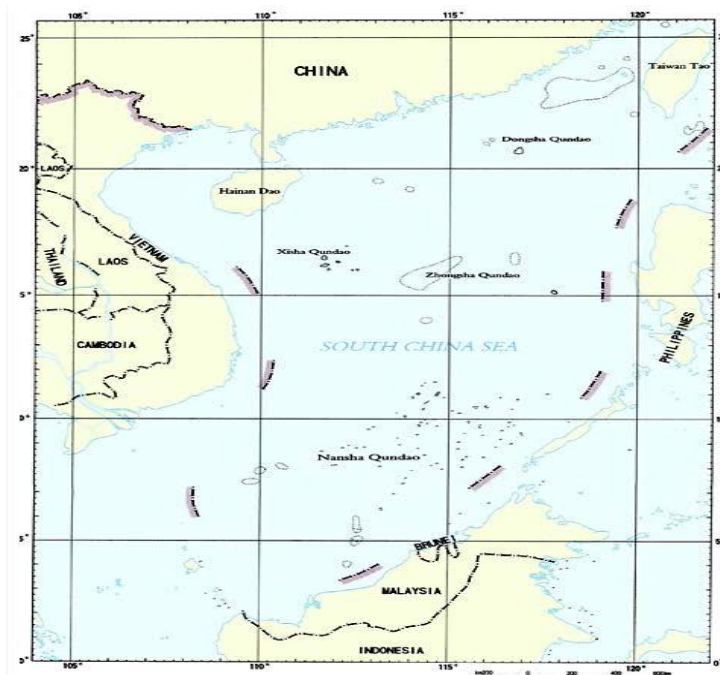


LECTURE ON THE PERMANENT COURT OF ARBITRATION'S RULING ON THE WEST PHILIPPINE SEA DISPUTE¹

Supreme Court Justice Antonio T. Carpio²

I. PRELIMINARY CONCEPTS

The Nine-dashed Lines Map Submitted by China to the United Nations on May 7, 2009



The root cause of the South China Sea dispute is of course China's Nine-Dash Lines that it submitted to the UN in 2009. The Nine-Dash Lines encroached on large areas of the Exclusive

¹ Lecture delivered at the University of Santo Tomas, Faculty of Civil Law Auditorium, 10 November 2016.

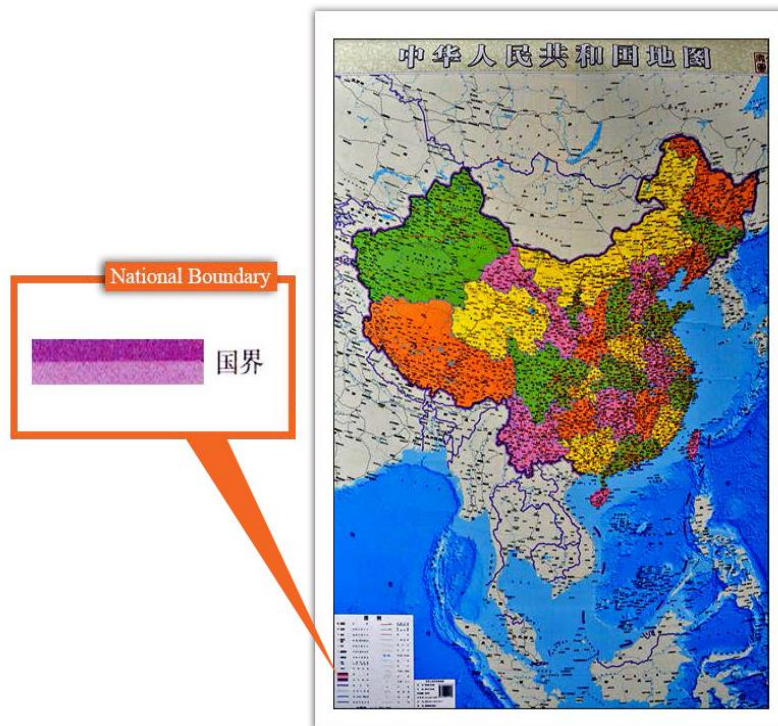
² Senior Associate Justice of the Supreme Court of the Philippines. The views expressed in this lecture are the personal opinion of the author and do not necessarily represent the position of the Philippine Government.

NOTE: All figures, maps and illustrations are from the Lecture.

Economic Zone (EEZ) of the Philippines, Vietnam, Malaysia, Brunei and Indonesia and because of that Malaysia, Philippines, Brunei and Indonesia promptly protested.

In 2013, China came out with the new map of China. China added the 10th dash on the eastern side of Taiwan so the Nine-Dash Lines are still growing. China calls now the dashes as its national boundaries. That's a very significant term because what is enclosed by the national boundaries was the national territory. And so the Philippines had to protest and sent a *note verbale* to China on June 7, 2013 saying that the Philippines strongly objects to the indications of the Nine-Dash Lines or China's national boundaries in the South China Sea.

China claims the Ten-Dashed Lines in 2013 Map are China's "National Boundaries"



This is the map that China produced in 2013 where it added a 10th dash on the eastern side of Taiwan. If you look at the legend of the map, you will see this shading. This Chinese character means national boundary. So China calls the dashes as its national boundaries. This is the same shading that we find in the land boundary of China. So China treats the waters of the South China Sea enclosed by the dashes in the same way it treats its land territory. So that's why we have to contest.

Now, the called dispute between the China and Philippines is simply that China is grabbing 80% of the EEZ of the Philippines. China's trying to re-frame the issue as a dispute between China and the US and the Philippines is an appendage of the US and the dispute is that the US is trying to constrain or contain the rights of China. Of course as far as we are concerned, we don't have the same interest as the US because the interest of US is freedom of navigation and freedom of overflight over the high seas and EEZs. We don't have a navy that will be sailing in the high seas of other countries. We don't have an air force that will fly over the EEZs and high seas of these countries and places. Our battle with China is over the resources of our EEZ. This is our EEZ here.

CORE DISPUTE: China's Claim to 80 Percent of Philippine EEZ



Now, China claims the markers here, this is the EEZ of Vietnam. China auctioned off areas here, claiming that China owns the waters here. China put up an oil rig here within the EEZ of Vietnam. So China claims the waters here. Now, China also claims that this is the southernmost border of China, James Shoal, 950 nautical miles from island.

Under UNCLOS, China can only claim up to 350 nautical miles. China also claims the Reed Bank within our EEZ which is very rich in gas. China claims ownership over the Reed Bank. China promulgated fisheries regulation stating if you want to fish in this area, foreign fishing vessels must secure permission from China. In the South China Sea, the waters here are the high seas, and these are the EEZs of the coastal states. The high seas of course belong to mankind. So China, in effect, claims 85.7 percent of the South China Sea that is everything enclosed within the line such as islands, reefs, atolls, all the fish, oil and gas. These are within the Nine-Dash Lines. So that is our dispute with China.

Now, what is the grand design of China? The grand design of China is to control the South China Sea for economic and military purposes. China wants to own all the fisheries, oil, gas, and other mineral resources within the Nine-Dash Lines. They still call it Nine-Dash Lines. China today takes 50 percent of the annual fish harvest in the South China Sea. In the 1990s, China was only taking 20 percent but 80 percent of the coastal waters of China are now polluted so China, now with the largest fishing fleet in the world, their vessels are now fishing in the EEZs of other countries. China has 1.4 billion people and China has the highest per capita consumption of fish in the world. So there's extreme pressure on China to fish outside of their EEZ. That's why they are now fishing within our EEZ.

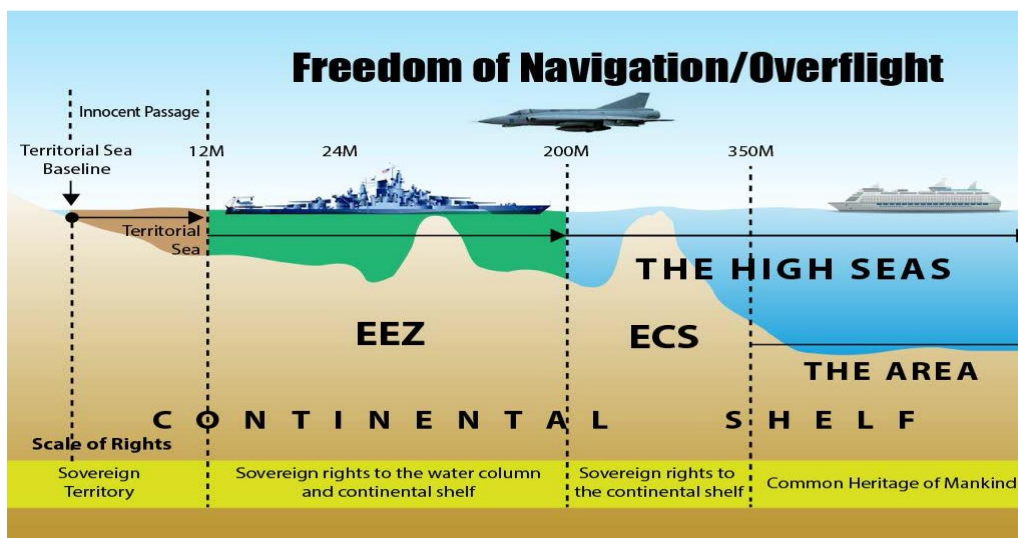
China is also the largest net importer of petroleum in the world. China wants the lion's share of all the oil and gas in the South China Sea. China estimates that the South China Sea holds about 130 billion barrels of oil. If this is correct then the South China Sea will be second only to Saudi Arabia in terms of oil deposit. Henry Kissinger reminds us that Chinese calls the South China Sea as the second Persian Gulf. The South China Sea also is rich in methane hydrates. What is a methane hydrate? Methane hydrate is a cage-like lattice of ice inside of which are trapped molecules of methane, the chief constituent of natural gas. There is a technology to extract the gas now but this is very expensive but the cost will go down over time. China estimates that the methane hydrates at the South China Sea can fuel the Chinese economy for 300 years.

China also wants to use the South China Sea as sanctuary for its nuclear arms submarines. Nuclear arms submarines are based in Hainan and right now the US aircraft, the Poseidon fly over

the South China Sea shadowing all of the nuclear arms submarines of China and China doesn't want that so China wants the US to get out of the South China Sea.

Let's go to some concepts. Under UNCLOS, these are the maritime zones. This is the low-water mark. I think this is Palawan. From the low water mark, we measure 12 nautical miles so you now have the **Territorial Sea**. From the edge of territorial sea, you measure 188 nautical miles, we have the Exclusive Economic Zone. This is called **Exclusive Economic Zone** because the economic exploitation of this zone belongs exclusively to the adjacent coastal state so the living and non-living resources here (fish, gas, oil, mineral resources) can be exploited only by the adjacent coastal state so it's called exclusive. From the edge of the EEZ you measure 150 nautical miles and we have the **Extended Continental Shelf**. The extended continental shelf can extend up to 150 nautical miles from the edge of the EEZ if there is a natural prolongation of the submerged continental shelf. If there is a deep trench deep trench here that breaks the natural prolongation, then the extended continental shelf will be up to that.

Maritime Zones under UNCLOS



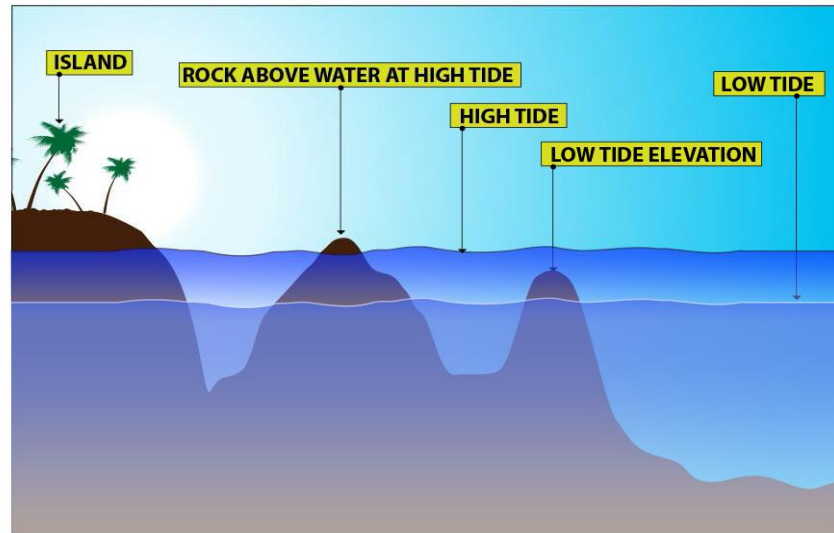
Now, the high seas actually start from here. These are the high seas. The high seas belong to mankind. All the fish here belong to mankind, all coastal states and all land-locked countries can fish here without permission from anyone because the fish belong to mankind. But here in the submerged continental shelf, the gas, oil and mineral resources belong to the adjacent coastal state.

From here, from the edge of the extended continental shelf, will start what is called the area, the common heritage of mankind. This belongs to mankind. It is administered by the International Seabed Authority, a creation of UNCLOS. If the state wants to get a permit to explore this, it has to apply with the International Seabed Authority (ISA). That authority has issued, to date, 27 permits, 4 permits have gone to China, the highest number for any state.

Now, here from the edge of the territorial sea to the high seas, you have freedom of navigation and overflight for military and civilian vessels and aircrafts. That means any civilian and military vessel and aircraft can sail and fly here without permission from anyone, that's freedom of navigation. What is important to remember is that in the South China Sea, because of the geology and the morphology of the South China Sea, the maximum that a coastal state can claim is 350 nautical miles from its coastline, nothing more. China is claiming more than 350 nautical miles. That's why we have to sue China. The maximum that a coastal can claim is up to only 350 nautical miles. Vietnam also sued China.

Another concept is the last concept that we have to understand before we can proceed. This is a low tide elevation. At low tide, it's elevated. At high tide, it's submerged. And this one has no territorial sea, no territorial airspace; it is part of the submerged continental shelf. It is not land. It is not territory. If it is beyond the territorial sea, it cannot be owned, it cannot be subjected to sovereignty.

Low Tide Elevation vs. Rock/Island



This is a rock above water. It's high tide elevation because at high tide it's still elevated. It is a land. This is territory even if it is only 1 inch above water at high tide it's considered territory so it's entitled to 12 nautical mile territorial sea and a territorial air space above it. This one is an island obviously, it's entitled to 12 nautical mile territorial sea; and if it is capable of human habitation or economic life of its own, it's entitled to a 200 nautical mile EEZ; and if it has a natural prolongation or a submerged continental shelf, it is entitled to an additional 150 nautical mile extended continental shelf. So those are the concepts that were considered by the tribunal in our case.

II. FACTS OF THE CASE

China Seized Mischief Reef in February 1995



So let's go to the facts of the case. In 1995, China seized Mischief Reef from the Philippines. Mischief Reef is a low tide elevation because at high tide it's completely submerged. China built this and said it's a fisherman's shelter, but of course it's now an air and naval base of China. So in 1995, military capability could take this back so we sat down with China. China said there's nothing to discuss because they have indisputable sovereignty over this area under the Nine-Dash Lines. But remember under UNCLOS, jurisdiction of our EEZ and the Constitution says that the state shall protect the nation's marine wealth in its EEZ and the Constitution defines national territory as including submarine areas over which the Philippines has sovereignty or jurisdiction. So there are **two types of national territory**: national territory because we have sovereignty over it; national territory because we have jurisdiction over it.

Under international law, our national territory refers only to territory over which we have sovereignty. But under **domestic law**, because our Constitution defines national territory to include areas of sovereignty, areas over which we have jurisdiction, we also call that national territory for domestic purposes. Under UNCLOS, we have jurisdiction over our EEZ. So we told China we have jurisdiction over that under UNCLOS and we are the ones who can put up artificial islands. We are the only ones who can exploit this submerged continental shelf but China said, "No we have indisputable sovereignty over this area." So we met China several times, several negotiations from 1995 to 2012. We kept on talking to China. We got the same re-frame of indisputable sovereignty.

China Seized Scarborough Shoal in 2012



In 2012 China seized another area, seized Scarborough shoal from the Philippines. Scarborough Shoal is a high tide elevation because at high tide it is elevated. It has a territorial sea of 12 nautical miles. And again we don't have the military capability to get back Scarborough shoal and remember under RA 9225, Scarborough Shoal is defined as Philippine territory by which the Philippines exercises sovereignty and jurisdiction. This is *Bajo de Masinloc* also known as Scarborough Shoal. It's in the law as our national territory and China seized it. Actually, it is an invasion. We say, China seized it so that we may not be alarmed but actually it's an invasion.

So we are faced with the dilemma to talk against China and then explain to China that it's Philippine territory. You will hear again from China saying under Nine-Dash Lines that China has undisputable sovereignty over the Scarborough Shoal. We decided to take a different tactic. We decided to bring the dispute to a forum where warships, warplanes and nuclear bombs do not count, where the dispute will be resolved only in accordance with the law of the sea and that forum is an UNCLOS tribunal.

A military officer in the Philippine Army asked me, "Why are we going to The Hague, to the UNCLOS tribunal?" I remembered and paraphrased Sun Tzu, the Chinese Military Scholar who wrote the "Art of War", and said "If the Philippines cannot defeat China in the battlefield, the Philippines must defeat China in the Court room." So we went to the Court room. We went to an UNCLOS tribunal and we raised these issues.

These are the major issues we raised. The first is that China's claim to historic rights under the Nine-Dash Lines is contrary to UNCLOS, without lawful effect and cannot be the basis of any maritime entitlement. Maritime entitlement means the territorial sea, the EEZ, or extended continental

shelf. That is the most important issue we raised, had we won only this issue, it would have been a major victory already because this will strike down the Nine-Dash Lines.

The second most important issue we raised is that no geologic feature in the Spratlys Island that is capable of human habitation of its own so as to generate the 200 nautical mile-EEZ that overlaps with Palawan EEZ. You know there was a big issue here among the lawyers of the Philippines and the American lawyers. Our American lawyers, the DFA and I advocated that we should raise specifically that Itu Aba is just a rock; it's incapable of human habitation. But we are overruled by the President who was advised by the Solicitor General at that time. So it's quite strange because in the case of Scarborough shoal, in our prayer, in the statement of claim, there is a prayer in the end.

What we want the tribunal to rule on in Scarborough shoal, we said that Scarborough shoal was just a rock. It's not entitled to 200 nautical miles EEZ. But in the case of Itu Aba, the largest island in the Spratlys, we were silent. We did not raise that issue although Itu Aba is just about 220 nautical miles from Palawan. So if Itu Aba generates an EEZ, it will overlap with the EEZ of Palawan. If there is an overlap, the tribunal will have no jurisdiction over that particular issue. But our lawyer was very brilliant Paul Reichler (Foley Hoag LLP Law Firm). He framed the issue like this: Palawan has a full 200 nautical miles EEZ. The implication is that there are no islands that generate an EEZ that will overlap. The ruling of the tribunal, the preliminary ruling on jurisdiction stated that the because we claim that Palawan has 200 nautical mile EEZ, full without any impediment from other states, then the Tribunal said that, "It is implied that there are no other islands in the Spratlys that can generate a 200 nautical miles EEZ." We got help there from the Tribunal because the Tribunal said it is implied already in the issue we raised that Palawan has a full 200 nautical mile. But there was a *deus ex machina* towards the end after we finished with the oral arguments that the case was submitted for resolution. Taiwan intervened by filing an *amicus brief* and Taiwan which is in control, in possession of Itu Aba raised the issue that Itu Aba is capable of human habitation and therefore generates a 200 nautical mile EEZ that will overlap with Palawan.

So what we failed to get from President Aquino, we got from President Ma of Taiwan and the Tribunal had no choice. The tribunal had to rule on the status of Itu Aba whether it is capable of human habitation or not because it was raised by Taiwan which was up to now, in physical control of Itu Aba, so they have to answer that. Remember before Taiwan filed its *amicus brief*. President Ma met with President Xi Jinping in Singapore that was November of 2015. For the first time the heads of

these two warring groups met since the end of the civil war in Mainland China. What they discussed was never disclosed but three months after that, Taiwan filed its *amicus Brief*. So I think President Xi Jinping notched President Ma to file that so we have to thank both of them for filing that intervention which forced the tribunal to rule on the status of Itu Aba. We got from them what we failed to get from President Aquino. So that is the second issue.

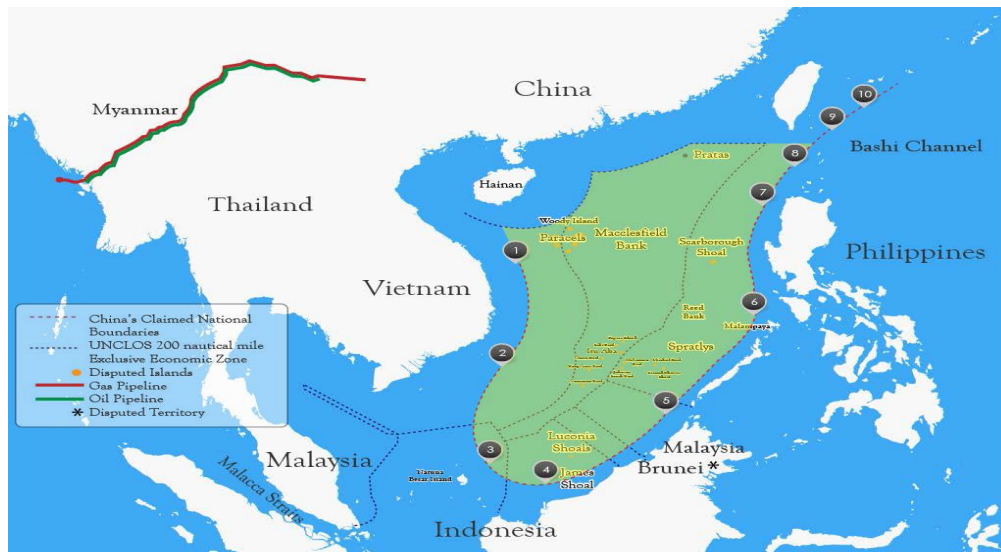
The third issue is the jurisdiction issue. We said that we were raising only maritime issues because UNCLOS regulates only maritime issues. It does not govern on sovereignty issues and UNCLOS tribunal has no jurisdiction over sovereignty issues. It only has jurisdiction over maritime issues. We said, “Determining the status of geologic features whether it is low tide or high tide elevation is a maritime dispute. Determining whether it is entitled to 12 nautical miles or 200 nautical miles is a maritime dispute and not a sovereignty dispute.” China in its position paper took the opposite view that these are all sovereignty dispute and therefore the tribunal has no jurisdiction.

The fourth issue we raised that Scarborough shoal is a rock only and entitled to 12 nautical mile and the Filipino fishermen has fishing rights there since time immemorial. Fifth issue was that China caused severe harm to the marine environment. The last one as major issue is that China committed unlawful acts when it prevented our fishermen from fishing within our own EEZ, prevented our ships from exploring our EEZ for exploring for oil and gas.

III. PERMANENT COURT OF ARBITRATION (TRIBUNAL) RULING

So how did the tribunal ruled? The Nine-Dash Lines have no legal effect and cannot serve as legal basis to claim any maritime zone under UNCLOS. In other words, there was no legal basis for China to claim historic rights to sources within the sea areas falling within the Nine-Dash Lines. The Tribunal struck down the Nine-Dash line. The tribunal said, “China like other coastal states like the Philippines, Malaysia, and Vietnam cannot extend its maritime zones beyond what is prescribed under UNCLOS. China cannot claim more than 350 nautical miles and because all coastal states in the South China Sea can only claim up to 350 nautical miles. Maritime entitlement must be claimed from land. Land dominates the sea, which means that before you can claim a territorial sea, EEZ, you must have land. The Nine-Dash Lines are not measured from land. The tribunal said, “All the historic rights in the EEZ, continental shelf and high seas were extinguished upon the effectivity of UNCLOS.

High Seas and EEZs in the South China Sea



“The Tribunal concludes that China’s claim to historic rights to the living and non-living resources within the Nine-Dash line is incompatible with the Convention to the extent that it exceeds the limits of China’s maritime zones as provided for by the convention.” (¶261, Award 12 July 2016)

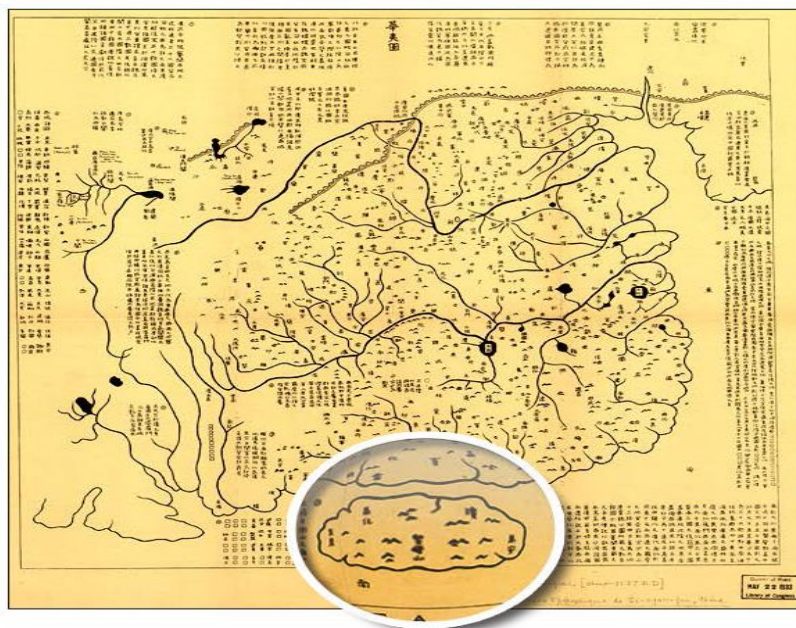
Let me explain this: The UNCLOS negotiations took place from 1972 to 1973 to 1982 and China participated from the very start actively. The big issue then was what would be the breadth of the Exclusive Economic Zone? Some countries want 24 nautical miles, others 50, 100, 200, 300. Basically countries with large fishing fleets wanted to get narrow EEZ because within the EEZ only the coastal state can fish. They wanted a wider, a larger high seas. So those were the conflicting interests and an agreement would have to be reached otherwise there will be no law of the sea. An agreement was reached and everybody gets 200 nautical miles but everyone must waive all other claims to other areas because the purpose of UNCLOS is to provide peace and stability in the oceans and seas our planet. If you don’t waive then the dispute will continue. The agreement is you get 200 nautical miles exclusive zones and you waive all historic claims to other areas. All other states will waive also all their claims to your EEZ so there will be peace and stability which China agreed. We agreed. We ratified 167 states signed and today’s UNCLOS. But China now says, yes we are entitled to 200 nautical miles EEZ from our coastline but we have historic rights to the rest of the South China Sea. China cannot do that anymore. That is why the Tribunal said, “All the historic rights in the EEZ, extended continental shelf

rights are extinguished from the effectivity of UNCLOS because that was really the agreement, the compromise.”

Now that would have been sufficient. The tribunal need not go further, but the tribunal went further. The Tribunal said that, “There is no evidence that China had historically exercised exclusive control all over the waters of the South China Sea or their resources.” We wanted this in because this goes to the very narrative of China. You see, here all historic rights were extinguished so it does not matter whether China had historic rights or not. They were extinguished. But the tribunal went further that China never had historic rights and I’ll explain later why it is important.

Now, if you look at this map, before the Tribunal stricken down the Nine-Dash Line, this was the disputed area, large area claimed by China. The 80 percent of our EEZ are eaten up by this. After the tribunal stricken down the Nine-Dash Lines, suddenly you have high seas now. The 25 percent of the South China Sea are high seas. You have the Exclusive Economic Zones of the Philippines, Malaysia, Brunei, Indonesia, and Vietnam. That was the result when the Nine-Dash Lines was struck down.

1136 AD “Hua Yi Tu”



How did we prove that China never historically control the South China Sea? We presented maps. This is the oldest map of China that we could gather. This is 1136 (Southern) Song Dynasty map. The China and the barbarian countries and it shows Hainan as the southernmost territory of

China. You can still see this map in the Museum of (Forest) Stones Steles in Xi'an, China because this is engraved in stone. There is only one copy, it is a stone map. That is the oldest map and I don't think there is an older map than this because the map will crumble over time. To all the Chinese dynasties, Hainan was always the southernmost territory of China in all their maps and other communications.

1896 The Qing Empire's Complete Map of all provinces



This is the last dynasty, the Qing (Great Qing) dynasty. This is the last official map of the Qing Dynasty that I could find in which Hainan is the southernmost territory of China. Throughout the Chinese dynasties, Song, Yuan, Ming, Qing, Hainan has always been the southernmost part of China. If you will superimpose that in the map of Asia, you will see here Hainan, this is Taiwan, you have here the Paracels (Paracel Islands) included in the territory of China. The Spratlys are not included. Scarborough shoal is not included. The territory of China never reached the Paracels, Spratlys and Scarborough Shoal.

China's Southernmost Territory through the Dynasties- Hainan (1894)



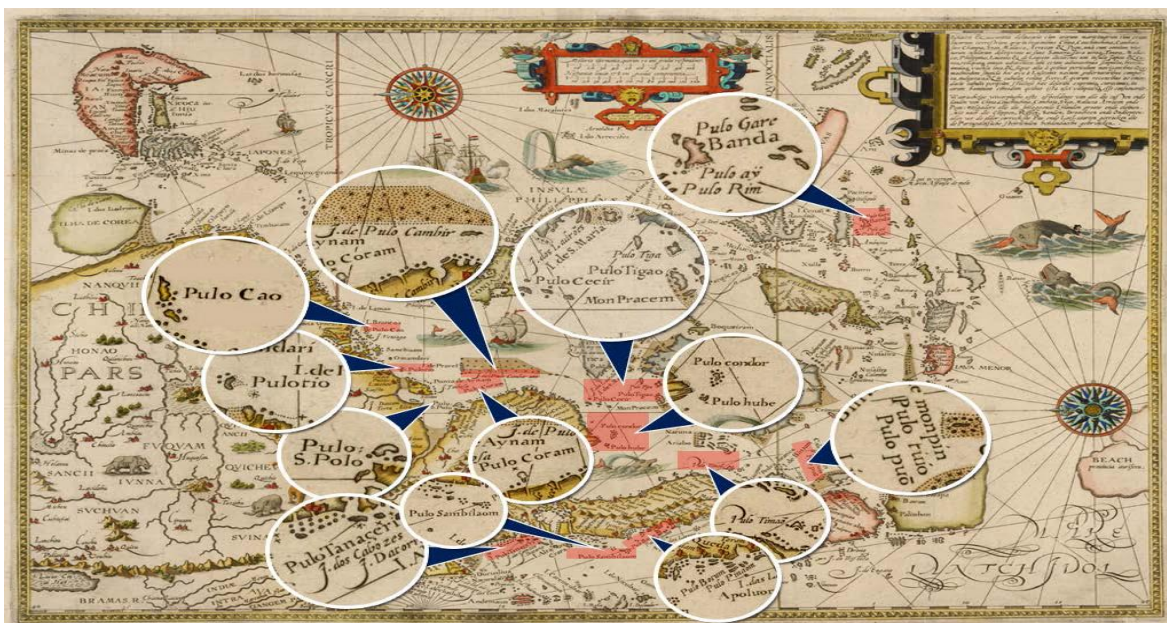
What is our narrative? In 2014, the National Geographic came out with an article that for centuries, the South China Sea was known by navigators in Asia s Champa Sea named to a great empire that control all of Central Vietnam. Where is Champa? Champa is here in Central Vietnam. The Champs were a maritime power. They had the peculiar technology. They had sailboats without trigger just like our balangay. The Champs, their ancestors spoke a Malayo-Polynesian language derived from the Austronesian language, just like the Tagalog. Tagalog is derived from the Malayo-Polynesian language which was derived from the Austronesian language.

1595 Ortelius Map- Champa Kingdom and Champa Sea



The champs were really Austronesian. We are Austronesian. Filipinos are Austronesian. Our ancestors were also masters of the South China Sea long before the South China Sea was called the South China Sea. That's our narrative.

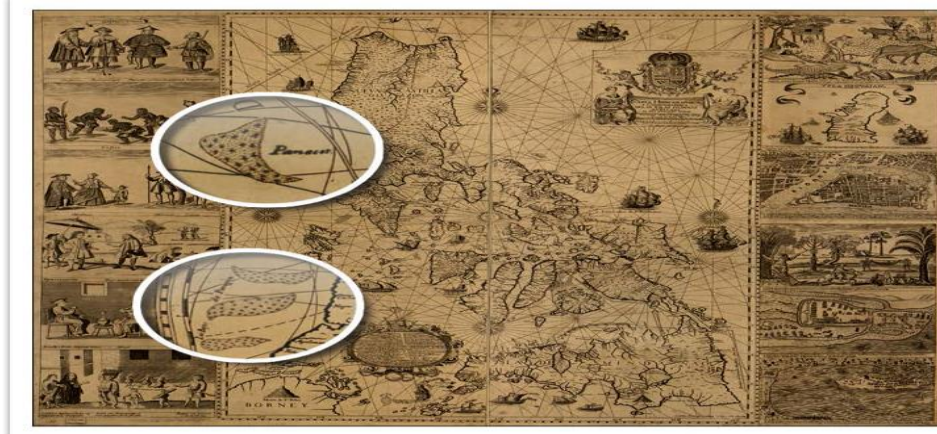
Islands in the Champa Sea had Austronesian Names



This is the map that we are not able to submit to the Tribunal because when I look at it, it did not mean anything. This was made in 1596 by (Jan Huygen Van) Linschoten that was during the Ming Dynasty which ended in 1614. Linschoten was the private secretary of the Archbishop of Goa, in the subcontinent of India. That was a Portuguese territory. Portuguese sailors, after going to South China Sea, they will go back to Goa and Linschoten will question them about the area. They will give him sketches of the area and made this map out of the stories of the Portuguese who sailed in the South China Sea.

One day, I was looking at this map in an enlarged sheet and suddenly, I saw all the islands were called “pulo.” 1596, what is pulo? In Tagalog it means island. So when sailors went there, they ask the inhabitants of the islands what is the name of their islands; Pulo Pundo, Pulo Pueblo, so they were Austronesians. They were our ancestors.

1734 Murillo Velarde Map



Ming Dynasty, which is our narrative. We were masters of the South China Sea long before South China Sea was called South China Sea. In 1734 Padre Pedro Murillo Velarde published this map in Manila, a Jesuit priest and it shows Panacot. Panacot is Scarborough shoal. For the first time, Scarborough shoal was given a Tagalog name in Panacot. Why panacot? Panacot means danger. If you are the captain of the ship and you don't know Panacot is, your ship may hit the rocks and the ship will run aground. That's what happened to a British ship called Scarborough, it run aground. European cartographers called this Scarborough shoal.

This is Los Bajos de Paragua. Paragua is the old name of Palawan. "Bajo" is a Spanish term for shoal. These are the shoals of Palawan. What are the shoals of Palawan? They are the Spratlys. In 1734, we already gave Spratlys a name, the first time Spratlys were given a name—"Los Bajos de Paragua." Panacot was also given a Tagalog name. Before, I thought that was the first time a name was given to Scarborough shoal but I found a map older than this giving it a Spanish name and I'll show that later.

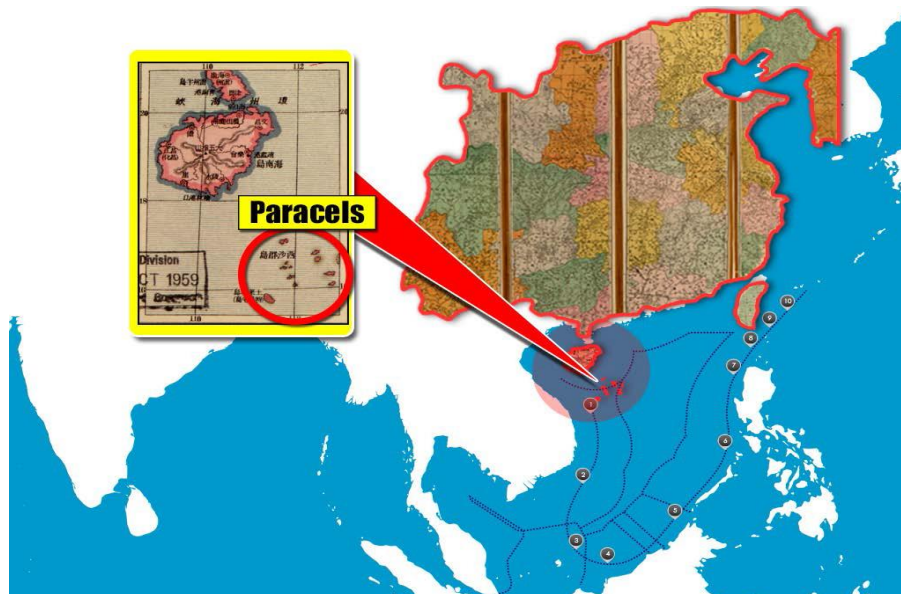
1690 Coronelli Map of South East Asia

1690, this is a map of Father (Vincenzo) Coronelli. He was a Franciscan monk and he never came to the Philippines. He stayed all throughout his life in Europe. But the Franciscans arrived here in 1578 and like all other religious orders, they will send reports to the Vatican—what are the new towns, what are the new islands. He made a map from these reports of the Franciscans and he drew lines around the Philippines, around the Portuguese possession in the East Indies and the Dutch possession. If you will see, within the lines in Palawan, he included the Spratlys as part of the Philippines. We have a map here which shows the Spratlys as part of the Philippines in 1690. The Vietnamese and the Chinese do not have maps like this. China, their first map showing that the Spratlys belong to them came out in the 1930's only. Vietnam, only when the French arrived in the 1800s. We go all the way back to 1690 and even older maps in 1630 and 1619.

When did China started to expand out of Hainan? In 1932 the French occupied the Paracels which were uninhabited at that time and China sent a *note verbale* to the French government in 1932. A *note verbale* is an official communication to the world; France and the world. It is binding on China. In the *note verbale*, China said, describing now the Paracels: two groups—Amphitrite group and Crescent group. These groups lie 145 nautical miles from Hainan Island and form the southernmost part of China's territory. Therefore, that was the southernmost part of Chinese territory; Chinese territory never reached Scarborough shoal and the Spratlys. If you will superimpose that in the map

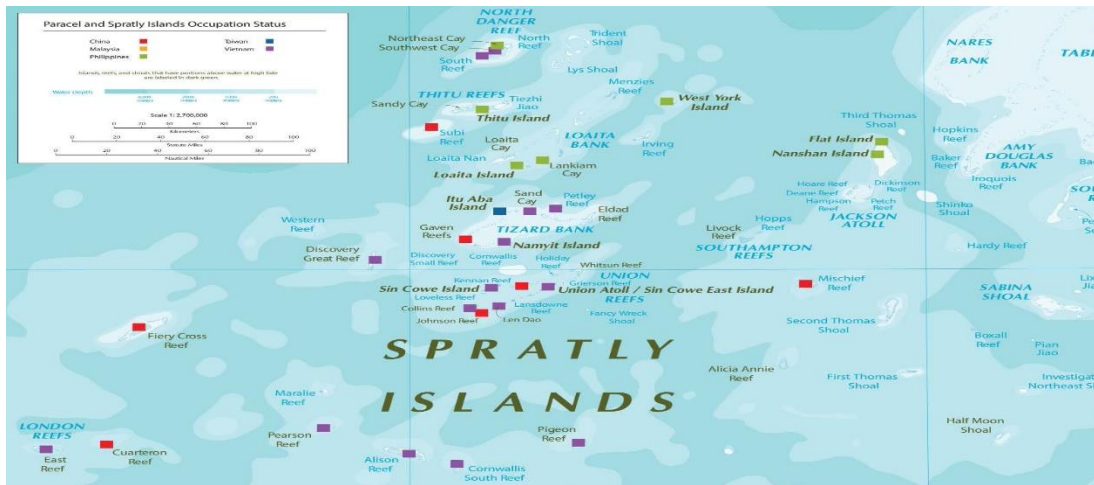
of Asia, China extended its territory to the Paracels but still, it never reaches the Spratlys and the Scarborough shoal. This is already in 1932. Because of that, the Tribunal said, “No historical evidence that China controlled the South China Sea.”

Southernmost Part of Chinese Territory”- The Paracels



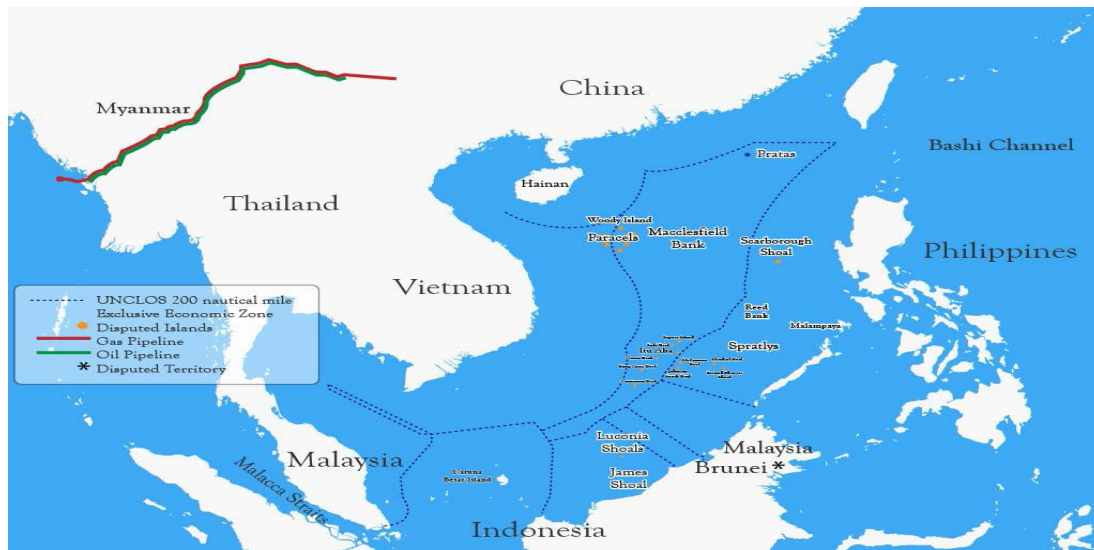
Let us go to the features that we raised. The Red squares are the features, seven of them that China occupies. The ruling of the tribunal, “None of those geologic features in the Spratlys is capable of human habitation or economic life of its own so as to be entitled to a 200 nautical mile Exclusive Economic Zone. Therefore, there is no overlap between an EEZ in the Spratlys and the EEZ of Palawan. There is no island in the Spratlys capable of generating an EEZ. The Spratlys cannot be taken as a whole to determine whether it is capable of human habitation, you have to look at each island.

Status of Geologic Features in the Spratlys



For the first time, an UNCLOS tribunal defined what a habitable island is. The tribunal said, “You must consider the natural condition of the island whether it can support a stable community of people.” Natural condition, Itu Aba is a 43 hectares in area controlled by Taiwan. Taiwan put up a desalination plant in Itu Aba so people can get fresh water from there now. Taiwan also brought soil and put it to Itu Aba and so there is now vegetable garden and trees. The tribunal said, “Desalination plant doesn’t count. Imported soil doesn’t count. You must consider the island in its natural condition and up to 12 nautical miles. If that can support a stable community of people then it is entitled to 200 nautical mile EEZ. The 200 nautical mile EEZ is given to an island because it is necessary for the population of the island. In 1982, the 12 nautical mile territorial sea was not enough to support certain islands so that’s the whole rationale behind the 200 nautical mile so that the resources there is enough to support the population of the island. If the island is not habitable, they are not entitled to 200 nautical miles.

South China Sea Islands



That's it. We won that argument, very important one. In the South China Sea, we have Paratas (Islands) it is about 174 hectares. You have Woody Island that is 213 hectares. I don't think they will qualify because the Tribunal said, "If the historical record of the feature shows that no stable community can ever develop there, the reasonable conclusion is the island in its natural condition cannot support a stable community of people. There are no historical records here in Paratas that it had a human habitation in the past, also, in the Woody Island. So in my opinion, none of them will qualify to the 200 nautical mile. Here is the ruling so that's how it is in the South China Sea.

Seven Geologic Features Occupied by China in the Spratlys



Let's go to the Chinese occupied features, seven of them. You have Cuarteron Reef, Fiery Cross Reef, Gaven Reef, Subi Reef, Mischief Reef, Johnson South Reef, and McKennan Reef. This is our biggest worry because this is between Palawan and the islands that we occupy in the Spratlys. It is now an air and naval base, from out of submerged area. What was the ruling of the Tribunal? Of the seven reefs occupied by China, five are high tide elevations. Five are territory. They are entitled to 12 nautical miles territorial sea only and there is a territorial airspace. Two, Mischief Reef and Subi Reef are low tide elevations. These are what we wanted to get from the Tribunal ruling that Subi and Mischief Reefs are low tide elevations and we got that. They are not entitled to territorial sea. They are part of the submerged continental shelf of the Philippines. They cannot be owned by anyone. As The coastal State, we have the right to exploit the resources there. Also, Reed Bank is a submerge area because it's not even a low tide elevation fully submerged all of the time so it's part of the EEZ of the Philippines. Therefore, the Philippines have the sole right to exploit all the oil and gas there. It is very important because this is where we get our gas. So we lost however in case of Gaven Reef and McKennan Reef. We said they are low tide elevations but the Tribunal said that they are high tide elevations. It's a small thing for us.

Gaven Reef and Mckennan Reef



Here is McKennan Reef with an EEZ, a high tide elevation according to the Court. We lost in this feature. Since it is high tide, it is considered a territory. The territory is still disputed together with the 12 nautical mile of the territorial sea. Gaven Reef, outside our EEZ but within our extended continental shelf is also disputed. It is a territory.

Scarborough Shoal- High Tide Elevation Incapable of human habitation

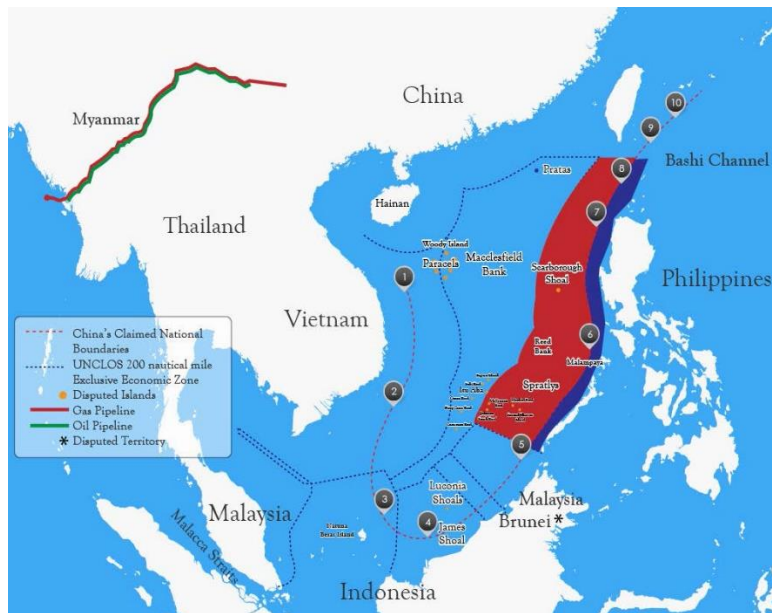


We go to Scarborough shoal. We said that rock is not capable of human habitation. China said it's capable of human habitation and therefore entitled to 200 nautical miles EEZ. Not a single blade of grass grows there. You cannot squeeze a single drop of freshwater. The tribunal ruled it's only entitled to 12 nautical miles and our fishermen have traditional fishing rights.

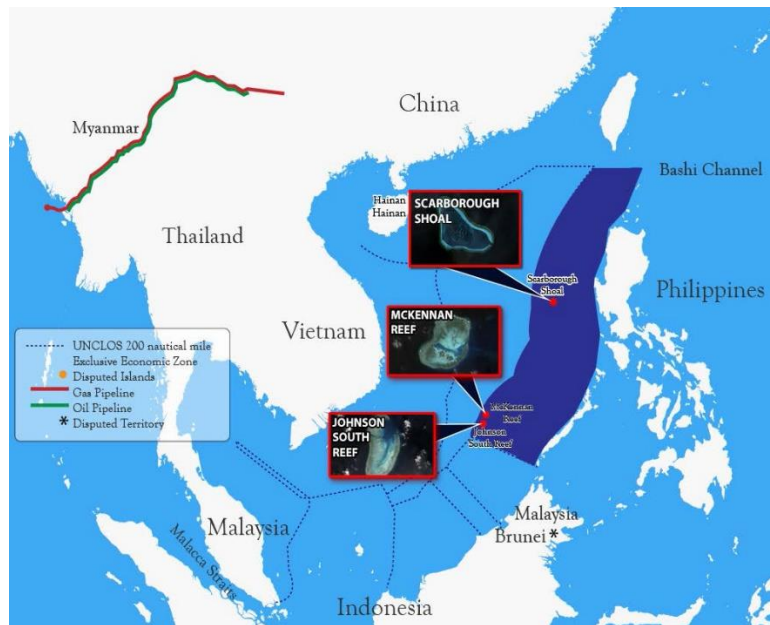
You see, we did not raise the issue of who owns the Scarborough shoal. We said, "Whoever owns Scarborough shoal, we have the right to fish in the territorial sea of Scarborough shoal. Under

UNCLOS, in the EEZ, the State has the exclusive right to fish but in the territorial sea, others can have historic right. Why? UNCLOS did not touch anymore the territorial sea. Customary international law was already well developed in the territorial sea so they could not touch that and under customary international law, other states can have historic rights to fish in the territorial sea of another state. That explains why people are asking how come in the territorial sea other countries can fish and in the EEZ they cannot. That is the reason.

Disputed EEZ before the Ruling of the Tribunal



Disputed Area after the Ruling of the Tribunal

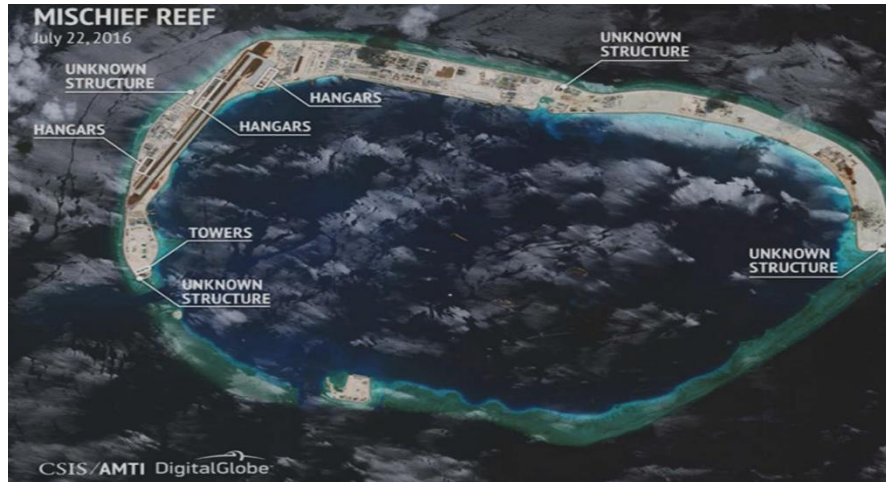


Now, these are the two slides that you have to remember on the arbitration. Before the arbitration, the red area here is the disputed area. China claimed this red area as its territory. We are left with this blue area as our Exclusive Economic Zone. When the tribunal shut down the nine-dash lines, the entire area now is blue, free from Chinese claim except for the three dots—Scarborough Shoal Territory, therefore cannot be ruled by the tribunal, and the 12-nautical mile and here also. These are three disputed territorial areas. We never conceded sovereignty but although, the waters with the blue area, they free from Chinese claim. What is the meaning of that? Our total area where our EEZ in South China Sea is 381,000 square kilometers. If you deduct the territorial sea of Johnson South Reef, McKenna Reef and Scarborough Shoal, you will get a net EEZ of 376,000 square kilometers, free from Chinese claim. That area is larger than the total land area of the Philippines, of approximately 300,000 square kilometers. So our EEZ in the West Philippine Sea is larger than our total land area and all the fish, oil, gas and other minerals in that EEZ exclusively belongs to the Philippines. China is still there as a squatter.

We go to the other issue. The ruling said that “China violated its obligation under UNCLOS that is to protect and preserve the marine environment.” All states that are coastal are required to protect and preserve the marine environment. The Tribunal said that “China violated this when it dredged and build islands and several reefs, when it failed to prevent its fishermen from harvesting endangered species like sea turtles, corals and giant clumps.” The Tribunal ruled that China “caused

permanent and irreparable harm to the coral reefs system.” This is the first time that an UNCLOS tribunal ruled on this environmental provision.

Mischief (Panganiban Reef) July 22, 2016



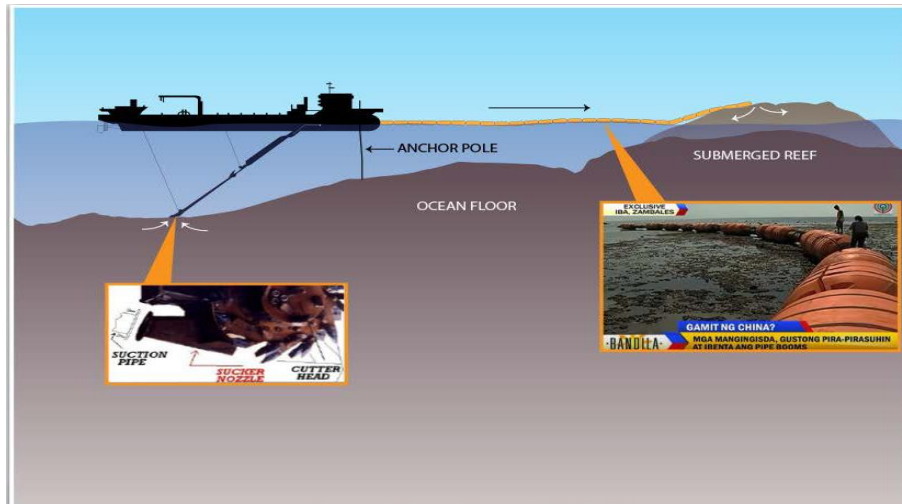
Mischief reef is the biggest worry of our naval commanders. Chinese called this “Pearl Harbor in the South China Sea.” Remember that Mischief Reef is a low tide elevation before, totally submerged. Now, it is 590 hectares. How big is that? San Juan City is 594 hectares. So it is as big as the San Juan City. There is a three kilometer runway. It can take in any military aircraft of China, fighter jet barracks for thousands of Chinese marines, entry and exit for war ships and submarines. Before the reclamation and dredging, it is already 26 meters deep. So this is very deep now ideal for a harbor. That is very close to Palawan. It is 125 nautical miles from Palawan.

Now, how did China dredged that? This is the largest dredger in Asia. This is the rotating steel cutter. This is dropped to the bottom of the sea. They are taking clutter, pulverizes corals here. The pulverized corals are sucked through this nozzle and pushed by pressure through its pipes and dumped on the rim. All the corals here are dead because they are covered by pulverized corals. That is how China dredged seven reefs. But in dredging seven reefs, China needs to dredge 10 other reefs to get fill in materials.

Chinese Reef Killer dredges 4,500 Cubic Meters of Sand per Hour



How China Dredges in the Spratlys



Now, Dr. John McManus, he studied the Spartlys in the 1990s, a world renowned marine biologist. He went back to the Spratlys last February 2016. He surveyed the area. He said, “the damage was much even worse than I even expected it to be. I swam over one whole kilometer of reef before I even see a single invertebrate. It is a really massive destruction.” The South China Sea is home to 34 percent of the coral reefs of the world but it holds only 2.5 percent of the ocean surface water. South China Sea is a small sea compared to other seas. But it is the richest in coral reefs. Coral reefs are

where fish spawn. It is where they lay their eggs. It is very important because the Spratlys are the nurseries of the South China Sea and very important for fish for all coastal states.

The Tribunal ruled that China violated the exclusive rights of the Philippines in its EEZ when it interfered with our fishermen, when it interfered with our petroleum activities in our EEZ, when it failed to prevent Chinese fisherman from fishing in our EEZ and when it build those artificial islands because only the Philippines can built those artificial islands.

Chinese Coast Guard Vessels Harassed a Philippines Survey Ship in Reed Bank in 2011



In 2010, the Philippines awarded a service of contract to Sterling energy now called the Forum Energy deep within our EEZ. China protested and sent a *note verbale* to the Philippines on February 22, 2010 expressing its strong objection and indignation in asserting its sovereignty, sovereign rights and jurisdiction over the Spratlys and its adjacent waters. China demanded to the Philippines to withdraw the contract of service. China sent another *note verbale* on 13 May, 2010 demanding that the Philippines immediately withdraw the decision to award the service of contract.

This one is 595 nautical miles from Hainan, very far. China is entitled only to claim up to 350. This is close to us. It is about 85 nautical miles from Palawan.

In 2011, we publicly bided Areas III and IV, international bidding for exploration. July 4, 2011, China sent a *note verbale* to the Philippines to immediately withdraw the offer in Areas III and IV,

refrain from any action that infringes on China's sovereignty and sovereign rights. China claims sovereignty and sovereign rights over the Reed Bank. In 2011, we sent this survey ship to survey the Reed Bank, sent their by Sterling Energy/Forum Energy and it was harassed by Chinese Coastguard Vessels. They ceased surveying the area and up to now, they have not resumed.

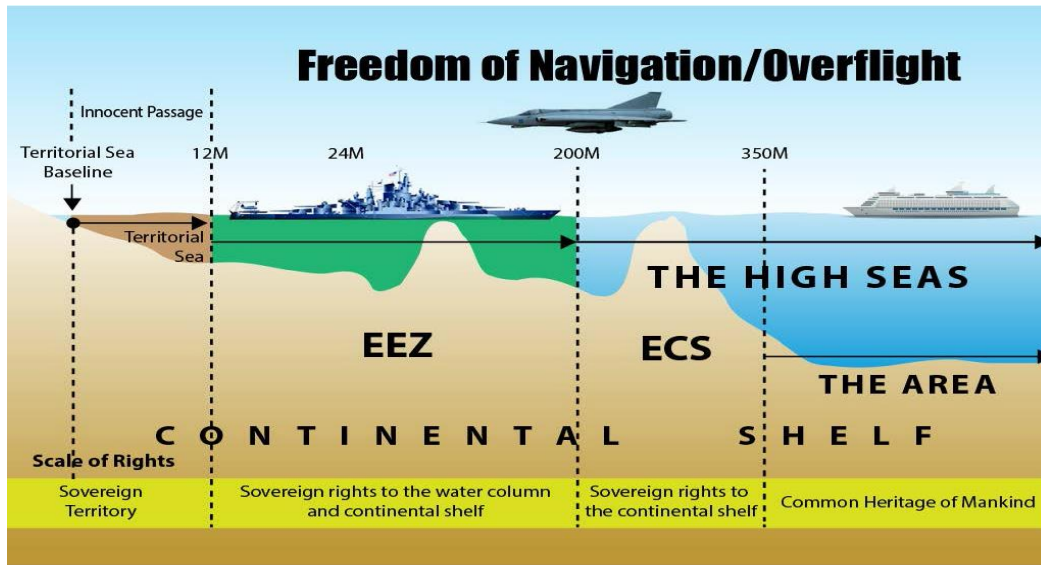
Now, this is Malampaya. Part of Malampaya is cut through by the Nine-Dash Line. Malampaya supplies 40% of the energy requirement of Luzon. It will run out of gas in 10 years. If we don't find a replacement, there will be rotating brown-outs in Luzon. We have to develop Reed Bank and we have a 10 year window. It takes about six years to put up facilities. We really have to start now. The window is closing on us.

We won an overwhelming victory. How do we enforce it? The Tribunal said that "the award is final and without appeal. It shall be complied with by the parties in dispute. The parties shall fulfill their obligations in good faith."

There is no world policeman. When you ratify UNCLOS, you bind yourself to comply with the ruling of the Tribunal. It is your obligation. *Pancta Sunt Servanta*, you must comply with the treaty in good faith. China said, "No, It is a scrap of paper. We will not honor that. We will just ignore that."

So what do we do? There are two aspects in enforcing the ruling. First part refers to the High Seas and EEZs. As I said, when the tribunal struck down the Nine-Dash Line, automatically, you have high seas and EEZs. For naval powers of the world, they will always assert freedom of navigation in the high seas and EEZs of the world wherever these high seas and EEZs are located. The naval powers will enforce that. As to our EEZ, we will have to do that ourselves. We have to enforce the ruling using our creativity.

Maritime Zones under UNCLOS



Let us go with the first. There is freedom of navigation in the high seas and EEZs. There are now high seas and EEZs in the South China Sea. When the ruling came out, the US said, “The US Navy will continue to conduct routine and lawful operations in the world, including that of the South China Sea, to protect the rights and freedoms of the lawful uses of sea and airspace, guaranteed to all. We will sail in the high seas of South China Sea. We will sail in the EEZ. We will fly.” They will enforce the ruling. France said, “We will encourage our EU neighbors to jointly patrol in the South China Sea, with us, the high Seas and EEZs” Why? France is concerned with the South China Sea as it may lead to similar problems in the Arctic Ocean. What’s the meaning of that? If China can claim the South China Sea, Russia might claim the Arctic Ocean. Other powers can claim the seas beyond their 200 nautical miles. Then that will mean the collapse of UNCLOS.

The world naval powers are called world naval powers because their expensive warships and warplanes can sail and fly in the EEZs and high seas of the world wherever these high seas and EEZs are located. But if coastal states can claim the high seas then they will not be called naval powers anymore because their navy, their ships airplanes will be in their coastal waters. They have to ask permission every time they sail in their EEZs. It is their paramount national interest to assert freedom of navigation. That is why; the naval powers of the world will enforce that part of the ruling.

Here, the high seas; they, the naval powers, will sail; Japan, Australia, India, France, UK and the US. They will enforce that.

In our Exclusive Economic Zone, how do we enforce that part of the ruling? That is our own problem—civil enforcement in the EEZ. What if China claims a gas platform in the Reed Bank and starts to extract the gas? What can we do? We do not have the military capability as that of China. We have to resort to “lawfare” again. We can sue that company. Most likely, it will be China National Offshore Oil Corporation in Canada because CNOOC assets in Canada. We will show the Canadian court, the ruling of the Tribunal that “the gas belongs to the Philippines.” CNOOC stole it from us. CNOOC has assets in Canada. Seize those assets to compensate us. We can do that. We can also recover damages from China because the Tribunal already ruled that “it caused severe harm to the environment.” We can file another case before an UNCLOS Tribunal to quantify the damages.

High Seas and EEZs in South China Sea



Also, textbook writers call UNCLOS a “package deal” which means that if you ratify, you have to accept all the provisions of the UNCLOS. You cannot cherry-pick. But China is accepting benefits from UNCLOS in the seabed provision by using those permits to explore the seabed. But China is refusing to comply in the dispute settlement mechanism of UNCLOS. China is not taking UNCLOS as a package deal. We will go to the International Seabed Authority (ISA) and ask them to suspend the license exploration permits of China because China is not taking UNCLOS as a package deal, the same in the Extended Continental Shelf application of China. It has applied in the East China Sea, off Japan. This was filed application before the UN Commission of the Limits of the Continental Shelf, another creation of the UNCLOS. We have the same argument. China is cherry-picking. It is not taking UNCLOS as a package deal.

How about other enforcement? As I said, it is the first time the Tribunal ruled on what a habitable island is. Many islands in the world which are small, which cannot support stable community of people but the States are claiming 200 nautical miles EEZ. There is one less than five hectare island, 250 nautical miles from Venezuela. It is very close to the Dominican Republic within 200 nautical miles. Venezuela claims an EEZ. Dominican Republic can file a case and point this case that five hectare of land with no trees and no water cannot possibly generate an EEZ. There would be many cases on this using this China-Philippines arbitration case. And so, this ruling shall be intended to subsequent opinions of tribunals. This way shall be enforcing the ruling of this Tribunal.

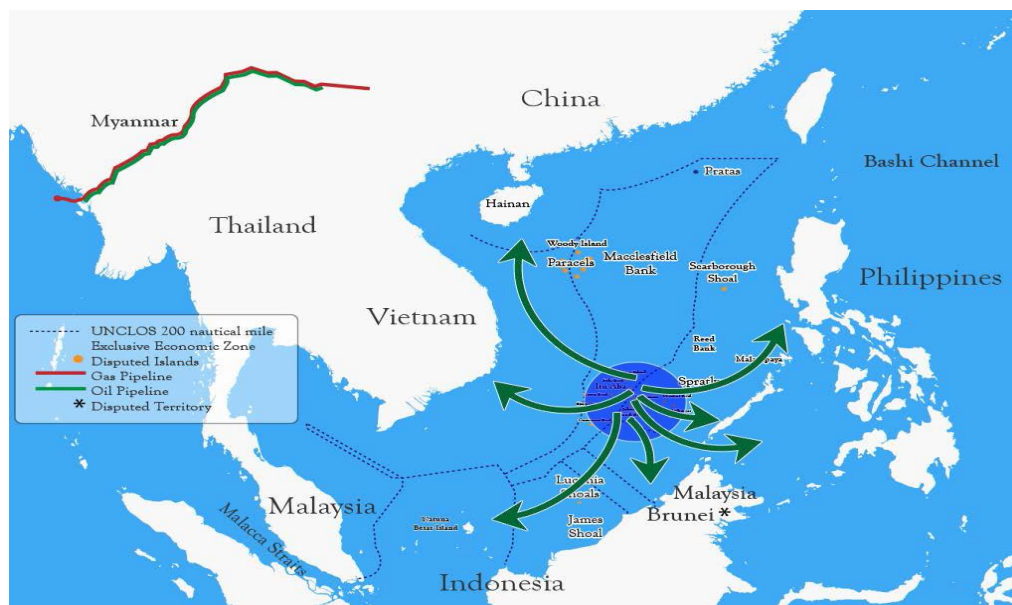
The Tribunal said that there is no island in the Spratlys that generates an EEZ, we can now enter as sea boundary with Malaysia; with Vietnam using this ruling that there is no EEZ that overlaps. So, by state practice, we are now enforcing and entrenching the ruling.

How about military enforcement? We have a defense treaty with the US. And it says, any other attack on a Philippine public vessel is a ground to invoke the treaty. We can patrol the EEZ with our vessels and if these are attack by China, we can invoke the treaty. We can send a survey ship to the Reed Bank, and park a navy ship there. China will not probably attack that because it would invite the Americans. China does not want to give the US an excuse to intervene. China knows this. We have this old dilapidated ship in Ayungin shoal, BRP Sierra Madre. We carry that as a commissioned ship up to now because if a commissioned ship or a public vessel is attacked in the South China Sea, it can trigger the operation of the Mutual Defense Treaty. China knows this as it is not attacking that. It is just only waiting for the ship to collapse. It's now rotting. We can follow Vietnam to put up anti-access and denial area missiles.

We are dealing with sovereign states here. China loss tremendously in this ruling but we have to give China a win-win solution, a face-saving exit but what would that be? This is a proposal by Dr. John McManus in the 1990s. The Spratlys are the source of fish in the South China Sea. We kill the Spratlys, we would not be able to get fish in the South China Sea. He said, "All countries with territorial claims will suspend their claims in 50 to 100 years and declare the Spratlys as a marine protected area as the fish are allowed to lay their eggs. The military structures there will be converted into tourism areas or marine research centers." We do not have to kick out China out of Mischief Reef but they will not use it as a military facility. Use it as a research facility or tourism facility for 100 years.

Is there a precedent to this? Yes. In 1994, Israel and Jordan signed a peace agreement. There was an overlapping area there in the Red Sea. They were claiming that area. They just have decided that the area to be the Red Sea Marine Peace Park in the Gulf of Aqaba. It is working up to now.

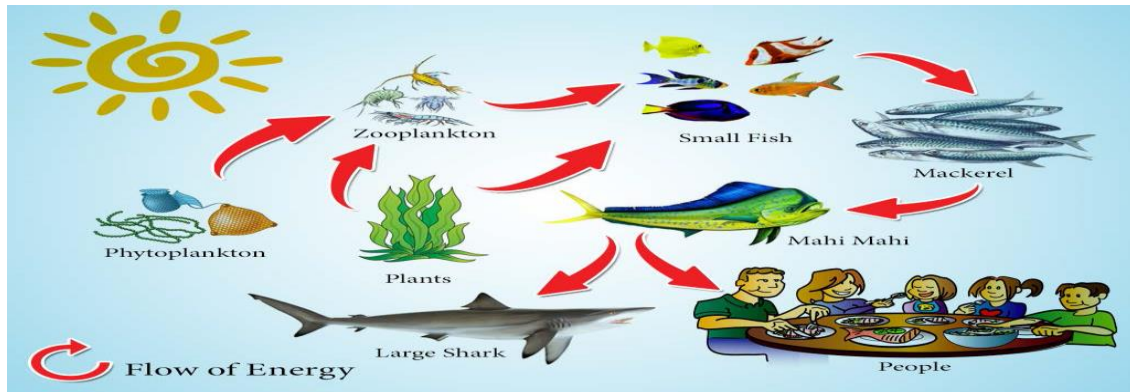
Dispersal of Eggs and Larvae of Fish



Why are the Spratlys important? It is the spawning ground of fish. They lay their eggs there, very expensive reefs. Tubbataha has only two reefs, two atolls. Spratlys has more than a dozen, maybe 18 or 24. Here, the eggs are carried by currents all the way to coasts of China, Vietnam, the Philippines, Palawan, Sulu Sea, Malaysia, Indonesia, and Vietnam. These fish are eaten by people. Whenever marine biologists meet, marine biologists from Taiwan and Mainland China, they all agree that Spratlys be declared as a marine protected area. Our own marine biologist, headed by our National Scientist, Dr. Edgardo D. Gomez, affirms that we should convert and declare Spratly as a marine protected area. The Vietnamese also want it to be declared so. Whenever these marine biologists meet, they have an agreement. Whenever diplomats meet, they disagree.

Dr. John McManus said, “If we don’t establish a marine protected area in the Spratlys, we are headed towards a major fisheries collapse that would lead to mass starvation.” The countries that border the South China Sea have a population of about 2 billion people. Maybe 200 million or 300 million people rely on fish that come from South China Sea. You can just imagine what will happen when Spratlys are no longer the nurseries of the South China Sea.

Fish Food Chain



Let me review the last point, “China’s Three Warfares.” China knows that a nuclear war is self-defeating. They will also be annihilated in a nuclear war with US. Even a small skirmish could escalate in a nuclear war. They do not want war. They do not even want a skirmish. That’s the position of US. That is also our position. We will not start a war where certainly we will lose and lose badly. War is not option in this dispute. China knows this. China formulated a strategy on how to control the South China Sea without firing a single shot, without going to war. China calls this the “Three Warfares.” This was approved by the highest organs of China, approved in 2003 by the Chinese Communist Party, the Central Committee and the Central Military Commission that controls the military.



What are these three warfares? The first warfare is China will repeatedly assert its historical narrative so the world will accept it as true even if the narrative is without historical basis. Nine-Dash Line is their narrative. China will assert a legal basis of historical claims to justify the claim as an

exception to the prevailing legal norms. China has been sending hundreds of scholars abroad to study law of the sea, international relations, and they have been writing articles that China is exempt from UNCLOS because the historic claim of China predated the UNCLOS. They wrote articles. Their theses are about these. That is the legal warfare. The psychological warfare is that China will display its overwhelming military might like those air and naval bases in the Spratlys to intimidate other countries into submission.

In the first warfare, China did not participate in the proceedings at The Hague but China submitted a position paper. “We are not participating but this is our position. China said, “Chinese activities in the South China Sea date back for about 2000 years. China was the first country to discover and exploit the resources in the South China Sea islands and continuously exercise sovereign powers.” This is the historical narrative that we always hear from China.

How do we counter that? The Tribunal said, “The Tribunal sees no evidence that prior to the 1982 UNCLOS Convention, China has established historic rights to the exclusive use of living and non-living resources in the South China Sea.” This warfare is dead in the water. They were able to blunt it. We wanted this statement, this ruling from the Tribunal. We will not be happy if the Tribunal would say, “historic rights have been extinguished.” We wanted the statement, “there are no historic rights at all.” We got that.

The second warfare of China is that their historic rights predated UNCLOS. They have written articles on these. Their scholars have written articles on these. China said that, “we have suffered a hundred years of humiliation at the hands of western powers when they invaded Beijing in 1901.” Remember the 55 days of taking? The Western powers looted Beijing. Therefore, the Western powers should not interfere in the activities of the South China Sea. This has resonated even among the distinguished people like Jose Ramos-Horta. He said, “If China cannot accept the UN framework, the UNCLOS for discussion, let us find another creative formula where everybody along the table could discuss and inform their views. China is a major power with a historical grievance.” This has resonated among some people. We had really needed to debunk that and we got it from the Tribunal. The Tribunal said, “All historic rights in the EEZs were extinguished upon the effectivity of the UNCLOS.” Even if China had historic rights, they have been extinguished by the agreement that was the reason for UNCLOS. It has been dead in the water again, the second warfare.

We go to the third warfare. China to intimidate the Philippines and other claimant states, have these air and naval bases in Fiery Cross Reef, Subi Reef, and Mischief Reef. China today is mass producing warships at a faster rate than any country in history after pre-hispanic. They have an assembly line for these.

Third Warfare: Huge Naval and Air Bases Will Intimidate Other Claimant States

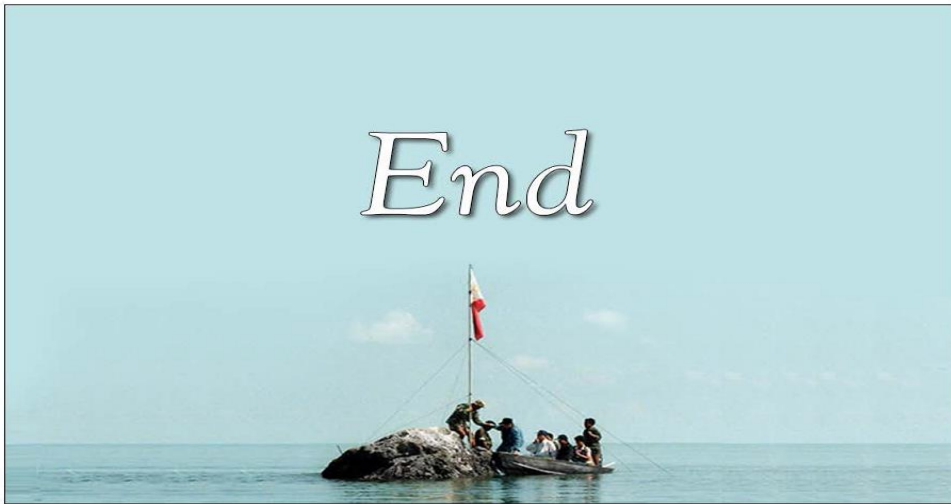


So how do we counter it? The Tribunal struck down the Nine-Dash Line. We have the naval powers of the world that will sail in the high seas and EEZs of China. They will take care of that.

We are back to our problem, the Exclusive Economic Zone of our country, how do we protect our rights there? We have to march on these countries, Vietnam, Malaysia, Indonesia, and Brunei. We have to get together and have a common front. We are on the same boat. We are all prejudiced by the Nine-Dash Line. We have to ask the world to help us convince the people of China that the Nine-Dash Line has no legal and historical basis.

Our problem is that everybody in China—all the generals, admirals, politburo members, bureaucrats, diplomats were taught from grade school to college that they own the South China Sea since 2000 years ago. That's been built in their minds. That is in their DNA. When we sit down with them, there is nothing to discuss.

How do you change that mindset? We have the ruling from an impartial Tribunal under the convention to which China is a member. We will also use the pronouncement of President Ma of Taiwan in 2014. He said, “I belong to the Kuomintang Party, the Kuomintang Party was the main party in the Mainland China in 1947 that invented and adopted the Nine-Dash Line. When we adopted it, we only claimed the islands between the Nine-Dash Line and the territorial sea. We never claimed the entire sea.” We will use that. That was an interpretation of Taiwan which is different now from the interpretation of China. That interpretation of Taiwan is acceptable to us because it follows the international law. It follows UNCLOS. It will take time. It is an intergenerational struggle. The Chinese government will not comply until the Chinese people understand and accept that there is no historical and legal basis for the Nine-Dash Lines. With that, I end my presentation. Thank you.



OPEN FORUM

Question 1: In the ruling of the Tribunal, the moment the states ratify the UNCLOS, it is tantamount to waiver of their historic rights claims. There are parts of the KIG which are outside of the 200 nautical miles of the Exclusive Economic Zone. I am wondering how the effect would be in our claims there. What do they mean of historic rights claims? Do they mean historic rights claim on the territory but they are not supposed to rule on the territory? Is it only about the seas?

Justice Carpio: The historic right of China that was overruled is the historic rights to the waters beyond the territorial sea because if it is high tide, of course, the territorial seas are still territory. It has no jurisdiction to decide who owns that territorial sea. Beyond the territorial sea, the Tribunal has jurisdiction to rule to whom or which state has the right to exploit those waters beyond the territorial sea. The historic right that the Tribunal ruled on was the historic right to areas beyond the territorial sea. The Tribunal said, "China claimed under its historic right that the areas beyond the territorial sea constitute also of their territory." It has been saying in its *note verbale* that they have sovereignty over Reed Bank. The Tribunal said, "these conflicts with China's claims that in the South China Sea, beyond the territorial sea, there is freedom of navigation and overflight." Freedom of navigation applies only to the EEZs and high seas. It does not apply to the territorial sea. Freedom of overflight also applies to the EEZs and high seas. It does not apply to the territorial sea. The Tribunal ruled that China really meant historic rights beyond the territorial sea. It was not claiming sovereignty. It was only claiming certain rights, sole right to fish, sole right to exploit oil, gas and natural resources and to prevent military ships from entering. That was how the Tribunal ruled. The Tribunal has no jurisdiction over land or territorial sea.

Question 2: I am hearing a proposal that China and Philippines will enter a development of marine resources in our Exclusive Economic Zone. What do you think of that Sir?

Justice Carpio: The Constitution says that it shall protect our EEZs, serve its use and for the enjoyment of the Filipino citizens. How do we do that? Actually, under the Constitution, how do we exploit natural resources? One of ways is for the State to directly undertake the exploration. Those service contracts are actual undertaking. The foreigner is just a service contractor. We just pay either cash or kind to the service contractor. It is actually the State doing the exploitation.

Malampaya Gas, is being exploited by Shell. It is 90% foreign owned. So it can even be 100% foreign-owned. There's no problem, because service contractors can be foreign-owned. But it will be under Philippine law and that is the problem. Because China insists that it is Chinese law. That's always been the problem. We can agree on the commercial considerations – how much should go to China, how much should go to the Philippines. But it gets back every time we talk about the law that will govern, under whose sovereignty that area is or sovereign jurisdiction.

Actually, we can propose: “China, okay, we'll give you a block there. Exploit it. 50-50 or you can even get more, but under Philippine law but China refuses.”

Question 3: Good evening! I think it is already mentioned by Judge Aguinaldo in the earlier part of the program, especially in the intervening or subsequent event after the ruling. First, looking back at the milestones of the Philippines, we won the award. Second, we have the iron-clad commitment of the government of the United States to support us in whatever way they can and also the coalition of different nations also having the same claim against China. But I believe that it has already been changed by: one, our President having openly talking about the possibility of bilateral talks with China which, many would think, that it would weaken our claim under the ruling. And second, yesterday, with Trump winning as the 46th president; not only Trump because the Republicans already control the Senate, Congress, and White House. If in case the US withdraws their legal or their moral support to the Philippines, I'm wondering how the Philippines' position would be with the interplay of that two significant events.”

Justice Carpio: “Okay, let me tackle that. You said that President Duterte will enter into bilateral talks and that would weaken our case. Remember in 2012, when China seized Scarborough Shoal, we had an option to continue bilateral discussions; why are you seizing this shoal which belongs to us or going to the Tribunal. We went to the Tribunal because we hit an impasse in the negative events. China said we have a dispute of sovereignty over the South China Sea. We have to destroy that argument by going to a tribunal – get a ruling that we don't have dispute of sovereignty. It was always our intention to go back to bilateral delegations with China after we get the ruling. Because if you are a diplomat, one of the tools in your toolbox when you hit an impasse is to go to arbitration. Use that arbitration to get a ruling in your favor and we start the discussion. So we always had that in mind, to go back to negotiations because that's the only way. You have to talk to the other country that's in dispute with you. That's only how we can solve.

That other part of your question, what is the effect now because there's a new president of the US. Well, I think we should judge the new president based on his actions. Whether that election rhetoric is translated into reality is something we're not yet sure because people say different things. And we have our president slowly walking back on his statements. He said that he will terminate military exercises now. So during the campaign, the president even said that that arbitration is useless but later on he said, I fully subscribe to the arbitration. So Trump comes from the business sector, he has no experience on foreign policy so you will expect those statements from him if he is asked questions and his adviser is not there so he will say whatever is on his mind.

When they sit down, there have this bureaucracy that will guide you, this is exactly what's happening in the present now. During the last cabinet meeting, everybody voted to ratify the climate change agreement. He was the only one against. It was overruled by its Cabinet. But he graciously said, okay we will follow the Cabinet. He also said that we will continue with the military exercises but no more landing exercises because we don't really need landing. Landing exercises is simulating how to retake an island; we don't need that.

So we cannot change a foreign policy overnight or reverse it totally but I do agree that we don't know what will happen because we don't know how President Trump will conduct its foreign policy and the US is very important in the South China Sea. There's only one power in the world that can stop China from grabbing the entire South China Sea with force, and that's the US. No other country even a combination, cannot beat China. We just have to wait."

Question 4 (Father Abaña): Your Honor, I have a question. Two days ago, Ambeth Ocampo is claiming that there is a document, a 16th century document, which speaks about a group of datus coming from Jolo, that went to the mainland China and they were giving tribute to Emperor and in fact they became good friends of the emperor and one of them even died in mainland China and one of the concubines was sent back also. So what can you say about the claim of Ambeth Ocampo will it affect the way people are thinking or is there any document that would prove what Ambeth Ocampo is talking about.

Justice Carpio: Yeah, I've read that. And it's documented that there was a Sultan who went to China, died there and his tomb is still there and part of his family stayed there, so that's part of history but what does it do? Today, when a President goes to another State, he brings a gift to the other President because that's the practice. You bring a gift to the State that's hosting you. You give

it to the head of state; that was the practice before. When Admiral Zeng He, the Yuan admiral of China, when he went to this province in Asia, excluding the Philippines – he never visited the Philippines. He gave a gift to the ruling king of that island, to that land so that you will be accepted as a friendly visitor. In fact, he had a whole ship; they call it the treasure ship of gifts. Even the Chinese, when they visit other countries, they bring a gift. Some may call it tribute. Some may call it the custom. And tribute can be a custom. It happens. If you see our own tribes, our ancestors, they bring gifts also whenever they go to other tribes. So it's a tribute.

There was one incident. When Kublai Khan became emperor of China, he was the first emperor of the Yuan Dynasty, he sent emissaries to all Southern Asia, inviting them, to visit him and bring tributes, gifts, and one sultan, one from Java, got offended. He thought it was rude for the Chinese to tell him to go there and bring gift so he cut the ears of the Chinese emissary, sent him back and that really enraged Kublai Khan; this is true story. And Kublai Khan sent a fleet – they said it was about 200 vessels, ships, soldiers – to punish that Sultan. And that sultan, who defeated the Chinese expeditionary force, died.

Some people will take it as an offense, but that's the custom or there's an international society of Zeng He, and scholars from Singapore, who has a compilation of articles of Zeng He, tackled this. Was it a tribute or not? They said that it's like, you pay somebody so that you can send your goods to that place. So you bring your tribute to the emperor so that you can trade. That's exactly what Zeng He did. He brought a gift to the ruler of that island in the South China Sea so that he can trade. Because after he gave the gift, they traded. We don't consider that as an act of acceptance, as a vassal of China. No, that's not the meaning of that. And it's not true that Admiral Zeng He came to the Philippines. If you look at the articles on the visit of – supposed visit – he never came. The Chinese claim that Zeng He came here and appointed a Governor General, but of course the scholars who have studied Zeng He's voyages, said that he never visited the Philippines.

Question 5: Thank you for your discussion, sir, but I would like to ask, having the fact that China already has their strategies, specifically the three warfare, which are related to legal and psychological techniques, are these complete counterparts from it aside from hoping that other countries will help us convince the people of China

Justice Carpio: Well on the third warfare, on how to protect our EEZ, we have to be creative about it. As I said, they bring in glass platform to the Reed Bank, we have to go to lawfare, refresh the

ruling by entering into sea boundary agreements with Malaysia, we have to do these all, all of these, and we have to educate also the Chinese people that there is no basis. In fact, if we talk to Chinese scholars, there is really no strategy but they are afraid of their government but this will sit down, it will take time.

Question 6: Sir, good afternoon! I hope you will indulge with me because this is of different subject matter but of transcendental importance. Sir, what do you think and feel of the decision of the majority on the Marcos burial?

Justice Carpio: The opinions of the majority and the other separate opinions in the dissenting opinions by this time, have been uploaded in the website so you can read them. And you know, I've been talking about the West Philippine Sea dispute because the court has no jurisdiction. The jurisdiction is with the Hague Tribunal so there's no conflict of interest and I can't talk about it. But with this case, this burial case, I always follow this rule: that justices should say everything they want to say in their opinion. And that's it. So you just have to read my opinion.

Question 7: Good evening, Justice. Thank you very much for that very informative lecture that you've given us. We're very much grateful to have you here in UST Law. Actually, Justice, my question would be: what could be the most effective thing we can do as law students or soon-to-be members of the legal profession to contribute in stepping into full force the arbitral award?

Justice Carpio: That's a good question. I think this is right on your alley. We have to generate interest among NGOs, students, that the Spratlys should be declared as marine-protected area. And you can write to your Congressmen. There's actually a pending bill now, filed by one of the congressmen. We can do it unilaterally if the other countries don't want to declare Spratlys as an MPA now. Because we can declare our area or part of the areas of marine-protected areas to start with. So that would be lobbying from the population of the people. If you have friends in Vietnam, Malaysia or Indonesia, write to them, ask them to lobby with their government that they do the same thing. So we create, all the ASEAN states that are parties of the dispute, if they declare their areas, as marine-protected areas, China will be isolated. It will be forced. Because the reason is very clear. Even their marine biologists think it's necessary to declare their areas as marine-protected areas. So the moment all the countries declare their areas as marine-protected areas, then the territorial dispute is shut. And if there is no territorial dispute, then we have clarity already on the maritime dispute, there is a tribunal ruling. In the territorial dispute because there is no jurisdiction over it, unless everybody agrees to

submit it to the jurisdiction of the court, the territorial issue – no jurisdiction by any tribunal in the South China Sea.

If we convince all the other claimant states, then we can solve the problem on the territorial dispute. So I think that's the most important and I think that's what the youth can do, what the students can do and what the private sectors can do.

Question 8 (Justice Fernandez): Good afternoon, sir. Thank you. Sir, are there any sanctions that can be imposed on China under International Law for its continuous violation of the final arbiter as well as its violation on its obligations against the environment?

Justice Carpio: Yes, we did not ask for damages when we filed our claim. But we can. Since there is already a ruling that China caused severe harm to the environment, we can file another case before the Tribunal to quantify that damage.

Question 9 (Justice Javier): Good afternoon again. Considering what has been said by our president on this matter and what has been said also by China on the matter and the fact that our fishermen are now back into fishing at the Scarborough, can we say that somehow that China has softened already?

Justice Carpio: Okay, that's a good question. There is no written agreement but there is an understanding that our fishermen can fish not within the lagoon but outside the lagoon. And the agreement is: nobody would fish within the lagoon because the lagoon will become the nursery. As long as we do not agree to any statement that we were allowed or permitted to fish, then that's okay with me because we can interpret that as compliance but part of the compliance of China on the ruling. Because the ruling says we can fish there. And we are now going to fish, China doesn't stop us. China wants to fish, we will not stop them. So Scarborough Shoal is a common fishing ground as declared by the Tribunal. In that situation I think that we can interpret that to mean that it's partial compliance. As I understand it, China wanted us to sign an agreement saying that we were allowed by China. But our foreign affairs official correctly said that we couldn't sign that because that's admitting that China is sovereign. So that's the situation now. Now, the US, the sources from the military, confirmed that last April, China was about to reclaim Scarborough Shoal to get another naval base; that President Obama told President Xi Jin Ping that he will take actions if they do that. President Xi Jin Ping backed off because I think there was a meeting of the granting and they don't want that issue

to bar the meeting. We know that China was about to reclaim Scarborough Shoal and we know that it's their plan. So they stopped for a while and my assessment is that they will also not do it during the US Elections because it will become an issue. But now that the elections are over, my assessment is that they're not backing down. And will Obama do it again now that Xi Jin Ping is gone. That's the big question.

Question 10 (Justice Javier): Sir, I have a follow up. The president in one of his interviews, expressed his gratitude for the contribution that you made in the final arbitral award. And he said that you are in good terms with him and anytime you could talk about this for the good of the country. My question is, have the two of you really talked about this?

Justice Carpio: You know, before the he assumed office, I offered to brief him. What I got was, I will brief the Cabinet. So I briefed the Cabinet and I said I'm ready to brief him anytime. When he was about to leave for China, I got worried when the Ambassador said that we have found a common ground in the Scarborough Shoal. I know that China always insists that we concede sovereignty to China before we can have joint development, before we can have joint fishing. So, I was afraid that we will agree to fish there and save China's sovereignty; because that is the condition of China. Ever since, since 1996 China said, let's go to joint development. If you concede to us, we will give you 50% in your own EEZ. That has been their condition ever since. No takers from other claimant states: Vietnam, Malaysia, none. So when I heard that we have found common grounds, I tried to reach the president but I cannot get him so I just said publicly that any agreement that concedes sovereignty will be a violation of the Constitution. But of course he said that he agreed with me. So that's the result. And he said that he will not deviate from the four corners of the ruling, I will not give up any sovereignty, sovereign rights of the Philippines on the West Philippine Sea; and I'm happy with that. That's my bottom line. Everything else is a matter of style. Whether he says that he wants to pivot; and that's okay with me. As long as we don't deviate from the ruling and we don't give up, expressly or impliedly our sovereignty to the islands, everything is the prerogative of the president.

Justice Javier: Sir, I noticed that every time you speak about it and the President does something that is contrary to it, he takes one step backward. Thank you sir, the Filipino people are so grateful to you.