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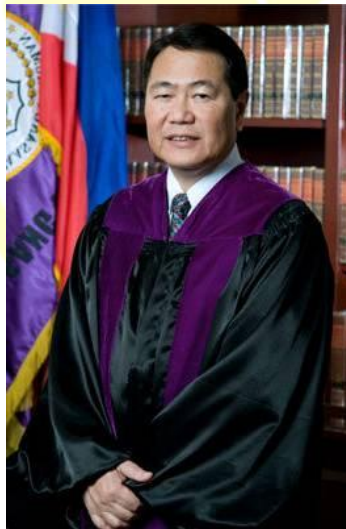
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Speech

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By



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at

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South China Sea/ West Philippine Sea Dispute

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

Ladies and Gentlemen,

Ramifications of Dispute

Half of the world's seaborne trade passes through the South China Sea, valued at US\$5.3 trillion annually. The South China Sea dispute has the potential to overturn the United Nations Convention on the Law of the Sea (UNCLOS)*, the constitution for the oceans and seas of our planet.

For the Philippines, what is at stake is 80% of its EEZ in the South China Sea - either the Philippines keeps it, or loses it to China. The root cause of the South China Sea dispute is China's 9-dashed lines claim, which gobbles up large swathes of the Exclusive Economic Zones (EEZs) of the Philippines, Vietnam, Malaysia, Brunei and Indonesia.

*One-hundred sixty-six countries, plus the European Union, are parties to UNCLOS. Party-states to UNCLOS comprise 86% of the total 193 UN member-states.

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

Nine-dashed Lines Map Submitted by China to UN on 7 May 2009 China did not explain the legal basis for the dashes. The dashes had no fixed coordinates.

"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 has not explained the meaning of "adjacent" or "relevant waters."

In 1995 China seized Mischief Reef, a Low-Tide-Elevation within the Philippines' EEZ; Since 1995 to the present, Chinese Coast Guard vessels have harassed Philippine and Vietnamese fishing vessels operating within the 9-dashed lines;

Since 1999 to the present, China has imposed an annual three-month fishing ban around the waters in the Paracels, Macclesfield Bank and Scarborough Shoal. In 2011, Chinese Coast Guard vessels harassed Philippine survey vessels in the Reed Bank, within the Philippines' EEZ. In a 2011 Note Verbale to the Philippines protesting the public tender by the Philippines of Areas 3 and 4 in Reed Bank, China asserted that the Philippine action "infringes on China's sovereignty and sovereign rights";

In 2011, Chinese Coast Guard vessels harassed Vietnamese survey ships within Vietnam's EEZ;

Since at least 2012, China has laid sovereignty steel markers on James Shoal, a fully submerged area within the EEZ of Malaysia in Sarawak. In 2012, China offered for international bidding by oil and gas companies areas within the EEZ of Vietnam. In 2013, China released an official map showing the 9-dashed lines as its "national boundaries". In 2014, China's Hainan Province issued *Fisheries Regulations* claiming to administer 2/3 of the waters enclosed by the 9-dashed lines, and prohibited foreigners from fishing in these waters unless permitted by Chinese authorities. In 2014, China placed its HD 981 oil rig within Vietnam's EEZ.

In 2014-2015, China reclaimed on LTEs within the Philippines' EEZ and Continental Shelf (CS).

China calls the Philippines' arbitration case a "political provocation in the guise of law that seeks to deny China's national sovereignty in the South China Sea". Chinese officials have repeatedly asserted publicly that China has sovereign rights and jurisdiction over the South China Sea under its 9-dashed lines. All these acts, among so many others, of China demonstrate beyond doubt that China is claiming sovereign rights and jurisdiction to all the waters, seabed and subsoil enclosed by the 9-dashed lines.

When the Philippines in 2011 invited bids for the exploration of Area 3 and Area 4 in the Reed Bank, well within the Philippines' EEZ, China sent on 4 July 2011 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.**"

In 2012, China invited 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". Chinese coast guard vessels have prevented Philippine-commissioned ships from undertaking oil and gas surveys 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's 2013 Map with 10-dashed Lines As "National Boundaries"

In 2013, China released a new map of China, adding a 10th 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 ninedash lines are China's national boundaries in the West Philippine Sea/South China Sea.**"

The Philippines will be left with a sliver of waters as its territorial sea and EEZ. The Philippines and China will have a very long common sea border 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 Yamin Island.

Then what is the dispute in the South China Sea?

Ladies and Gentlemen,

There is a **territorial dispute** that is rooted in conflicting territorial claims over islands, rocks, and reefs above water at high tide. There is also a **maritime dispute** that is rooted in conflicting maritime claims over maritime zones. The dispute involves **six countries** bordering the South China Sea: China, Vietnam, the Philippines, Malaysia, Brunei and Indonesia. Indonesia is involved only in the maritime dispute. All the disputant states are parties to UNCLOS.

China's 9-dashed lines claim, through which China is aggressively asserting "indisputable sovereignty" to all the islands and waters enclosed by the lines, is the **main driver** of the South China Sea dispute. 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.

What is the Effect of China's "National Boundaries" under the 9-dashed Lines?

The Philippines loses about 80% of its EEZ facing the West Philippine Sea, including the entire Reed Bank and part of the Malampaya gas field. Malaysia loses also about 80% of its EEZ in Sabah and Sarawak facing the South China Sea, as well as most of its active gas and oil fields in the same area. Vietnam loses about 50% of its total EEZ. Brunei loses about 90% of its total EEZ.

Indonesia loses about 30% of its EEZ facing the South China Sea in Natuna Islands, whose surrounding waters comprise the largest gas field in Southeast Asia.

James Shoal - China's "Southernmost" Border

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 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.

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 to China.

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.**" Shahidan revealed that the Malaysian Navy has deployed ships one nautical mile distance from the Chinese ship to monitor it. Shahidan announced that Malaysia would lodge a formal protest against China, effectively assailing the validity of China's 9-dashed lines claim. Shahidan also revealed that Malaysia has been protesting for years now, without publicizing it, China's almost daily incursions on Malaysian waters.

Luconia Shoals, covering 100 square miles, are one of the largest reef formations in the South China Sea. Luconia Shoals, with a high tide feature, are rich in oil and gas. Luconia Shoals are 54 NM from the coast of Sarawak, Borneo. This Chinese vessel has been anchored at Luconia Shoals since April 2013.

China's Continuing Mass Production of Warships

China is mass-producing warships at a faster rate than any other country in world history during peacetime. According to the U.S. Office of Naval Intelligence, "During 2014 alone, more than 60 naval ships and crafts were laid down, launched, or commissioned, with a similar number expected through the end of 2015." China launched its 25th Type 056 Corvette last March 19, 2015, out of a total planned 40-Type 056 Corvette fleet. The PLA Navy

believes that it can control the South China Sea with 20 of these Corvettes. China will deploy this year a 10,000-ton coast guard vessel, the world's largest blue water coast guard vessel. A second 10,000-ton sister ship is under construction. China has more coast guard vessels than Japan, Vietnam, Indonesia, Malaysia and the Philippines combined. China's Coast Guard is the largest blue water coast guard fleet in the world.

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.**"

A Low-Tide Elevation (LTE) is a naturally formed area of land (rock, reef, atoll or sandbar) surrounded by water, above water at low tide but **submerged at high tide**. An LTE is part of the submerged continental shelf. An LTE is not land or territory, and has no territorial sea or territorial airspace (Art. 13, UNCLOS). An LTE beyond the territorial sea is not subject to appropriation by any State (Nicaragua v. Colombia, ICJ, 2012).

The Philippine arbitration case against China is not a territorial dispute but **solely a maritime dispute** involving the interpretation or application of UNCLOS:

Whether China's 9-dashed lines, which are not measured from land (and thus not part of China's TS, EEZ or CS), can encroach on the 200 NM EEZ of the Philippines;
Whether certain geologic features, namely Mischief Reef, Second Thomas Shoal, and Johnson South Reef, all within the Philippines EEZ, are LTEs and therefore form part of the submerged continental shelf of the Philippines and as such are under Philippine jurisdiction; and whether Subi Reef, outside the Philippines' EEZ but within its continental shelf, is an LTE generating no maritime entitlements.

Whether certain geologic features, namely Gaven Reef* and McKennan Reef** (including Hughes Reef), are low-tide elevations which generate no maritime entitlements of

their own, but their low water line may be used to determine the baseline from which the territorial sea of Namyt Island and Sin Cowe Island, respectively, may be measured.

Whether certain geologic features, namely, Fiery Cross Reef and Cuarteron Reef, outside the Philippines' EEZ but within its continental shelf, are mere rocks above water at high tide that generate no EEZ;

Whether Scarborough Shoal, whatever state owns it, is entitled to only a 12 NM territorial sea or also to a 200 NM EEZ. All these disputes are **maritime** disputes involving the interpretation or application of UNCLOS.

The Philippines is **not** asking the tribunal to rule what state owns certain islands, or rocks above water at high tide. The Philippines is asking the tribunal to rule what is the extent of the **maritime entitlements** (0, 12, or 200 NM) of certain islands or rocks, regardless of what state owns them; and whether certain geologic features are LTEs or not. All these are **maritime** disputes.

There is no need to settle first who has sovereignty over these geologic features to determine their maritime entitlements. In fact, China acknowledged this when China informed the Philippines that **“some issues of our dispute can be settled in accordance with UNCLOS.”*** China reiterated this when China signed the 2002 Asean-China Declaration of Conduct which provides that the dispute shall be resolved “in accordance with universally recognized principles of international law, **including the 1982 United Nations Convention on the Law of the Sea.**”

Scarborough (Panatag) Shoal

One does not need to know what state has sovereignty over these rocks to conclude with certainty that these rocks are not capable of sustaining human habitation or economic life of their own. Not a single blade of grass grows on these rocks, and not a single drop of fresh water can be squeezed from these rocks. The biggest rock, 1.2 meters above water at high tide, can generate only a 12 NM territorial sea, regardless of what state has sovereignty

over it. Whether China or the Philippines has sovereignty over Scarborough Shoal will not change the shoal's maritime entitlement.

As an LTE, Mischief Reef is part of the seabed or continental shelf. Being located beyond the territorial sea, it is incapable of appropriation or ownership by any state. In short, it is not subject to the sovereignty of any state. Thus, there is no need, in fact it is futile, to know who has sovereignty over this LTE to determine its maritime entitlement. An LTE beyond the territorial sea does not generate any maritime entitlement.

China claims that since the basic principle is the “**land dominates the sea,**” sovereignty over the land must first be determined before maritime entitlements can be allocated. However, the 9-dashed lines are not based or measured from land so this principle cannot not apply. What applies is the reverse of the principle - **the absence of land dominates no sea.** Since the 9-dashed lines are not measured from land, and even completely ignore land as source of the lines, they cannot claim any sea. The dispute whether the 9-dashed lines, or historic rights, can be the basis to claim maritime zones is a dispute involving the interpretation of UNCLOS, and does not fall under any of the exceptions in Article 298 that can be excluded from compulsory arbitration.

China's Reclamations in the Spratlys

China has on-going reclamations on seven (7) reefs, Fiery Cross Reef, Cuarteron Reef, Gaven Reef, Johnson South Reef, McKennan Reef, Mischief Reef and Subi Reef. These are all the reefs China occupies. However, China has actually also dredged ten (10) other reefs for filling materials for the seven reefs China occupies.* China has explained: “The primary purpose of these activities is to improve the working and living conditions of personnel stationed there, to better fulfil our international obligations concerning maritime search and rescue, disaster prevention, and mitigation, and to enable China to provide better services to vessels from China, her neighbors, and other countries sailing in the South China Sea.”**

China, however, adds that there will be military facilities to defend these civilian structures in the reclaimed areas. As the Chinese envoy to the U.S. Ambassador Cui Tankai explained, “Of course, there will be military facilities.”

This is similar to China's explanation in 1995 that it occupied Mischief Reef to provide a "shelter" to its fishermen, which later turned out to be a military garrison. China is now reclaiming Mischief Reef and turning it into a 500-hectare military facility.

Fiery Cross Reef is about 1 meter above water at high tide. It is just outside the Philippines' EEZ but within its continental shelf.

One of the reclamation projects of China will be an airbase with a seaport, expected to be completed in 2015. The airbase, with a 3,000 meter runway, will be on a 270-hectare reclamation on Fiery Cross Reef, larger than Woody Island, China's airbase in the Paracels. This reclamation will also be larger than the combined area of the 20 largest islands in the Spratlys, and more than twice the area of Diego Garcia Island, the U.S. airbase in the Indian Ocean.

The H-6K can carry under its wing pylons six conventional or nuclear armed CJ-10A cruise missiles with 2,200 KM range. Although the H-6 was first domestically produced in 1968, this upgraded version, using composite materials, modern avionics and a powerful radar, first entered service only in October 2009.

Johnson South Reef is an LTE within the Philippines' EEZ. [Note: Chinese, Philippine and other countries' nautical charts designate this as an LTE. Only the U.S. nautical chart designates this as a high tide feature.

In 1988, Chinese naval forces forcibly dislodged the Vietnamese soldiers guarding this LTE.

Over 77 Vietnamese soldiers died in the battle. Johnson South Reef is within the Philippines' EEZ. McKennan Reef is an LTE within the Philippines' EEZ. It is within 12 NM of SinCowe Island.

Mischief Reef

China's reclamation along the left side of the reef's ring is about 9 KMs in length. If China closes the edge of the upper reclamation and the edge of the lower reclamation running about 3.5 KM, the total reclaimed area can reach at least 500 hectares. This area is more than enough for an air and naval base, plus a garrison for thousands of marines. Thirty-two dredging vessels, 32 cargo vessels, and three ocean tugs work overtime on the Mischief Reef reclamation.

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.

Woody Island has an area of 213 hectares. It has a 2,700 meter runway that can handle all of China's 4th generation fighter aircraft as well as the H-6K strategic bomber.

Before World War II, China's southernmost defense perimeter was Hainan Island. Right after the war, China took over the Amphitrite Group of the Paracels after the departure of the Japanese, moving China's defense perimeter southward. In 1974, China forcibly dislodged the South Vietnamese from the Crescent Group of the Paracels, expanding China's defense perimeter further south. In 1988, China forcibly evicted Vietnam from Johnson South Reef, moving China's southernmost defense perimeter to the Spratlys. In 1995, China seized Mischief Reef from the Philippines, just 125 NM from Palawan. In 2012, China seized Scarborough Shoal from the Philippines, just 124 NM from Luzon. In 2013, China seized Luconia Shoals from Malaysia, just 50 NM from Sarawak's coast. In 2014, China started reclaiming rocks and submerged areas in the Spratlys to build air and naval bases. China announced in June 2015 that it would conduct regular air-sea military drills in the Bashi Channel between the Philippines and Taiwan. For 21 consecutive years now, China's defense spending has grown by double-digit increments.

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 has the largest fishing fleet in the world with 70,000 vessels. China's per capita fish consumption is the highest in the world at 35.1 kg/year, while the rest of Asia is only 21.6 kg/year. China is the largest net importer of petroleum in the world. 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 reclamations in the Spratlys are not a knee-jerk response 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.

Article 192 of UNCLOS mandates, "**States have the obligation to protect and preserve the marine environment.**" China's massive and wanton reclamation in the Spratlys is destroying the marine environment.

Article 123 of UNCLOS requires coastal states in semi-enclosed seas to "**cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention xxx with respect to the protection and preservation of the marine environment.**" China reclaimed seven geologic features in the Spratlys, destroying ten other reefs, without notifying, consulting or cooperating with other coastal states. Parties to arbitration under UNCLOS have the the obligation "**not to aggravate the dispute pending its settlement,**" and the obligation "**not to create an irremediable situation and in particular not to frustrate the purpose**" of the arbitration.

Mischief Reef- Environmental Concerns

It takes 30 million years for the reefs of an atoll like Mischief Reef to form. Reefs are the breeding ground of fish. In the Spratlys, the eggs and larvae spawned by fish are carried by currents to the Sulu Sea, the coasts of Palawan, Luzon, Malaysia, Brunei, Indonesia, and Vietnam. Once the sand supporting the reefs are removed, the reefs collapse. Reefs need clear

waters to grow. Reclamations make the waters turbid, unhealthy for both reefs and fish. China is reclaiming on seven (7) reefs in the Spratlys. The coral reefs in the South China Sea comprise 34% of the world's total coral reefs, despite the South China Sea occupying only 2.5% of world's total ocean and sea surface.

The *Tiang Jing Hao* dredger, a 127 meter-long seagoing cutter suction dredger designed by the German engineering company Vosta LMG. At 6,017 gross tons, this dredger is the largest in Asia. China has dozens of dredgers in the Spratlys.

The 2012 Asean-China Declaration of Conduct states:

“ The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, **refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features** and to handle their differences in a constructive manner.”

Only the adjacent coastal state has the right to create artificial islands, or erect structures on LTEs, within its EEZ or CS (Arts. 60 & 80, UNCLOS). Thus, such artificial islands or structures put up by other states within the EEZ or CS of a coastal state are illegal under UNCLOS.

Thus, 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 nonliving 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 reclamations on LTEs in the EEZ and continental shelf of the Philippines violate UNCLOS and are thus illegal under international law.

Article 87, Part VII

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

(a) xxx

xxx

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; [Note: referring to Art. 80, Part VI]

xxx.

Article 87(d) applies only if a coastal state cannot claim a continental shelf beyond its EEZ because there is no natural prolongation of its continental shelf from its land mass.

Even then, any artificial island or installation erected on the high seas must be for peaceful purposes only (non-military) because Article 88 of UNCLOS mandates that **“the high seas shall be reserved for peaceful purposes.”**

Do LTEs and artificial islands acquire a maritime zone if by reclamation 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.”

Artificial islands reclaimed from LTEs or submerged areas beyond the territorial sea are not land or island territory, and thus do not have territorial sea or territorial airspace.

Artificial islands reclaimed from **LTEs** beyond the territorial sea, such as Mischief Reef, Johnson South Reef and Subi Reef:

1. Are not islands or rocks above water at high tide;
2. Do not have a territorial sea;
3. Do not have territorial airspace;
4. Do not have EEZ or CS;
5. If illegally erected (as China has done), do not even have a 500-meter safety zone.

A reclamation on a **rock above water at high tide**, such as Fiery Cross Reef or Cuarteron Reef, is an expansion of insular **land territory**. A rock above water at high tide is a land territory that generates –

1. 12 NM territorial sea; and
2. Territorial airspace above such land territory and its territorial sea.

A reclamation on a rock above water at high tide is valid under UNCLOS.

How can the Philippines establish before the Tribunal that Mischief Reef, Gaven Reef, Subi Reef and McKennan Reef are LTEs when China has already covered them with sand and these geologic features are now permanently above water at high tide?

The Philippines can show that China’s own nautical charts prior to the reclamations designate these four geologic features as LTEs, just like Philippine nautical charts. The nautical charts of other countries, such as those of the United Kingdom, the United States,

Japan, Russia and Vietnam are unanimous in their designations of these geologic features as LTEs .

There is no legal basis whatsoever. The well entrenched doctrine in the law of the sea is that “**the land dominates the sea.**” This means that for non-archipelagic states like China, all maritime zones must be “**measured from baselines**” “**along the coast**” of continental land, island or rock (Arts. 3, 57 & 76, UNCLOS). China’s 9-dashed lines are not measured from baselines along its coast, and thus do not comply with the basic requirement under UNCLOS for validly drawing maritime zones.

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).

Historic rights or historic title 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.

“[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.

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.

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. Moreover, since 1999 Hainan has unilaterally imposed an annual fishing ban, 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.

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.

Under 2002 ASEAN-China Declaration of Conduct it has been stated that 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.”**

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.”**

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.

This map was engraved in stone in Fuchang in 1136 AD during the Song Dynasty. A stone rubbing of the map was published in 1903(?) in France. The stone map is entitled “**Hua Yi Tu**” or **Map of China and the Barbarian Countries**. The stone map is now in the Forest of Stone Steles Museum in Xi’an, China. **This map shows Hainan Island as the southernmost territory of China**. The annotations on the sides of this map are not part of the stone engraving. This digital reproduction is from the U.S. Library of Congress (Catalogue No.2002626771; Digital IDg7820 ct000284).

Published in Beijing in 1602 by the Ming Dynasty, this map is entitled “**Kunyu Wanguo Quantu**” or **A Map of the Myriad Countries of the World**. The Jesuit priest Matteo Ricci created this map upon request of the Ming Emperor Wanli. Ricci was assisted by Zhong Wentao, Li Zhizao, and other Chinese scholars. **This map shows Hainan Island as the southernmost territory of China**. This digital reproduction is from the U.S. Library of Congress (Catalogue No. 2010585650; Digital ID g3200 ex000006Za,b and g3200m gex00001).

Published in 1896 in China by Guangxu Bing Shen, this map is entitled “**Huang Chao Zhi Sheng Yu Di Quan Tu**” or the **Qing Empire’s Complete Map of All Provinces**. **This map shows Hainan Island as the southernmost territory of China**. This digital reproduction is from the U.S. Library of Congress (Catalogue No. gm71005083; Digital ID g7820 ct003428).

Published in Frankfurt in 1636 by map maker Matthaues Merian, this map is entitled “**China Veteribus Sinarum Regio Nunc Incolis Tame Dicta.**” This map shows China, Korea, Japan, Taiwan and Northern Luzon. **On the western side off the coast of Central Luzon, there is an unnamed shoal below the words “P. de Mandato.”** The Spanish phrase “P. de Mandato” means the point of command – which implies there was a Spanish military garrison in that coastal place. The unnamed shoal off this coastal place would later be called “Panacot” by the Jesuit Pedro Murillo Velarde. This digital reproduction is from Barry Lawrence Ruderman Antique Maps, Inc. (<http://www.raremaps.com/gallery/detail/36716>).

Published in 1734 in Manila by the Jesuit Pedro Murillo Velarde, this map is entitled “**Carta Hydrographica y Chorographica de las Yslas Filipinas.**” This is the oldest map that gives a name to “Panacot” shoal. Panacot is the Tagalog word for threat or danger. Prior to this 1734 map, no map had ever given a name to this shoal. Scarborough Shoal had a Tagalog name 213 years before China drew its 9-dashed lines map. The Spratlys are shown on this 1734 map as “**Los Bajos de Paragua,**” which means the shoals of Paragua. The old Spanish name of Palawan is Paragua. The Murillo Velarde map itself names two Filipinos, Francisco Suarez who drew the map and Nicolas dela Cruz Bagay who engraved it. This map is considered the “mother of all Philippine maps.” This digital reproduction is from the U.S. Library of Congress (Catalogue No. 2013585226; Digital ID g8060 ct003137).

Published in Madrid by the *Direccion de Hidrografica* from the surveys of the Malaspina Expedition, this 1792 chart (**plano de la navegacion**) is the route of the navigation taken by Alessandro Malaspina’s ship *Sta. Lucia* when Malaspina surveyed what the chart states as “**Bajo Masinloc o Scarborough.**” On May 4, 1792, the day he surveyed Bajo Masinloc, Alessandro Malaspina wrote in his Journal “on (this shoal) Spanish and foreign ships have been lost.” This digital reproduction is from the archives of the Museo Naval de Madrid, copied by the Philippine Embassy in Madrid.

Published in 1933 in Manila and reissued in 1940 in Washington, D.C. by the U.S. Coast and Geodetic Survey, this map is entitled “**Philippine Islands.**” The map shows “**Scarborough” shoal with depth soundings.** This digital reproduction is from the U.S. Library of Congress (Catalogue No. 2011592026, Digital ID g8061p ct003542).

When the Qing Dynasty ended in 1912, the Chinese republicans led by Dr. Sun Yat Sen established the Republic of China. The following provisions of five (5) Constitutions of the Republic of China state:

Article 3, Chapter 1, of the Provisional Constitution of the Republic of China of March

11, 1912 states: “**The territory of the Republic of China is composed of 22 provinces, Inner and Outer Mongolia, Tibet and Qinghai.**” As we have seen in the 1896 map of the Qing Dynasty, one

of the 22 provinces is Guangdong, which includes Hainan Island as the southernmost territory of China.

Article 3, Chapter 1 of the Constitution of the Republic of China of May 1, 1914 states: **“The territory of the Republic of China continues to be the territory of the former empire.”** The editorial comment in the *Regulations of the Republic of China Concerning Rule over Tibet* (1999) explains the words **“former empire”** as **“referring to the Qing Dynasty.”**

Article 3, Chapter 2, of the Constitution of the Republic of China of October 10, 1924 states: **“The territory of the Republic of China continues to be the traditional territory.”** The Constitution of the Republic of China of January 1, 1937 states: **“The territory of the Republic of China continues to be the territory it owned in the past.”**

Article 4, Chapter 1 of the Constitution of the Republic of China of December 25, 1946 states: **“The territory of the Republic of China shall be that encompassed by its traditional boundaries.”**

All these constitutional provisions are from an official publication of the People’s Republic of China entitled *Regulations of the Republic of China Concerning Rule Over Tibet* (China No. 2 History Archives, China International Press, January 1, 1999).

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.”

“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]

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.

In China’s Manila Embassy website, China claims Scarborough Shoal because the shoal is allegedly the *Nanhai* Island that Guo Shoujing visited in 1279 and where he erected an astronomical observatory. The website states:

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.

However, 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:

“China’s Indisputable Sovereignty Over Xisha And Nansha Islands”

“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) Gou Shoujing built 27 astronomical observatories, 26 on the mainland and one on an island in the South Sea (Nanhai). China cannot now claim that Scarborough Shoal is the South Sea island that Guo Shoujing visited in 1279 because China had already declared in 1980 that Gou Shoujing visited the Paracels where he erected the astronomical observatory. Besides, the massive astronomical observatories that Guo Shoujing erected in other places in China could not possibly fit on the tiny rocks of Scarborough Shoal.

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.

South Rock, the biggest rock on Scarborough Shoal, is just 1.2 meters above water at high tide, and not more than 6 to 10 people could stand on it. To be operated, the observatories of Guo Shoujing have to be manned everyday since measurements have to be taken everyday. It is physically impossible to erect, or operate, such an observatory on Scarborough Shoal.

In September 2014, Taiwan’s 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” over all the waters enclosed within the 9-dashed lines.

In an October 21, 2014 interview with the *New York Times*, President Ma, who earned an S.J.D. from Harvard University with specialty 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;** however, even if it is logically this way, when resolving disputes, it is not impossible to first resolve resource development issues. xxx.”

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

However, two years later, 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, Spain ceded Scarborough Shoal to the United States under the 1900 Treaty of Washington (*Treaty between Spain and the United States for Cession of Outlying Islands of the Philippines, signed November 7, 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.

The Philippines exercised effective, continuous, open and public sovereignty over Scarborough Shoal since the Spanish colonial period (Island of Palmas case).

From 1960s to 1980s, Scarborough Shoal was used by the American and Philippine military as an **impact range** for their warplanes. *Notices to Mariners* were issued worldwide by American and Philippine authorities thru the International Maritime Organization of the

United Nations whenever bombing runs were made. Not a single country registered any protest to these military activities.

China's Core Objection

“xxx even assuming that the subject-matter of the arbitration did concern the interpretation or application of the Convention, it has been excluded by the 2006 declaration filed by China under Article 298 of the Convention, **due to its being an integral part of the dispute of maritime delimitation between the two States.**”

China correctly states that the exclusion arising from its 2006 declaration under the opt out clause [Article 298(1)(a)(i), UNCLOS] refers to a **“dispute of maritime delimitation between the two States.”** Article 298(1)(a)(i) allows exclusion from compulsory arbitration of **“disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations.”**

Article 15 - Delimitation of the territorial sea between States with opposite or adjacent coasts

Article 74 – Delimitation of the exclusive economic zone between States with opposite or adjacent coasts

Article 83 - Delimitation of the continental shelf between States with opposite or adjacent Coasts

There is no overlapping territorial sea between the Philippines and China. There is also no overlapping EEZ between the Philippines and China. In the Luzon side of the West Philippines Sea, the Manila Trench prevents the Philippines from claiming an extended continental shelf so that the Philippines has no overlapping ECS with China in this area.

China does not claim that the waters enclosed by the 9-dashed lines are its territorial sea, EEZ or CS. The 9-dashed lines are not measured from baselines along China's coast, and hence the the 9-dashed lines cannot possibly delineate China's territorial sea, EEZ or CS. There is no overlapping TS, EEZ or CS between China's 9-dashed lines waters and the Philippines' \

TS, EEZ or CS that could be subject of the opt out clause under Article 298(1)(a) of UNCLOS. In fact, China claims the waters enclosed by the 9- dashed lines as “sui generis” waters, admitting that these waters are neither territorial, EEZ nor CS waters.

Article 309 of UNCLOS mandates that “no reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention.”

Article 310 states that declarations or statements made by a state upon signing or ratification of the Convention cannot “modify the legal effect of the provisions of this Convention in their application to that State.”

If UNCLOS does not apply to the South China Sea dispute, as when China’s 9-dashed lines are allowed to gobble up the EEZs of coastal states as well as the high seas, then UNCLOS, the constitution for the oceans and seas, cannot also apply to any maritime dispute in the rest of the oceans and seas of our planet. It will be the beginning of the end for UNCLOS. The rule of the naval canon will prevail in the oceans and seas of our planet, no longer the rule of law. There will be a naval arms race among coastal countries.

In 1609, Hugo Grotius published *Mare Liberum* or the Free Sea. Grotius argued that the oceans and seas belong to all mankind. Grotius articulated the position of the Netherlands. Years later, in rejoinder, John Selden wrote *Mare Clausum* or the Closed Sea. Selden argued that the oceans and seas are subject to appropriation and ownership by sovereign states. Selden articulated the position of England, Spain and Portugal, the naval powers of that bygone era. For over a century these two opposing ideas battled for the hearts and minds of the world. Grotius won that great battle and his idea became the foundation of the modern Law of the Sea.

Today, China has revived John Selden’s argument that a state can appropriate as its own sovereign waters an entire or almost an entire sea. **At bottom, this is the core issue before the UNCLOS tribunal hearing the Philippines’ arbitration case against China.** If China’s 9-dashed lines claim is allowed to stand, it will be a direct attack on the Grotian foundation of the Law of the Sea. The settled principles on freedom of navigation, freedom of overflight, freedom to fish

in the high seas, the right of coastal states to exclusive economic zones and continental shelves, and the common heritage of mankind, will all be in peril.

The Grotian Question

Will the world community allow a single state to re-write the Law of the Sea, so it can exercise indisputable sovereignty to almost an entire sea, subject the high seas to its sovereign jurisdiction, and seize large areas of other coastal states' EEZs, which are their legal maritime entitlements under UNCLOS?

Thank you very much
