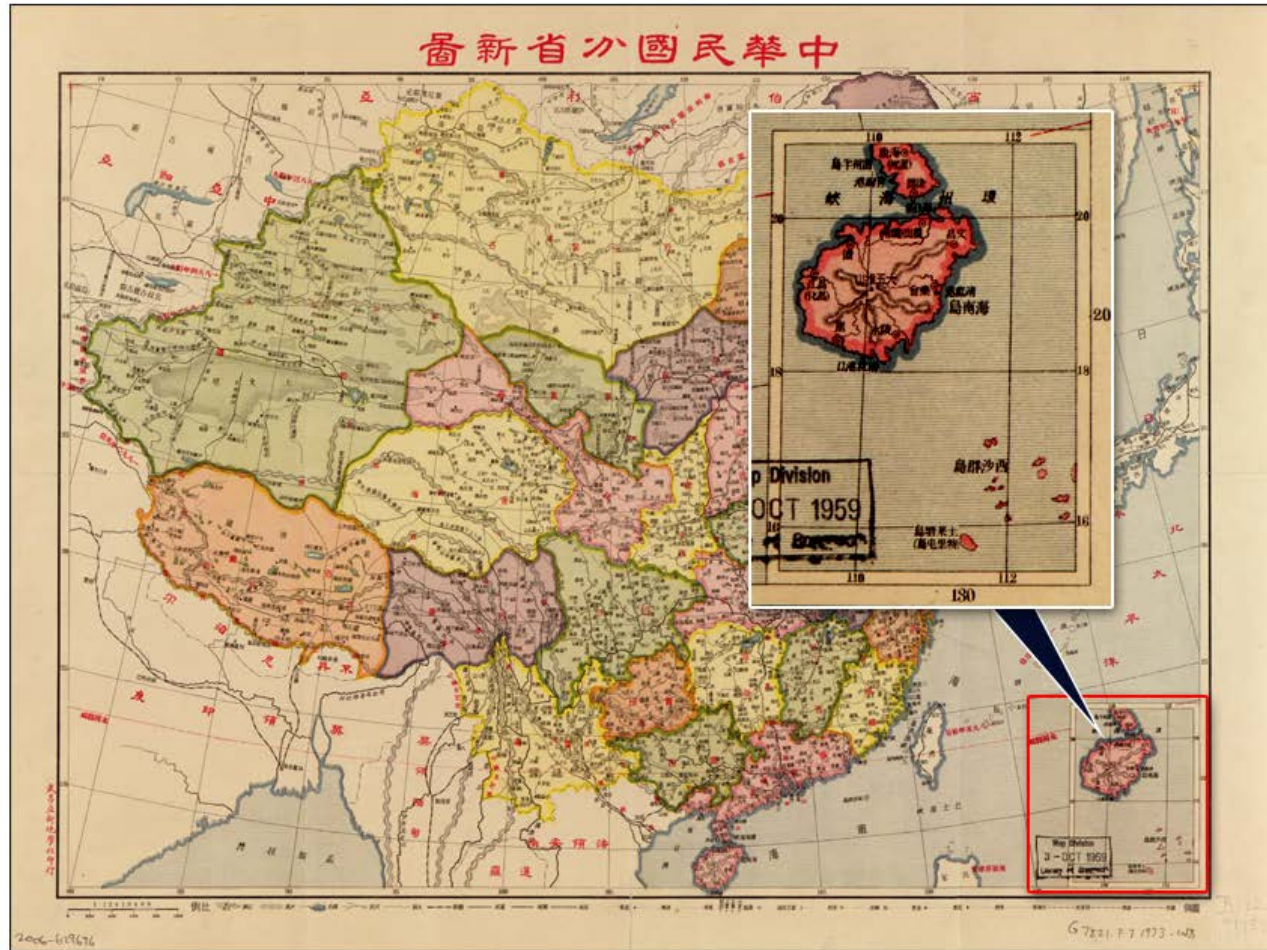
# “Southernmost Part of Chinese Territory” – the Paracels



The Paracels - “These groups lie 145 nautical miles from Hainan Island, and form the southernmost part of Chinese territory.” *China’s Note Verbale to France of 29 September 1932*



# 1933 “Zhonghua Min Guo Fen Sheng Xin Tu”



Despite Chinese maps that appeared in the 1930s and 1940s showing the Paracels as part of China, China's Republican Constitutions of 1937 and 1946 still declared that its territory remained the same as the territory of the former empire.

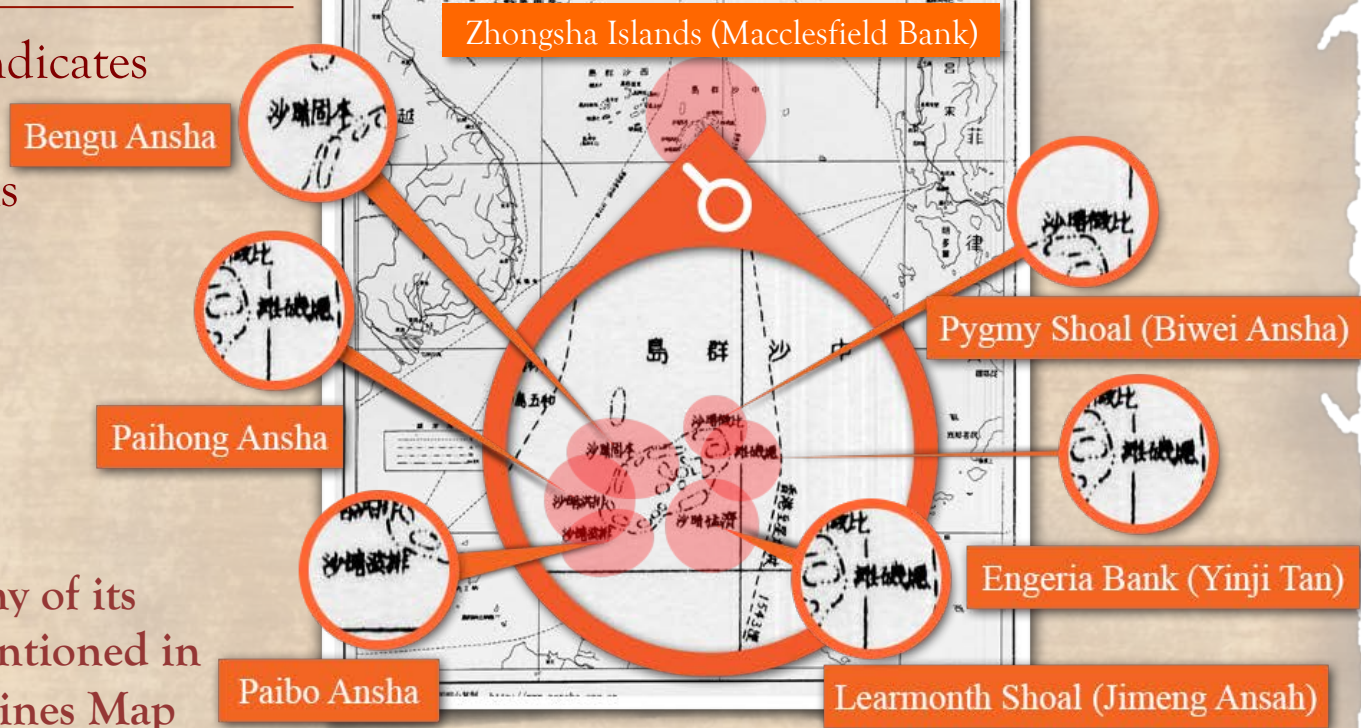


# The Original 1947 9-dashed Lines Map of China Entitled “Location Map of the South Sea Islands”

The title of the map indicates a claim to the islands, not the sea. China calls the South China Sea *Nanhai* or *South Sea*. European navigators gave the name South China Sea.

Scarborough Shoal or any of its Chinese name is not mentioned in China's 1947 9-dashed Lines Map

Huangyan Dao or its second name Minzhu Jiao is not mentioned in the 1947 9-dashed Lines Map. China's CCTV states: “The island was named Huangyan Island in 1935 and renamed into Minzhu Jiao (reef) in 1947” - <http://english.cctv.com/2016/06/12/VIDEcF6mUCIF9RrE0XSZjNqK160612.shtml>. The Philippines gave Scarborough Shoal a Tagalog name in 1734 – Panacot - 201 years before China named it Huangyan Island. Scarborough Shoal is 180 NM from Macclesfield Bank (Zhongsha Islands).

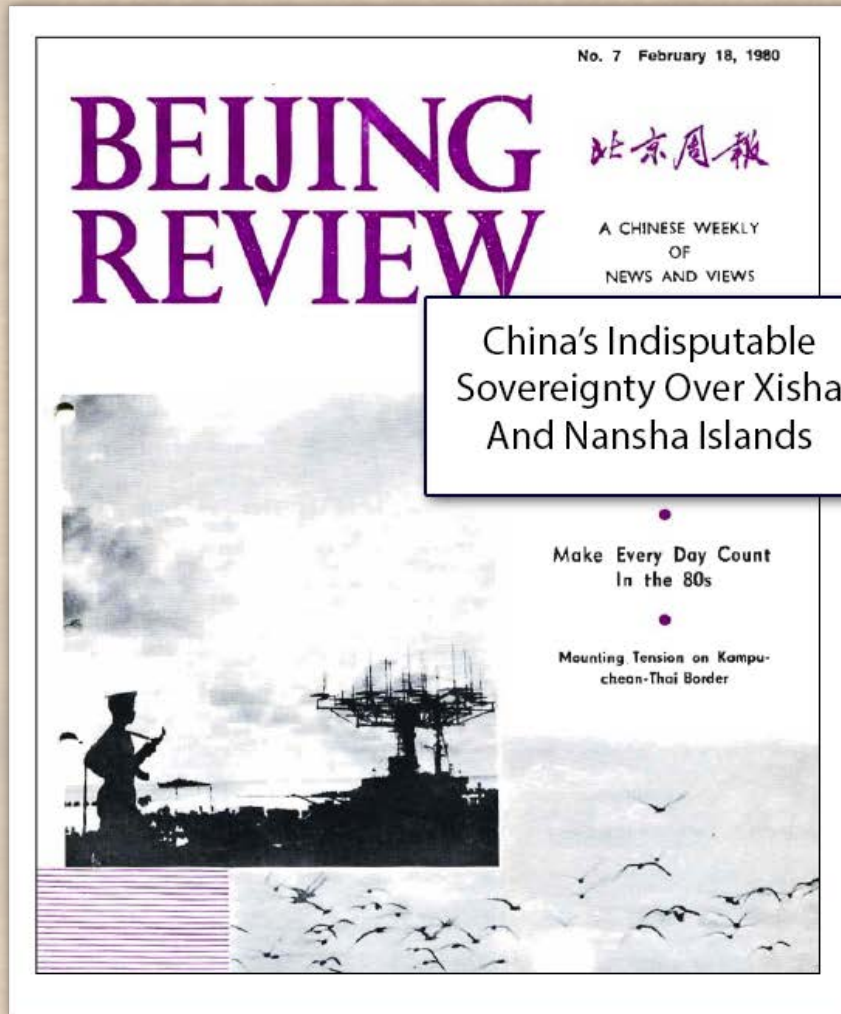




## China and Vietnam: Conflicting Claims over the Paracels

---

In a document entitled *China's Sovereignty Over Xisha and Zhongsha Islands Is Indisputable* issued on January 30, 1980, China's Ministry of Foreign Affairs **officially declared** that the Nanhai island that Guo Shoujing visited in 1279 was in **Xisha or what is internationally called the Paracels**, a group of islands more than 380 NM from Scarborough Shoal. China issued this official document to bolster its claim to the Paracels to counter Vietnam's strong historical claims to the same islands. This Chinese **official document**, published in *Beijing Review*, Issue No. 7 dated February 18, 1980, states:



“Early in the Yuan Dynasty, an astronomical observation was carried out at 27 places throughout the country. xxx According to the official *History of the Yuan Dynasty*, Nanhai, Gou’s observation point, was “to the south of Zhuya” and “the result of the survey showed that the latitude of Nanhai is 15°N.” The astronomical observation point Nanhai was today’s Xisha Islands. It shows that Xisha Islands were within the bounds of China at the time of the Yuan dynasty.” (Emphasis supplied)



# Screenshot from China's Manila Embassy Website



Huangyan Island was first discovered and drew into China's map in China's Yuan Dynasty(1271-1368AD). In 1279, Chinese astronomer Guo Shoujing performed surveying of the seas around China for Kublai Khan, and Huangyan Island was chosen as the point in the South China Sea.

1. It is China who first discovered Huangyan Island, gave it the name, included it into its territory, and exercised jurisdiction over it.

Huangyan Island was first discovered and drew into China's map in China's Yuan Dynasty(1271-1368AD). In 1279, Chinese astronomer Guo Shoujing performed surveying of the seas around China for Kublai Khan, and Huangyan Island was chosen as the point in the South China Sea.

# Gaocheng Observatory

---



---

This 12.6 meter high stone observatory in Henan Province is the only extant astronomical observatory among the 27 that Guo Shoujing built during the Yuan Dynasty.





# The *Cairo*, *Potsdam* and *San Francisco* Conferences

---

China claims that these three conferences awarded the Paracels and the Spratlys to China. This is utterly false.

1. The 1943 Cairo Conference attended by Roosevelt, Churchill and Chiang Kai-shek produced a press release that “**territories taken from China by Japan**, including Manchuria, Taiwan, and the Pescadores, would be returned to the control of the Republic of China after the conflict ended.”\* **The Paracels and the Spratlys were never mentioned because these islands were not taken by Japan from China.** Japan seized the Paracels from the French, while the Spratlys were unoccupied when Japan seized the islands.

---

\* <http://2001-2009.state.gov/r/pa/ho/time/wwii/107184.htm>



2. The Potsdam Conference (July-August 1945) among Truman, Churchill (later Atlee) and Stalin discussed how to administer a defeated Germany. The conference also produced the *Potsdam Declaration*, through which the U.S., U.K. and China threatened Japan with “prompt and utter destruction” if it did not immediately surrender (the Soviet Union did not sign the declaration because it had yet to declare war on Japan).\* **The Potsdam Declaration never mentioned the Paracels or the Spratlys; the Potsdam Declaration never awarded these islands to China.**
  
3. In the 1951 San Francisco Peace Treaty, China was not represented because of the then on-going civil war in China. The People’s Republic of China denounced the Treaty as illegal and claimed the Paracels, Spratlys and Pratas islands as part of China. **The motion of the USSR to award the Paracels and the Spratlys to China was defeated by a vote of 46 to 3, with one abstention.\*\*** Under the Treaty, "Japan renounce[d] all right, title and claim to the Spratly Islands and to the Paracel Islands." **However, the Treaty did not award the Spratlys or the Paracels to any country.** The Pratas was placed under the trusteeship of the United States.

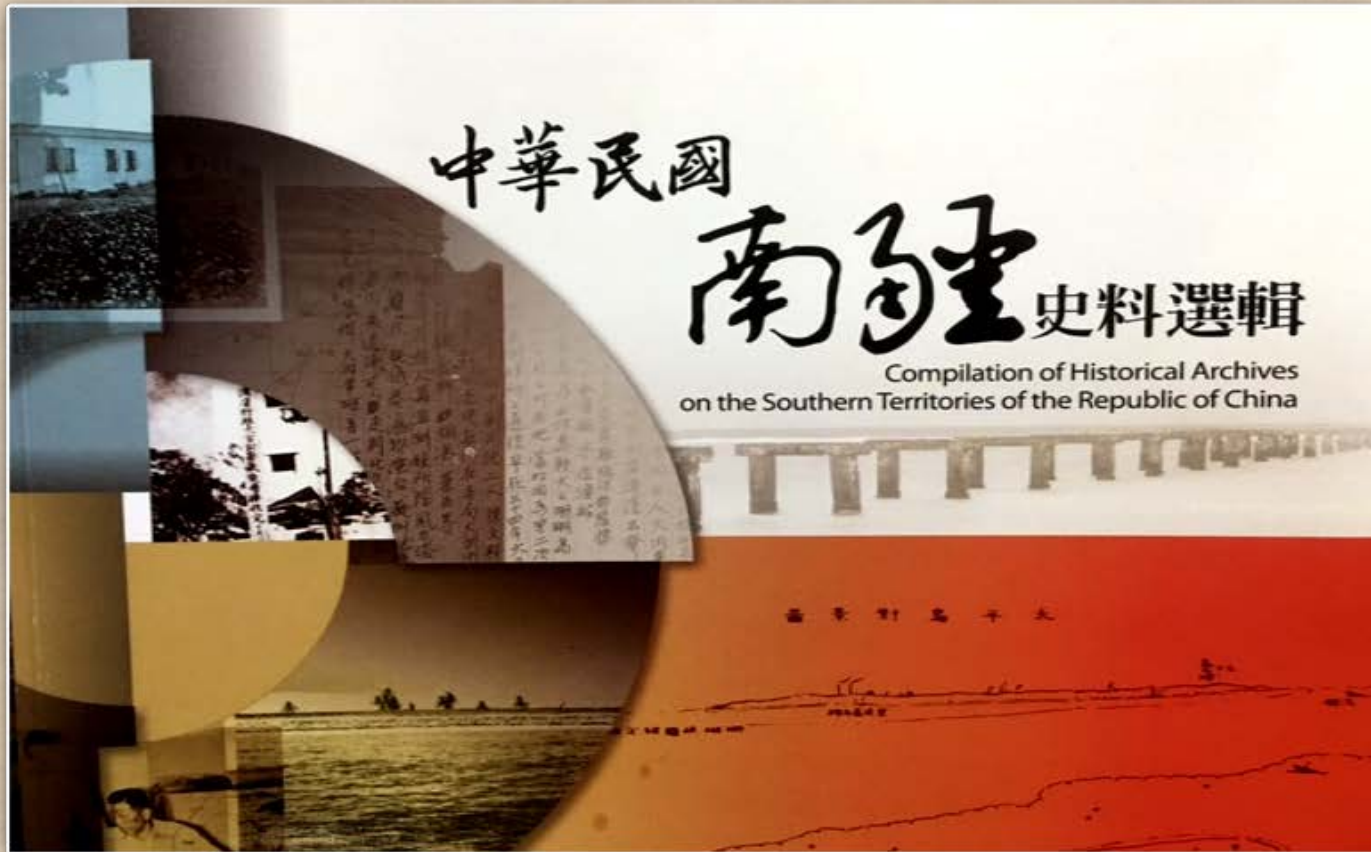
\* <https://history.state.gov/milestones/1937-1945/potsdam-conf>

\*\* Record of Proceedings, *Conference for the Conclusion and Signature of the Treaty of Peace with Japan*, U.S. Department of State Publication (1951), pp. 119 and 292.



*Compilation of Historical Archives on the Southern Territories  
of the Republic of China - Published in July 2015 by Taiwan*

---



This is a compilation of the most important documents relating to the 9-dashed lines culled from the thousands of records in the Kuomintang historical archives. The Kuomintang brought the records with them to Taiwan when they fled the mainland in 1949.



# Kuomintang's Compilation of Historical Archives

---

The Tribunal invited the Philippines to comment on Taiwan's official publication entitled *Compilation of Historical Archives on the Southern Territories of the Republic of China* published in July 2015. The Philippines made the following comments, among others:

1. Of the tens of thousands of historical records reviewed by the experts who compiled the archives, **not a single document could be identified asserting China's claim to the South China Sea before 1907.**
2. Taiwan's President Ma himself wrote in the *Preface* of the book that China's "**sovereignty over the South China Sea islands**" dates only to the "**early 20th century,**" 1935 to be exact, with the publication of the *Map of the South Sea Islands and Maritime Features*. The claim to **sovereignty** refers only to the islands and their territorial seas.
3. The book contains a **timeline of key events** that summarizes China's historic evidence in support of its historic rights claim. **The chronology of event starts in 1907.**
4. The events in the timeline from 1907 to 1935 refer to China's claims to the Pratas and the Paracels, not to the Spratlys. **Chinese claims to the Spratlys started only in 1935.**

# Timeline of Key Events Starts in 1907

中華民國南疆史料選輯

Compilation of Historical Archives  
on the Southern Territories of the Republic of China

## 大事紀

1900

1910

1920

▶ 1907

清光緒 33 年

日人西澤吉次入侵東沙島。

▶ 1909

清宣統元年

在清外務部授權下兩廣總督袁樹勳與日本國廣東駐在總領事議訂「交還東沙島條款」。

兩廣總督張人駿派水師提督李準率員勘查西沙群島，並奏請清廷派員籌辦東西沙島。

▶ 1910

清宣統二年

廣東省試辦開發東沙島物產。

廣東水師提督李準奉粵省總督張人駿之命偵巡調查東沙及西沙群島。

▶ 1921

民國 10 年

廣東省政府批准廣東商人何瑞年組織之西沙群島實業公司，開發西沙群島礦產。

▶ 1925

民國 14 年

外交部照會日本公使，未經我國允許，不得往東沙島採捕，並請轉令日本漁民違犯此令勿得再行越界捕魚。

海道測量局建設東沙島氣象臺，並建立航路。

▶ 1926

民國 15 年

東沙島及西沙島隸屬海軍軍事區域，歸海軍管轄。

海道測量局籌建西沙觀象臺。

▶ 1928

民國 17 年

廣東中山大學與廣東南區養後公署至





## Taiwan Debunked China's Incredulous Historic Claim to the South China Sea

---

In its Position Paper dated 7 December 2014 submitted to the UNCLOS Tribunal, China made this incredulous claim: “Chinese activities in the South China Sea date back to over 2,000 years ago. China was the first country to discover, name, explore and exploit the resources of the South China Sea Islands and the first to continuously exercise sovereign powers over them.”

Taiwan's publication of *Compilation of Historical Archives on the Southern Territories of the Republic of China*, using the extensive archives of the Kuomintang, the originator of the 9-dashed lines, has definitively debunked the PROC's claim that the 9-dashed lines were “formed in the long course of history,” dating back two thousand years ago.

# The Territories of China Throughout the Dynasties

---

- "Ancient China Maps." China Highlights, n.d. Web. 27 May 2016. <<http://www.chinahighlights.com/map/ancient-china-map/>>.
- Daverman, Robin. "Re: How Did China Become Large?". *Quora*. N.p., 28 May 2015. Web.
- Simon, Gavin. "How Many Chinese Dynasties Were There in Total?" *Quora*. N.p., 15 Aug. 2015. Web. <<https://www.quora.com/How-many-Chinese-dynasties-were-there-in-total#!n=12>>.



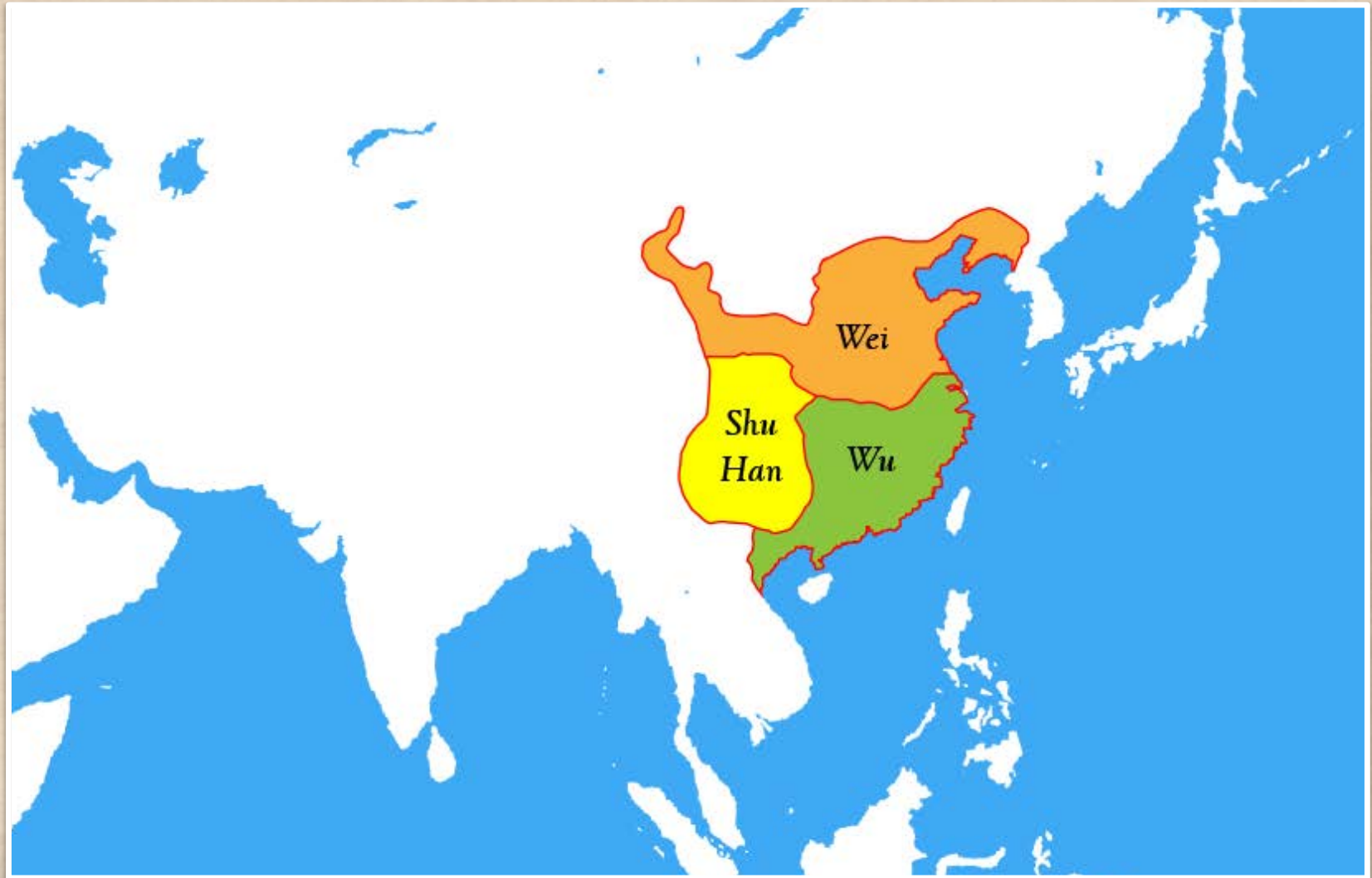
# 100 BCE: Han Dynasty

---



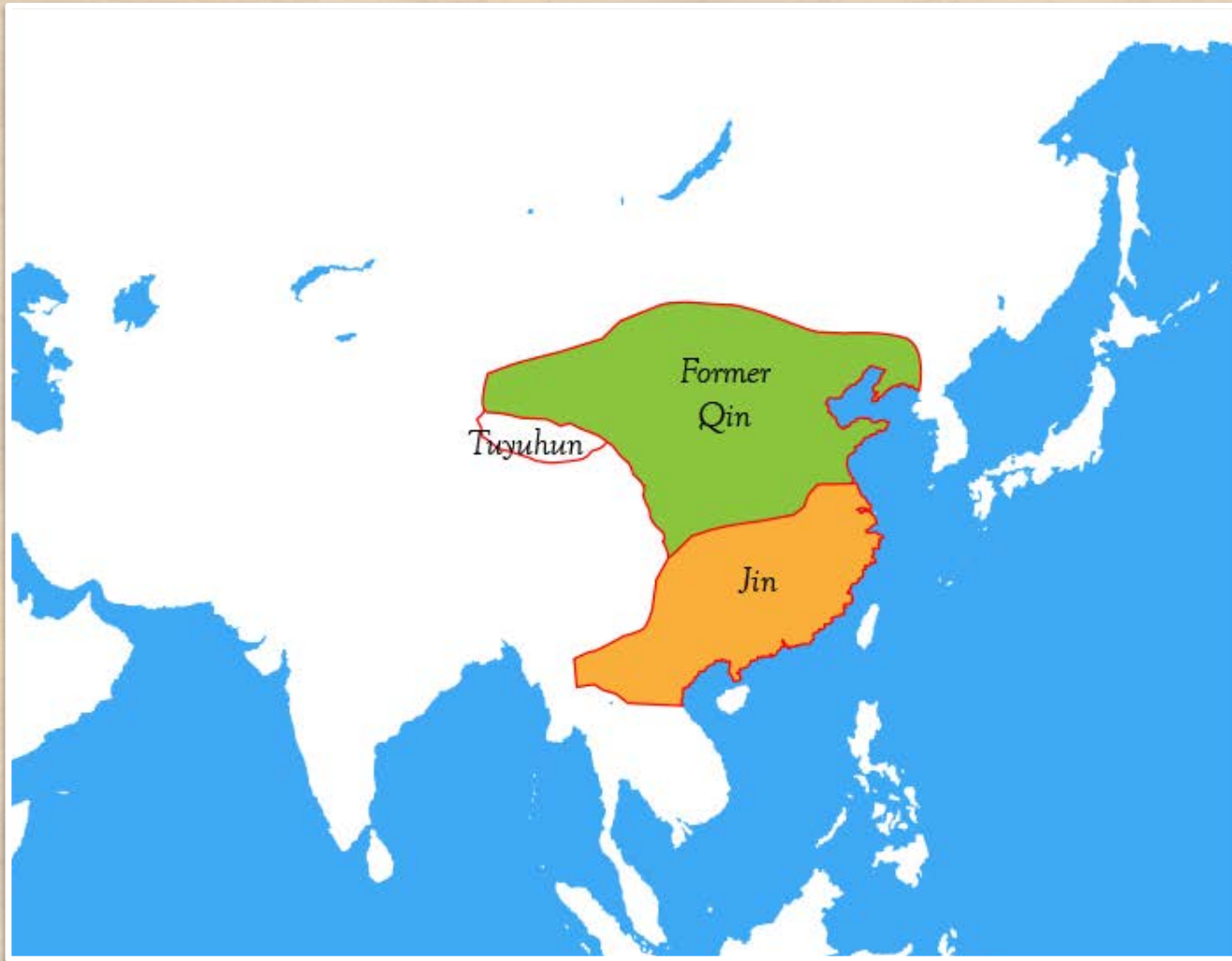
# 262 CE: Three Kingdoms

---





# 376 CE: State of Former Qin & Eastern Jin Dynasties



# 581 CE: Sui Dynasty





# 700 CE: Tang Dynasty

---



# 1141 Southern Song Dynasty

---





# 1141 Northern Song Dynasty

---



# 1294: Yuan Dynasty

---





# 1410: Ming Dynasty

---



# 1892: Qing Dynasty

---





# Present: People's Republic of China and Republic of China

---





# 1588 Ortelius Map - Champa Kingdom and Champa Sea

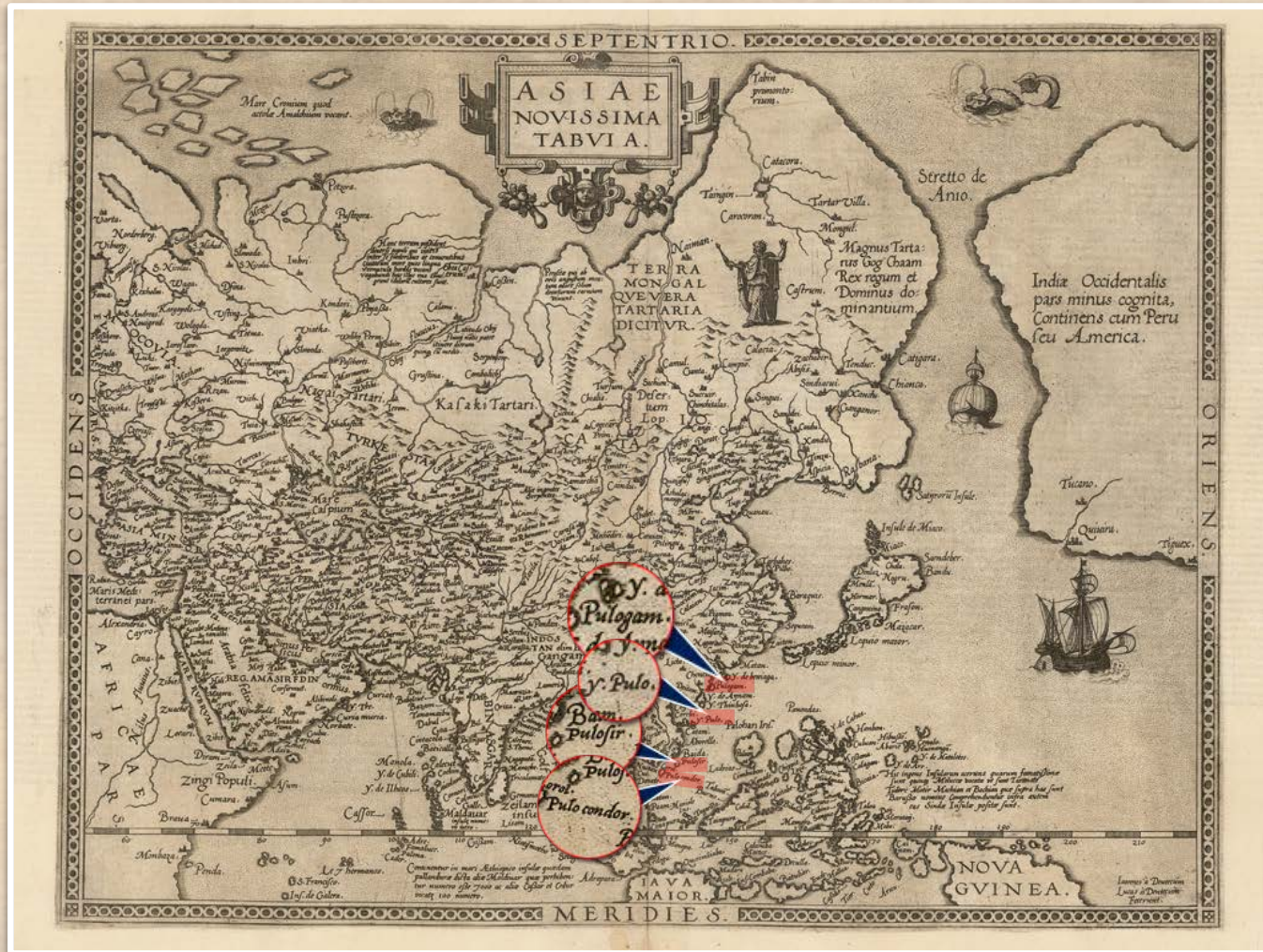
“For centuries the South China Sea was known by navigators throughout Asia as the Champa Sea, named for a great empire that controlled all of central Vietnam xxx.” - *National Geographic*, June 18, 2014



Before Portuguese navigators coined the name South China Sea, the sea was known as the **Champa Sea**, after the Cham people who established a great kingdom in central Vietnam from the late 2<sup>nd</sup> to the 17<sup>th</sup> century. The Chams had sailboats with outriggers, just like the sailboats of the Austronesians. The ancestors of the Chams spoke a Malayo-Polynesian language that is derived from the Austronesian language, just like the Tagalog language. The word “cham” comes from the flower of the champaka tree. This flower is the symbol of the Cham Kingdom. The Chams are believed to have migrated from Borneo to central Vietnam.



# Islands in the Champa Sea Had Austronesian Names



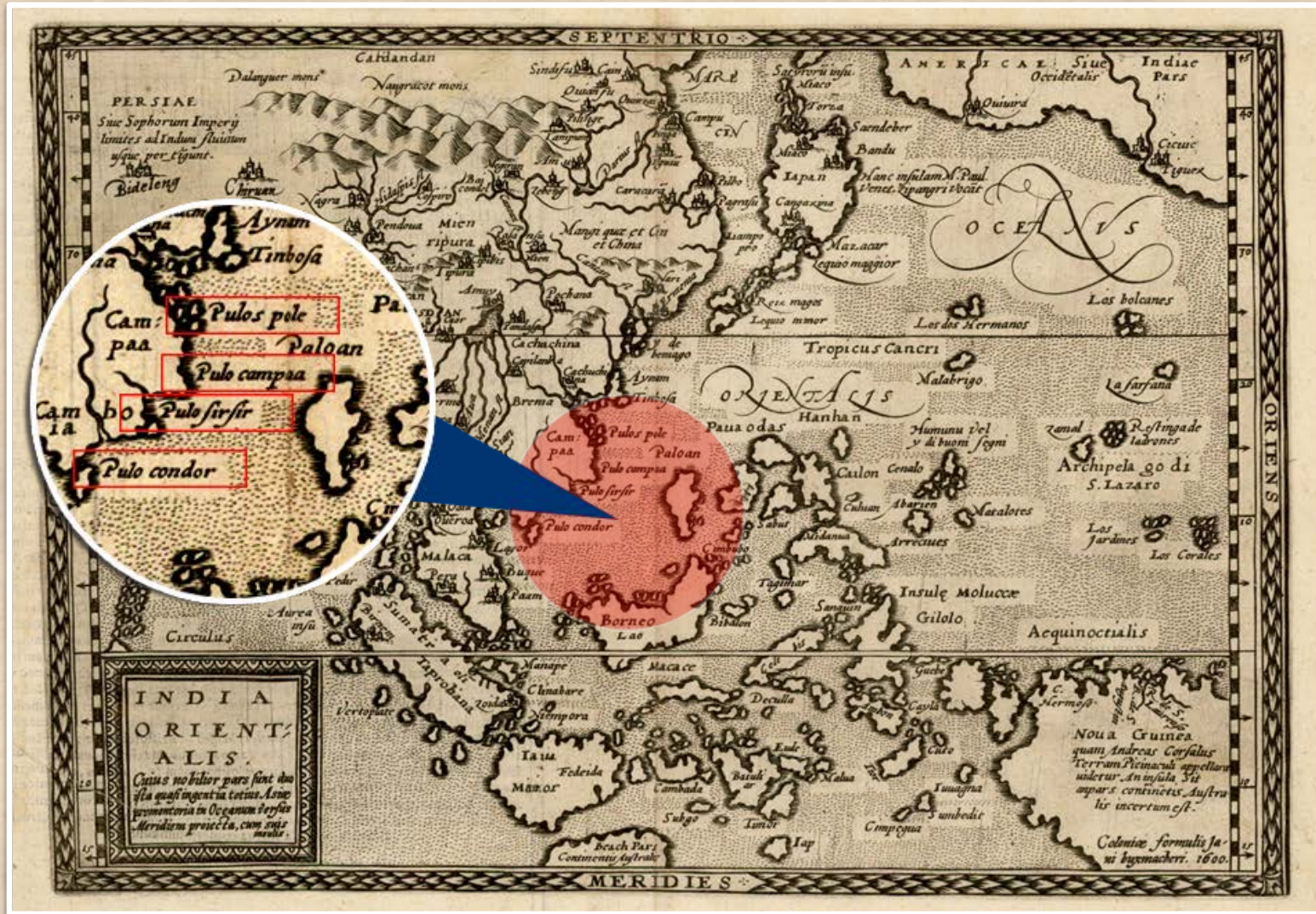
1578 Gerard De Jode Map: “Pulo” in Tagalog means an “island, isolated place.” <https://www.tagalog-dictionary.com/search?word=pulo>. This map was made during the Ming Dynasty (1368-1644).







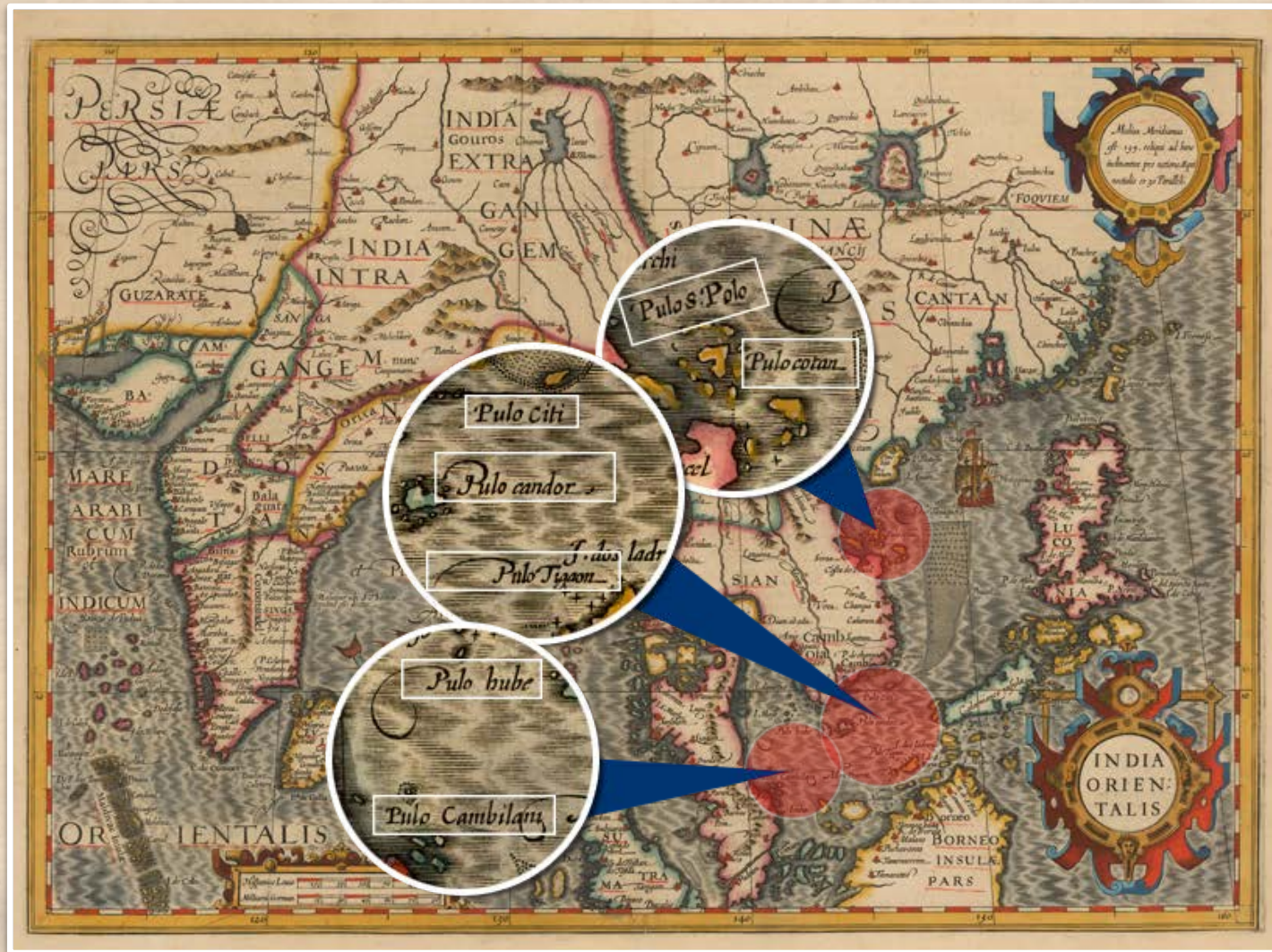
# Islands in the Champa Sea Had Austronesian Names



1600 Bussemachae India Orientalis Map: “Pulo” in Tagalog means an “island, isolated place.”  
<https://www.tagalog-dictionary.com/search?word=pulo>



# Islands in the Champa Sea Had Austronesian Names



1606 Hondius Map: “Pulo” in Tagalog means an “island, isolated place.” <https://www.tagalog-dictionary.com/search?word=pulo>



# What is the Legal Basis of the Philippines' Claim to Scarborough Shoal

The 1898 Treaty of Paris between Spain and the United States drew a rectangular line wherein Spain ceded to the United States all of Spain's territories found within the treaty lines.

**Scarborough Shoal lies outside of the treaty lines.**



## China's Argument Why Philippines Does Not Have Sovereignty Over Spratlys and Scarborough Shoal

---

Chinese Foreign Minister Wang Yi stated: "The three treaties that stipulate the Philippines' territory, the first in 1898, the second in 1900 and the third in 1930, all regulated the Philippines' western boundary line at 118 degrees east longitude. Areas in the west of the 118 degrees east longitude do not belong to the Philippines. But the Nansha islands claimed now by the Philippines, the Huangyan Islands, are all in the west of the 118 degrees east longitude." *Speech on 25 February 2016 at the CSIS, Washington, D.C.*



## 1900 Treaty of Washington between Spain & United States\*

---

In the 1900 Treaty of Washington, Spain clarified that it had also relinquished to the United States “all title and claim of title, which (Spain) may have had at the time of the conclusion of the Treaty of Peace of Paris, to any and all islands belonging to the Philippine Archipelago, **lying outside the lines**” of the Treaty of Paris. Thus, under the 1900 Treaty of Washington, Spain ceded to the United States all territories, to which Spain had title or claim of title, **lying outside the lines of the Treaty of Paris**. These territories outside the lines, west of the 118 degrees east longitude, included Scarborough Shoal and the Spratlys.

---

*\*Treaty between Spain and the United States for Cession of Outlying Islands of the Philippines, signed on 7 November 1900.)*



# In 1938 the U.S. Had Already Determined Scarborough Shoal Is Part of Philippine Territory

---

When the issue of whether Scarborough Shoal forms part of Philippine territory, Secretary Cordell Hull of the U.S. State Department stated in his *Memorandum of July 27, 1938* to Harry Woodring, Secretary of War:

Because of the absence of other claims, the shoal should be regarded as included among the islands ceded to the United States by the American-Spanish Treaty of November 7, 1900\*... In the absence of evidence of a superior claim to Scarborough Shoal by any other government, the Department of State would interpose no objection to the proposal of the Commonwealth Government to study the possibilities of the shoal as an aid to air and ocean navigation.

---

\*Treaty of Washington; boldfacing supplied.

Source: A CNA Occasional Paper, *Philippine Claims in the South China Sea: A Legal Analysis*, Mark E. Rosen, JD, LLM [citing François-Xavier Bonnet, *The Geopolitics of Scarborough Shoal*, available at [www.irasec.com](http://www.irasec.com).] (2014)



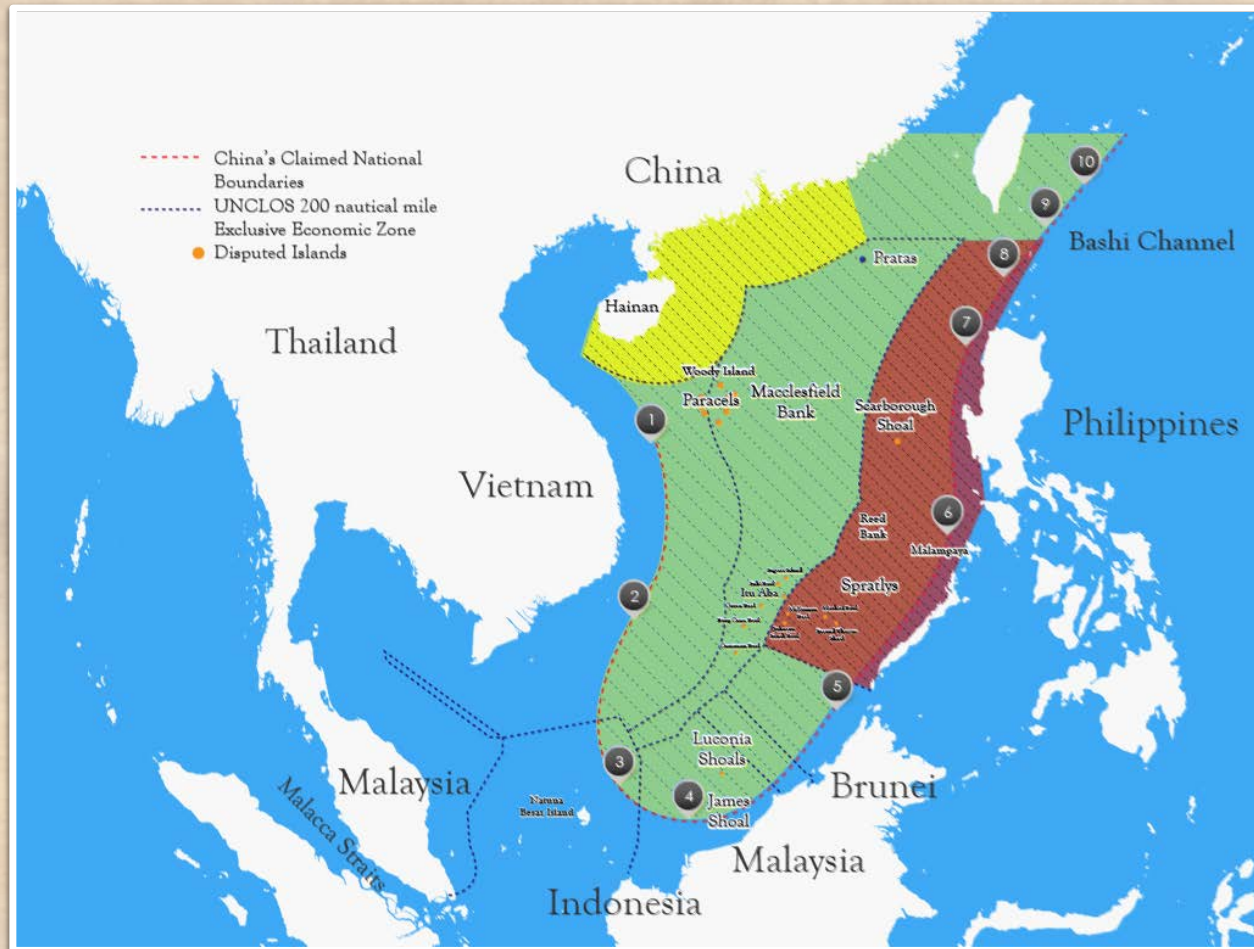
# Chinese Society of the Law of the Sea

---

“Given the fact that China and the Philippines have opposite coasts, **the distance between which is less than 400 nautical miles**, an overlap exists between their 200 nautical mile exclusive economic zones and continental shelves. Besides, their potential rights to claim continental shelf beyond 200 nautical miles also overlap. All this makes maritime delimitation necessary.” *Statement of 2 June 2016 of the Chinese Society of the Law of the Sea*

This is truly incredible – contrary to actual, verifiable physical fact that is known to the entire world.

# No Overlap of EEZs between China and Philippines



The distance between the coasts of Hainan Island and Palawan is over 650 NM. The distance between the coasts of mainland China and Luzon is over 500 NM. Thus, there is no overlap between the EEZs of China and the Philippines.



# China's Jurisdictional Objections to Arbitration

---

In its Position Paper of 7 December 2014 submitted to the Tribunal, China claimed that the arbitration is about –

- a. “**territorial sovereignty**” which is outside the jurisdiction of UNCLOS, as well as about
- b. “**maritime delimitation**” from which China has opted out of compulsory arbitration under Article 298 of UNCLOS.

## “Award on Jurisdiction and Admissibility”

---

The Tribunal ruled on 29 October 2015:

1. “This is **not** a dispute concerning **sovereignty** or **maritime boundary delimitation**. xxx This is a dispute concerning the interpretation and application of the Convention.” Maritime entitlement to a territorial sea, EEZ or ECS is **separate** from sovereignty and maritime boundary delimitation.



# “Award on Jurisdiction and Admissibility”

---

The Tribunal ruled on 29 October 2015:

2. In the southern sector (Spratlys, Palawan side), there may be issues on “historic bays or titles.” There may also be issues on “overlapping entitlements” (EEZs and ECSs) if any of the geologic features is capable of human habitation of its own. Thus, the Tribunal “reserve(d) a decision on its jurisdiction xxx for consideration in conjunction with the merits of the Philippines’ claim.” In short, the Tribunal could not decide whether it had jurisdiction in the Spratlys area without an evidentiary hearing.

## Northern and Southern Sectors



Article 288(4), UNCLOS: “In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.” Article 296(1) provides: “Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.”



## “Award on Jurisdiction and Admissibility”

---

The Tribunal ruled on 29 October 2015:

3. In the northern sector (Scarborough Shoal, Luzon side), “given that Scarborough Shoal lies over 200 nautical miles from any maritime feature claimed by any State to generate an exclusive economic zone or continental shelf, no delimitation is required before the Tribunal may determine the status of Scarborough Shoal, nor is any delimitation potentially relevant to the determination. Article 298 does not, therefore, limit the Tribunal’s jurisdiction. Nor is any other exception or limitation in Article 297 or 298 potentially applicable to the status of Scarborough Shoal.”



# World Support for Compliance with Arbitral Decision

---

## 1. G7 Ise-Shima Summit Leaders' Declaration:

We reiterate our commitment to maintaining a rules-based maritime order in accordance with the principles of international law as reflected in UNCLOS, xxx . We reaffirm the importance of states' making and clarifying their claims based on international law, xxx and seeking to settle disputes by peaceful means including through juridical procedures including arbitration. *G7 Ise-Shima Leaders Declaration, 26-27 May 2016*

## 2. British Prime Minister David Cameron:

"We want to encourage China to be part of that rules-based world. We want to encourage everyone to abide by these adjudications. I'm sure that will be something that will be discussed." *Statement of 25 May 2016 upon arrival in Japan to attend the G7 Summit*

## 3. France, Germany, Italy, Japan, United Kingdom, and United States) Foreign Ministers Conference in Hiroshima Japan:

The G7 Foreign Ministers called on the parties to the arbitration **"to fully implement any decisions rendered by the relevant courts and tribunals which are binding on them, including as provided under UNCLOS."** *Statement on Maritime Security, 11 April 2016*

## 4. European Union Declaration:

The EU, through its High Representative for Foreign Affairs and Security Policy, called on **"all concerned parties to abide by the legally-binding ruling of the tribunal."** *EU Declaration of 11 March 2016*



# World Support for Compliance with Arbitral Decision

---

## 5. ASEAN Foreign Ministers' Statement in Vientiane, Laos:

The ASEAN foreign ministers called for **"full respect for the legal and diplomatic processes, without resorting to the threat or use of force."** *ASEAN Foreign Ministers' Statement of 28 February 2016*

## 6. ASEAN-U.S. Special Leaders' Summit at Sunnylands, California:

Reaffirmed the key principle of: "Shared commitment to peaceful resolution of disputes, including **full respect for legal and diplomatic processes**, without resorting to the threat or use of force in accordance with universally recognized principles of international law and the 1982 United Nations Convention of the Law of the Sea (UNCLOS)." *Joint Statement of 15-16 February 2016*

## 7. European Parliament Resolution of 16 December 2015 on EU-China relations (2015/2003(INI):

EU Parliament "considers it regrettable that China refuses to acknowledge the jurisdiction of both UNCLOS and the Court of Arbitration; urges China to reconsider its stance and **calls on all the parties including China to respect the eventual decision of UNCLOS.**" *Resolution of 16 December 2015*

## 8. Group of Seven (G7) – Canada, France, Germany, Italy, Japan, United Kingdom, and United States:

"We call on all states to pursue the peaceful management or settlement of maritime disputes in accordance with international law, including through internationally recognized legal dispute settlement mechanisms, and **to fully implement any decisions rendered by the relevant courts and tribunals which are binding on them.**" - *Declaration of 15 April 2015*



# Who Will Enforce Ruling of the Tribunal?

---

There is no world policeman to enforce the ruling. But –

1. The world's naval powers, which consider freedom of navigation and over-flight their national interest, have declared they will sail and fly in the high seas and EEZs of the South China Sea.\*
2. If CNOOC lifts the oil and gas in the Reed Bank, the Philippines can sue CNOOC in countries where CNOOC has assets, like Canada and the U.S.
3. China has secured 4 permits from the International Seabed Authority to explore the seabed, and has 2 pending applications. The Philippines can ask the ISA to suspend the 4 permits and the processing of the 2 pending applications until China complies with the ruling.
4. The Philippines can also ask the UN Commission on the Limits of the Continental Shelf to suspend the processing of China's extended continental shelf claims until China complies with the ruling.

\* During the June 5-7, 2016 Shangri-la Dialogue in Singapore, French Defense Minister Jean-Yves Le Drian called for "regular and visible" European patrols in the South China Sea.



# The High Seas and EEZs of the South China Sea



The high seas are part of the global commons, belonging to mankind and not subject to the sovereignty or jurisdiction of any state. In the EEZs, there is freedom of navigation and overflight for both civilian and military ships and aircraft of other states.

# The Historic Battle for the West Philippine Sea

---

The Philippines today is engaged in a historic battle to defend over 531,000 square kilometers of its maritime space (EEZ and ECS) in the West Philippine Sea, an area larger than the total land area of the Philippines of 300,000 square kilometers.

This huge maritime space is part of Philippine national territory since the Constitution defines the “national territory” to include “the seabed, the subsoil, xxx and other submarine areas” over which the Philippines has “sovereignty or jurisdiction.” Under Article 56 of UNCLOS, the Philippines has “jurisdiction xxx with regard to the establishment and use of artificial islands, installations and structures, xxx marine scientific research, xxx protection and preservation of the marine environment, xxx other rights and duties provided for in the Convention” within this huge maritime space.

Can the Philippines prevent China from gobbling up this huge maritime space? All citizens of the Philippines – both government personnel and private individuals – have a solemn duty to prevent the loss of this huge maritime space. It is a duty we owe to ourselves, and to future generations of Filipinos.



---

*End*

---