

**PROTECTING THE NATION'S MARINE WEALTH
IN THE WEST PHILIPPINE SEA**

Philippine Women's Judges Association
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This morning, with your kind indulgence, allow me to speak on a matter that I hope would be the advocacy of every Filipino - the protection of the marine wealth of the Philippines in the West Philippine Sea.

Our 1987 Constitution mandates: "***The State shall protect the nation's marine wealth in its xxx exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.***" This is the mandate of the Constitution that we have all solemnly sworn to uphold.

To fulfill the State's obligation to protect the nation's marine wealth in its exclusive economic zone, the Philippines has filed an arbitration case against China in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS). At stake in the arbitration before an UNCLOS Annex VII tribunal is **whether the Philippines will keep or lose 80% of its exclusive economic zone and 100% of its extended continental shelf in the West Philippines Sea.**

UNCLOS, ratified by 165 states comprising 85% of the entire membership of the United Nations, is the primary international law governing the use of the oceans and seas of our planet. Specifically, UNCLOS governs the use of the following maritime zones: (a) internal waters or archipelagic waters, the landward waters adjacent to the territorial sea; (b) territorial sea, an area of 12 NM from the baselines along the coast; (c) exclusive economic zone (EEZ), an area of 200 NM from the baselines; (d) extended continental shelf (ECS), an additional area of 150 NM from the outer limits of the EEZ; and (e) the

AREA, which is the common heritage of mankind, the maritime zone beyond the ECS. The AREA belongs to all states, whether coastal or land-locked.

UNCLOS governs **maritime disputes on overlapping maritime zones** like overlapping territorial seas, EEZs and ECSs. UNCLOS does not govern **territorial disputes**, which are sovereignty or ownership issues over land territory like islands or rocks above water at high tide. Rocks that are below water, or submerged, at high tide are not considered land and thus disputes over such rocks are governed by UNCLOS.

UNCLOS provides for a compulsory dispute settlement mechanism over maritime disputes among its member states, **including disputes involving the interpretation or application of the provisions of UNCLOS**. A state may opt out of certain specified disputes, one of which is maritime boundary delimitation arising from **overlapping** territorial seas, EEZs or ECSs. A state cannot opt out of any dispute except those expressly specified under UNCLOS. China, the Philippines and all the other disputant states in the South China Sea are parties to UNCLOS, and are thus bound by the UNCLOS compulsory dispute settlement mechanism.

Maritime disputes are governed primarily by UNCLOS, while **territorial disputes** are governed by the general rules and principles of international law. Maritime disputes are subject to compulsory arbitration because under UNCLOS a party state has given its **advance consent** to compulsory arbitration, unless a state has opted out of compulsory arbitration involving certain specified disputes. In contrast, territorial disputes can be subject to arbitration only with the consent of each disputant state to every arbitration, unless such consent has been given in advance in a treaty. There is no such treaty between the Philippines and China involving compulsory arbitration of territorial disputes.

The Philippines' arbitration case against China is **solely a maritime dispute and does not involve any**

territorial dispute. The Philippines is asking the tribunal if China's 9-dashed lines can negate the Philippines' EEZ as guaranteed under UNCLOS. The Philippines is also asking the tribunal if certain rocks above water at high tide, like Scarborough Shoal, generate a 200 NM EEZ or only a 12 NM territorial sea. The Philippines is further asking the tribunal if China can appropriate low-tide elevations (LTEs), like Mischief Reef and Subi Reef, within the Philippines' EEZ. These disputes involve the interpretation or application of the provisions of UNCLOS.

The Philippines is not asking the tribunal to delimit by nautical measurements overlapping EEZs between China and the Philippines. The Philippines is also not asking the tribunal what country has sovereignty over an island, or rock above water at high tide, in the West Philippine Sea.

Under UNCLOS, every coastal state is entitled to a 200 NM EEZ, subject to boundary delimitation in case of overlapping EEZs with other coastal states. The EEZ is the area extending to 200 NM measured from the **baselines** of a coastal state. Under UNCLOS, EEZs must be **drawn from baselines** of the coast of a continental land or island capable of human habitation of its own. This basic requirement stems from the international law principle that the "**land dominates the sea**" – or to put it another way, areas in the seas and oceans can be claimed and measured **only** from land.

A coastal state has full sovereignty over its 12 NM territorial sea. Beyond the territorial sea, the coastal state has only specific "**sovereign rights**" up to 200 NM from its baselines. These "sovereign rights" are **to the exclusion of all other states**. The term "sovereign rights" refers to specific rights that do not amount to full "sovereignty."

A coastal state's "sovereign rights" to its EEZ beyond the territorial sea refer principally to the **exclusive right to exploit the living and non-living resources in the**

area, without other sovereign rights like the right to deny freedom of navigation and over-flight, which a coastal state can deny in its territorial sea.

China claims almost 90% of the South China Sea under its so-called 9-dashed line map, which overlaps 80% of the Philippines' EEZ in the West Philippine Sea. If China's claim is upheld, the Philippines will lose 80% of its EEZ in the West Philippine Sea, including the Reed Bank and even Malampaya. The Philippines will also lose all its ECS in the West Philippine Sea.

The maritime dispute between the Philippines and China boils down to whether there are **overlapping EEZs** between the Philippines and China in the West Philippine Sea. Are the waters enclosed by China's 9-dashed lines part of the EEZ of China such that China's EEZ overlaps with the EEZ of the Philippines? China also claims that the islands in the Spratlys like Itu Aba generate their own EEZs which overlap with the Philippines' EEZ in Palawan.

China argues, through its scholars and officials, that the arbitral tribunal has no jurisdiction over the Philippines' claim for two reasons: *First*, the dispute involves maritime boundary delimitation arising from **overlapping EEZs** of the Philippines and China, a dispute that China has opted out of compulsory arbitration. *Second*, China's 9-dashed line claim is a historical right that predates UNCLOS and cannot be negated by UNCLOS. On these grounds, China has refused to participate in the arbitral proceedings.

The Philippines' response is that the waters enclosed within China's 9-dashed lines do not constitute an EEZ because the 9-dashed lines are **not drawn from baselines** along the coast of continental land or habitable islands. Under UNCLOS, EEZs can **only be drawn from baselines along the coast of continental land or an island capable of human habitation or economic life of its own**. China's 9-dashed lines do not comply with the basic requirement of UNCLOS for drawing EEZs.

China has no EEZ that overlaps with the Philippines' EEZ in the Scarborough area. China's baselines are either along the coast of Hainan Island, which is 580 NM from Luzon, or along the coast of mainland China, which is 485 NM miles from the Zambales coastline in Luzon facing Scarborough Shoal. Even if you grant the Chinese-held Paracels an EEZ, the Paracels are about 480 NM from Luzon. To have overlapping EEZs, the distance between the opposite baselines must be less than 400 NM. In the Scarborough area, there is no baseline in Luzon where its distance from the nearest Chinese baseline is less than 400 NM.

Low-Tide-Elevations or LTEs are rocks above water at low tide but below water, or submerged, at high tide. LTEs are not land but part of the submerged continental shelf. Under UNCLOS, LTEs beyond the 12 NM territorial sea are not capable of appropriation by any state. As part of the submerged continental shelf, LTEs beyond the territorial sea but within the EEZ of a coastal state are subject to the sovereign rights of such coastal state.

Thus, LTEs in the Spratlys within the 200 NM EEZ of the Philippines, like Mischief Reef and Subi Reef, are subject to the sovereign rights of the Philippines. Under UNCLOS, only the Philippines can construct structures on LTEs within its EEZ. Geographic and hydrographic surveys, satellite imageries, and international nautical charts, including China's own nautical charts, all show that several geologic features in the Spratlys occupied by China, including Mischief Reef and Subi Reef, are LTEs within the Philippines' 200 NM EEZ.

Scarborough Shoal, 124 NM from Zambales in Luzon, lies within the Philippines' 200 NM EEZ. Scarborough Shoal has 3 to 4 rocks that protrude not more than 2 meters above water at high tide. The rocks have no vegetation and obviously cannot sustain human habitation or economic life of their own. As a non-habitable "island," Scarborough Shoal generates only a 12 NM territorial sea. Contrary to China's claim, Scarborough Shoal cannot, for obvious reasons, generate

an EEZ. The Philippine position is that whether China or the Philippines, which are the only two claimant states, has sovereignty over Scarborough Shoal, the rocks can only generate a 12 NM territorial sea. Thus, Scarborough Shoal has no overlapping EEZ with the EEZ of Luzon.

In the Spratlys, with the exception of China, all the disputant states, namely the Philippines, Vietnam, and Malaysia, agree that none of the islands in the Spratlys generates an EEZ. The largest island, Itu Aba, has a land area of only 37.7 hectares and a coastline of 1.0 KM facing Palawan, the largest Philippine province. Palawan has a land area of 1,489,655 hectares and a coastline of 650 KM facing Itu Aba. In short, Palawan's coastline is 650 times longer, and its land area 39,513 times larger, than those of Itu Aba. The distance between Itu Aba and Palawan is 250 NM. Itu Aba is occupied by Taiwan, which the Philippines recognizes as part of China.

Under UNCLOS, to generate an EEZ an island must be **capable of human habitation or economic life of its own**. The soldiers stationed in Itu Aba cannot survive without periodic supplies from Taiwan. In the law of the sea jurisprudence, there are many islands bigger than Itu Aba that have been denied EEZs **opposite** a mainland or a much larger island. In all probability, an international tribunal will deny Itu Aba an EEZ.

Even assuming for the sake of argument that Itu Aba generates an EEZ, the UNCLOS rule of ensuring an "**equitable solution**" in maritime boundary delimitation prohibits any substantial disproportion in the allocation of EEZs if the length of the **opposite coastlines** are substantially unequal. The opposite coastline of Itu Aba is 1 KM while that of Palawan is 650 KM.

Under law of the sea jurisprudence, the rule of "equitable solution" in **opposite coastlines** requires a **reasonable degree of proportionality, or at least absence of excessive disproportionality**, in the lengths of the coastlines and the areas of the adjacent EEZs. The best-case scenario for Itu Aba is a reduced EEZ of 50 NM

facing Palawan, while Palawan will have a full EEZ of 200 NM facing Itu Aba. Itu Aba may, however, be given a longer or even a full EEZ facing the South China Sea away from Palawan.

Of course, if an arbitral tribunal rules that Itu Aba is capable of human habitation or economic life of its own and thus generates an EEZ, the tribunal will have no jurisdiction to proceed further without the consent of China. The arbitral tribunal cannot rule on the extent of such EEZ for that will involve a maritime boundary delimitation on overlapping EEZs – a dispute that China has excepted from compulsory arbitration.

In such eventuality, where an arbitral tribunal rules that Itu Aba generates an EEZ, the Philippines will then file a second case against China, this time for **compulsory conciliation** over the maritime boundary delimitation between China's EEZ in Itu Aba and the Philippines' EEZ in Palawan. Under UNCLOS, states that opt out of compulsory arbitration in maritime delimitation of sea boundaries **cannot** opt out of compulsory conciliation. While the report of the conciliation commission is non-binding, it will have persuasive authority as the equitable boundary delimitation under international law.

Interestingly, in China's dispute with Japan over the Japanese-held Senkaku Islands in the East China Sea, China claims that the largest Senkaku island - Uotsurishima - with an area of 430 hectares, does not generate an EEZ but only a 12 NM territorial sea because, according to China, Uotsurishima cannot sustain human habitation of its own. In sharp contrast, China claims that Itu Aba, which has an area of only 37.7 hectares, and Scarborough Shoal, whose largest rock has an area of not more than 3 square meters, each generates a 200 NM EEZ, implying that both Itu Aba and Scarborough can sustain human habitation of their own. Uotsurishima is 11.4 times larger than Itu Aba and 860,000 times larger than the largest Scarborough rock.

This is not the only glaring inconsistency of China. China claims that the largest Japanese-held rock in Okinorotishima in the Philippine Sea, protruding about two feet above water at high tide with an area of less than 4 square meters, does not generate a 200 NM but only a 12 NM territorial sea because obviously Okinorotishima cannot sustain human habitation of its own. Yet China claims that Scarborough, which just as obviously cannot sustain human habitation of its own, generates a 200 NM EEZ. There is neither reason nor rhyme in China's position.

China's claim to a "**historical right**" to the waters enclosed within the 9-dashed lines in the South China Sea is utterly without basis under international law. This is the almost universal opinion of non-Chinese scholars on the law of the sea.

First, UNCLOS **extinguished** all historical rights of other states within the 200 NM EEZ of the adjacent coastal state. That is why this 200 NM zone is called "**exclusive**" – no state other than the adjacent coastal state can exploit economically its resources. Fishing rights that other states historically enjoyed within the EEZ of a coastal state automatically terminated upon the effectivity of UNCLOS.

Moreover, UNCLOS prohibits states from making any reservation or exception to UNCLOS unless expressly allowed by UNCLOS. Any reservation of claims to historical rights over the EEZ or ECS of another coastal state is prohibited because UNCLOS does not expressly allow a state to claim historical rights to the EEZ or ECS of another state. In short, UNCLOS does not recognize "historical rights" as basis for claiming the EEZs or ECSs of other coastal states.

Second, under UNCLOS the term "historic bays" refers to internal waters, and the term "historic titles" refers to territorial seas. A state can claim "historical rights" over waters only as part of its internal waters or

territorial sea. Thus, under UNCLOS, a state cannot claim “historical rights” over waters beyond its territorial sea.

The South China Sea, beyond the 12 NM territorial sea of coastal states, has never been considered as the internal waters or territorial sea of any state. Since time immemorial, ships of all nations have exercised freedom of navigation in the South China Sea. Likewise, since the time airplanes flew across the seas, aircraft of all nations have exercised freedom of over-flight over the South China Sea.

If the South China Sea were the internal waters or territorial sea of China, then no state could have exercised freedom of navigation and freedom of over-flight over the South China Sea. Indeed, China has stated that there is freedom of navigation and freedom of over-flight in the South China Sea, an admission that the waters enclosed within the 9-dashed lines do not constitute China’s internal waters or territorial sea.

The waters enclosed within the 9-dashed lines cannot also form part of China’s EEZ or ECS because they are not drawn from China’s baselines and are beyond the limits of China’s EEZ and ECS as drawn from China’s baselines. In short, China’s claim to the waters enclosed by the 9-dashed line claim does not fall under any of the maritime zones - internal waters, territorial sea, EEZ and ECS - recognized by international law or UNCLOS that can be claimed by a coastal state. Only China seems to know what kind of maritime regime the 9-dashed line waters fall under, but China is not telling the world except that it is claiming “indisputable sovereignty” over such waters by “historical right.”

Third, under the general principles and rules of international law, a claim of “historical rights” to internal waters or territorial sea must satisfy four conditions. *One*, the state must **formally announce to the international community** such claim to internal waters or territorial sea, clearly specifying the extent and scope of such claim. *Two*, the state must **exercise effective**

authority, that is, sovereignty, over the waters it claims as its own internal waters or territorial sea. *Three*, such exercise of effective authority must be **continuous over a substantial period of time**. *Four*, other states must **recognize, tolerate or acquiesce** to the exercise of such authority.

China fails to comply with any of these four conditions. China officially notified the world of its 9-dashed line claim **only in 2009** when China submitted the 9-dashed line map to the United Nations Secretary General. Not a single country in the world recognizes, respects, tolerates or acquiesces to China's 9-dashed line claim. China has never effectively enforced its 9-dashed line claim from the time of China's domestic release of its 9-dashed line map in 1947 up to 1994 when UNCLOS took effect, and even after 1994 up to the present.

Thus, under the general principles and rules of international law, China cannot claim any "historical right" that pre-dated UNCLOS. Even assuming, for the sake of argument, that China has such "historical right," the entry into force of UNCLOS in 1994 **extinguished** such right. Under UNCLOS, a state cannot claim any "historical right" to the EEZ or ECS of another state.

China, with its blatantly weak position under international law, has tried to shore up its position with so-called "**historical facts**". For one, China claims that Scarborough Shoal, or Huangyan Island to the Chinese, is the **Nanhai** island that the 13th century Chinese astronomer-engineer-mathematician Guo Shoujing allegedly visited in 1279, having been ordered by Kublai Khan, the first emperor of the Yuan Dynasty, to conduct a survey of the Four Seas to update the Sung Dynasty calendar system. Thus, the Chinese Embassy website in Manila claims:

Huangyan Island was first discovered and drew (sic) into China's map in China's Yuan Dynasty (1271-1368 AD). 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. (Emphasis supplied)

The alleged visit of Gou Shoujing to Scarborough Shoal in 1279 is the only historical link that China claims to Scarborough Shoal.

However, in a document entitled *China's Sovereignty Over Xisha and Zhongsa 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. In the 16th year of the reign of Zhiyuan (1279) Kublai Khan or Emperor Shi Zu, (sic) personally assigned Guo Shoujing, the famous astronomer and Deputy Director of the Astronomical Bureau, to do the observation in the South China Sea. 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)

China is now estopped from claiming that Scarborough Shoal is Nanhai island. **China has officially declared that Nanhai island is in the Paracels**, and thus China can no longer claim that Scarborough Shoal is the Nanhai island that Gou Shoujing visited in 1279. Besides, it is quite ridiculous to claim that the famous Chinese

astronomer-engineer-mathematician would visit and write for posterity about a few barren rocks that barely protruded above water at high tide.

One could not imagine how Guo Shoujing went ashore to “visit” Scarborough Shoal when it was just a rock, with no vegetation, and did not even have enough space to accommodate an expedition party. Worse, the Chinese historical account that Guo Shoujing installed one of the 27 Chinese observatories on Nanhai island clearly rules out any possibility that Scarborough is Nanhai island because no observatory could have possibly been physically installed on Scarborough Shoal at that time.

Based on the extant Gaocheng Observatory built in 1276 by Guo Shoujing in Henan Province, Guo Shoujing’s 27 observatories were massive 12.6 meters high stone and brick structures. The purpose of the observatories was to accurately determine the duration of the calendar year. To operate such an observatory, one had to visit the observatory every day of the year to take measurements. There was simply no way at that time that such an observatory could have been built and operated on the tiny rocks of Scarborough Shoal.

In short, it is both physically and legally impossible for Scarborough to be Nanhai island - physically because no observatory could possibly have been installed in 1279 on the tiny Scarborough rocks, and legally because China has already officially declared that Nanhai is in the Paracels, more than 380 NM from Scarborough.

Another preposterous Chinese claim is that China’s **southernmost territory** is James Shoal, 50 NM from the coast of Bintulu, Sarawak, Malaysia. James Shoal is a fully submerged reef, 22 meters under water, entirely within Malaysia’s 200 NM EEZ and more than 950 NM from China. How did the fully submerged James Shoal become China’s southernmost territory? Let me quote a fascinating article on James Shoal published on February 9, 2013 in the *South China Morning Post*, written by Bill Hayton, a well-known British journalist:

How did the Chinese state come to regard this obscure feature, so far from home, as its southernmost point? I've been researching the question for some time while writing a book on the South China Sea. The most likely answer seems to be that it was probably the result of a translation error.

In the 1930s, China was engulfed in waves of nationalist anxiety. The predation of the Western powers and imperial Japan, and the inability of the Republic of China to do anything meaningful to stop them, caused anger both in the streets and the corridors of power. In 1933, the republic created the "Inspection Committee for Land and Water Maps" to formally list, describe and map every part of Chinese territory. It was an attempt to assert sovereignty over the republic's vast territory.

The major problem facing the committee, at least in the South China Sea, was that it had no means of actually surveying any of the features it wanted to claim. Instead, the committee simply copied the existing British charts and changed the names of the islands to make them sound Chinese. We know they did this because the committee's map included about 20 mistakes that appeared on the British map - features that in later, better surveys were found not to actually exist.

The committee gave some of the Spratly islands Chinese names. North Danger Reef became Beixian (the Chinese translation of "north danger"), Antelope Reef became Lingyang (the Chinese word for antelope). Other names were just transliterated so, for example, Spratly Island became Sipulateli and James Shoal became Zengmu. And this seems to be where the mistakes crept in.

But how to translate "shoal"? It's a nautical word meaning an area of shallow sea where waves "shoal" up. Sailors would see a strange area of choppy water in the middle of the ocean and know the area was shallow and therefore dangerous. James Shoal is one of many similar features in the Spratlys.

But the committee didn't seem to understand this obscure English term because they translated "shoal" as " *tan*" - the Chinese word for beach or sandbank - a feature which is usually above water. The committee, never having visited the area, seems to have declared James Shoal/Zengmu Tan to be a piece of land and therefore a piece of China.

Apparently, Chinese leaders and cartographers claimed James Shoal as China's southernmost territory even without seeing James Shoal. Certainly, no Chinese could have gone ashore to "visit" James Shoal. James Shoal is the only national border in the world that is fully submerged and beyond the territorial sea of the claimant state.

Today, when Chinese naval vessels visit James Shoal, they would occasionally drop to the bottom of James Shoal cement and steel markers to designate China's southernmost territory. Of course, this is blatantly contrary to UNCLOS, which prohibits any state from appropriating submerged features beyond its territorial sea. Not even Malaysia, whose coastline is just 50 NW away, can claim James Shoal as its sovereign territory.

Bill Hayton's account of how James Shoal became China's southernmost territory gives us an idea how dubious are China's "historical facts" under its so-called 9-dashed line claim. China's official proclamation in 1980 that Nanhai island is in the Paracels also exposes China's false claim to any historical link to Scarborough Shoal.

Indeed, all Chinese official maps during the Yuan, Ming and Qing Dynasties placed the **southernmost border of China at Hainan Island**. The famous 17th century Qing Dynasty Kangxi maps, prepared by the Jesuit missionaries who became advisers to Emperor Kangxi, placed Hainan Island as the southernmost border of China. None of the Chinese dynasty maps ever mentioned the Paracels, the Spratlys, Scarborough Shoal, the 9-dashed lines or the U-shaped lines.

Guangdong province of China first claimed the Paracels in 1909. China itself claimed the Paracels only in 1932 and the Spratlys only in 1946 after World War II. In the 1951 San Francisco Peace Conference that produced the Peace Treaty of San Francisco, the victorious allies rejected by a vote of 48 states to 3 states (only the Soviet Union, Poland and Czechoslovakia dissented) to turn over possession of the Paracels and Spratlys to China as demanded by the Soviet Union on behalf of China.

As late as in 1932, China has been telling the world that its **southernmost border was Hainan Island**. 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.

The Si-Chao-Chuin-Tao Islands, also known as Tsi-Cheou-Yang and called the Paracel Islands in the foreign tongue, lie in the territorial sea of Kwangtung Province (South China Sea); the northeast are the Ton-Chao Islands; the Si-Chao-Chuin-Tao Islands form one group among all the islands in the South China Sea which are an integral part of the territorial sea of Kwangtung Province.

According to the reports on the Si-Chao-Chuin-Tao (Paracel) Islands drawn up in the Year XVII of the Chinese Republic (1926) by Mr. Shen-Pang-Fei, President of the Commission of Inquiry into these islands, and to the files of these islands compiled by the Department of Industry of Kwangtung Province, the islands lie between longitude 100°13' and 112°47' east. More than 20 in number, large and small, most of them are barren sandbanks, 10 or so are rocks and

8 are true islands. 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)

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In short, in 1932 the Chinese Government **officially declared** to the world that the “**southernmost part of Chinese territory**” or border was Hainan Island, which for the first time according to the Chinese included the Paracels. This declaration categorically affirmed the previous official maps of the Yuan, Ming and Qing Dynasties that showed Hainan Island as the southernmost territory or border of China. James Shoal, 800 NM away from the Paracels and 950 NW from Hainan Island, was never in Chinese history the southernmost territory or border of China.

The same is obviously true for Scarborough Shoal, which is 380 NM from the Paracels and 500 NM from Hainan Island. Since Hainan Island or even the Paracels are the southernmost territory or border of China as officially declared by China in its September 29, 1932 *Note Verbale* to the French Government, then Scarborough Shoal is not part of, and could never have been part of, Chinese territory.

The oldest map in the world depicting Scarborough Shoal is the Murillo map that was first issued in 1734 during the Spanish regime. The Murillo map, entitled *Mapa de las Islas Filipinas*, was made by the Spanish priest Fr. Pedro Murillo. The Murillo map clearly shows Scarborough Shoal, at that time called Panacot, lying just across Zambales. Panacot was the name given by Filipino fishermen to Scarborough Shoal during the Spanish regime.

The real and unvarnished historical facts in the South China Sea are quite different from what China has claimed them to be. Despite its name, which was given by European explorers and cartographers, the South China

Sea was never the sole domain of China or of any one country. Even if we go back to the Sung Dynasty, we find the early Filipinos already sailing across the South China Sea to trade with the Chinese along the coast of Canton in mainland China.

A noted Chinese scholar during the Yuan Dynasty, Ma Tuan-lin, wrote in his book *A General Investigation of the Chinese Cultural Sources*, about traders from the Philippines, which the Chinese at that time called Mo-yi or *Ma-i*. Ma Tuan-lin stated in his book, published in 1322 during the Yuan Dynasty and republished in 1935 in Shanghai:

There were traders of the country of Mo-yi carrying merchandise to the coast of Canton [for sale] in the seventh year of Tai-ping-shing-kuo [of the Sung Dynasty, that is 982 A.D.].

As early as 982 A.D., Filipino traders were already masters of the South China Sea, sailing back and forth from the Philippines to China to trade, **more than 400 years** before the Chinese Imperial Admiral Zeng He launched his famous sea voyages from 1405 to 1433 A.D.

China has been dangling to the Philippines and other claimant states its offer for joint development of the disputed areas while shelving the sovereignty issues, an idea suggested by the late Chinese paramount leader Deng Xiaoping. There are at least three problems to this offer.

First, China wants to jointly develop the EEZ of the Philippines but refuses to jointly develop China's own EEZ. In effect, China is saying to the Philippines, what is exclusively China's economic zone is China's alone, but what is exclusively the Philippines' economic zone belongs to both China and the Philippines, and if the Philippines does not agree, China's warships will be there to prevent the Philippines from exploiting its exclusive economic zone.

Second, as explained by Chinese officials and scholars, China's offer of joint development is subject to the **precondition** that participating coastal states must first expressly recognize China's "indisputable sovereignty" under its 9-dashed line claim. This **precondition** effectively means that once a state agrees to joint development, it must not only vacate any island it possesses in the Spratlys and turn over the same to China, it must also renounce any maritime claim within the 9-dashed line area. This **precondition** demanded by China is obviously inconsistent with its offer to shelve the sovereignty issue.

Third, if the Philippines agrees to China's joint development offer, the Philippines will in effect give up its exclusive "sovereign rights" to exploit all the living and non-living resources in its own EEZ. The Philippines will also give up its exclusive right to exploit the mineral resources in its own ECS. The bottom line is that China's joint development offer will negate the maritime entitlements of the Philippines under UNCLOS. This is constitutionally impermissible because our 1987 Constitution mandates the State to "protect the nation's marine wealth in its xxx exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens." Any joint development with China constitutes a "**culpable violation of the Constitution.**"

Of course, the fact that the use and enjoyment of our EEZ is reserved exclusively to Filipino citizens does not mean that Chinese companies cannot participate in the exploitation of oil and gas in our EEZ. They can but as technical and financial contractors of the Philippine Government or Filipino companies under Philippine law, not Chinese law. As such technical contractors and financial contractors, they may be paid in kind. This is actually the set-up in Malampaya where Shell is the technical and financial contractor of the Philippine Government under Philippine law.

Not one of the claimant states to the Spratlys has accepted China's joint development offer. Acceptance of

China's joint development offer means a complete surrender to China's outlandish "indisputable sovereignty" claims. In an article in *The Diplomat* dated February 28, 2014, Prof. Carl Thayer, a well-known regional security analyst, quoted how a Malaysian defense official viewed China's joint development offer:

Nor are we ready to consider joint development activities with the Chinese. **That would require recognition of China's claims in the South China Sea, including our EEZ. And that's not our policy.**
(Emphasis supplied)

Vietnam has a similar view of China's joint development offer. Dr. Tran Truong Tuy, Director of the Centre for South China Sea Studies at the Diplomatic Academy of Vietnam, interprets the Chinese offer as saying: "*What is mine is mine, what is yours is mine and we are willing to share.*"

The world is now familiar with the expansionist designs of China in the South China Sea. China's creeping invasion of the islands, rocks and reefs, as well as of the waters, of the South China Sea grows in force and aggressiveness each day as China's naval forces assume greater superiority over those of other coastal states. The Philippines is particularly vulnerable to Chinese bullying because the Philippines has the weakest navy among all the major disputant states in the South China Sea.

The Philippines lost Mischief Reef in 1995 and Scarborough Shoal in 2012 to Chinese invasion. Vietnam lost the Paracels in 1974 and Fiery Reef Cross in 1988 to Chinese invasion. China, as I speak, threatens to forcibly evict the handful of Philippine marines aboard the shipwrecked RPS Sierra Madre in Ayungin Reef, an LTE within the Philippines' EEZ in the Spratlys. The Chinese invasion and occupation of these islands, rocks and LTEs are acts of armed aggression outlawed by the United Nations Charter.

The world should now remind China of Deng Xiaoping's solemn commitment to the world when he declared in his speech before the United Nations General Assembly on April 10, 1974:

A superpower is an imperialist country which everywhere subjects other countries to its aggression, interference, control, subversion or plunder and strives for world hegemony. xxx **If one day China should change her color and turn into a superpower, if she too would play the tyrant in the world, and everywhere subject others to her bullying, aggression and exploitation, the people of the world should identify her as social-imperialist, expose it, oppose it and work with the Chinese people to overthrow it.** (Emphasis supplied)

China's rulers today have transformed China into the imperialistic hegemon that Deng asked the Chinese people and the world to fight and overthrow should China's rulers in the future deviate from his vision of a peaceful and law-abiding China. Deng had repeatedly promised the world that China would "never seek hegemony". Sadly for Deng, and sadly for the rest of the world, especially for the Philippines, that day has come.

I started this speech by articulating the Philippine State's constitutional obligation to protect its marine wealth in its EEZ. I have explained how the Philippine Government is fulfilling this constitutional duty by filing the arbitration case against China. I have explained why we are entitled to our full 200 NM EEZ in the West Philippine Sea and why China's 9-dashed line claim is invalid for being contrary to UNCLOS.

I have also explained why any joint venture with China under its terms will constitute a "**culpable violation of the Constitution**," a sell-out of our national patrimony. I end by affirming that this exercise of pursuing the arbitration case against China is to reserve the use and enjoyment of our marine wealth in our EEZ

exclusively to Filipinos, as mandated by the Constitution, which we have all sworn to uphold.

Thank you and a pleasant morning to all.