

ARBITRATION UNDER ANNEX VII OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA



REPUBLIC OF THE PHILIPPINES

v.

PEOPLE'S REPUBLIC OF CHINA

MEMORIAL OF THE PHILIPPINES

VOLUME IV
ANNEXES

30 MARCH 2014

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CONVENTION ON THE LAW OF THE SEA

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MEMORIAL OF THE PHILIPPINES

VOLUME IV

ANNEXES

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VOLUME IV

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Annex 61

Memorandum from the Embassy of the Philippines in Beijing to Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-0691-2009 (8 Sept. 2009)

1/2

VERY URGENT

To : SFA
Rt : OUP
Cc : ASEAN, ASPAC
Fr : Beijing PE
Re : Meeting with Counsellor Ma Ming Qiang
Dt : 8 September 2009
Cn : ZPE - 0 6 9 1 - 2 0 0 9

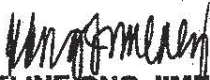
1. FYI, the Embassy was invited to a meeting this afternoon with Counsellor Ma Ming Qiang of the Asian Department, MFA, to convey China's concern over moves of "some ASEAN countries to put the South China Sea issue in the ASEAN summit and the ASEAN-China Leaders' Meeting" in October.
2. Following are the main points made by Counsellor Ma:
 - a. The situation in the SCS is fairly stable and peaceful, as a result of the joint efforts by China and ASEAN, including the Philippines. China believes the SCS issue should be resolved through peaceful dialogue and meaningful negotiation **"among countries directly involved."**
 - b. However, "some countries" are making unilateral actions, which may cause "future disturbance". These countries are attempting to "magnify the issue" and make it more internationalized and "ASEANized." These moves will lead to "distability" (sic) in the region.
 - c. China hopes that ASEAN will make an unbiased judgment of the situation and also hopes that the Philippines will have a better understanding.
 - d. The basic position of China is that the SCS is an issue of concern between China and some ASEAN countries, and NOT between China and ASEAN as an entity. This is clearly seen in the Declaration on the Conduct of **Parties** in the SCS (emphasis by Counsellor Ma). It is not a declaration between ASEAN and China.
 - e. ASEAN and China have different views on the Guidelines to implement the DOC, but these differences cannot be addressed by "opening them up in the wrong channel." It is not constructive to bring the issue from the working level to the leaders. **China is firmly opposed to putting the SCS issue in the agenda of the ASEAN summit and in the China-ASEAN leaders meeting.**
 - f. ASEAN and China should focus on economic cooperation, particularly consolidating economic recovery and "joining hands" to find solutions to the adverse effects of the financial crisis. ASEAN and China relations should not go "astray" and in the "wrong direction."

2/2

- g. ASEAN and China have numerous cooperative projects. Even though the ASEAN-China Summit did not push through last April, Premier Wen Jiabao instructed FM Yang to announce new Chinese initiatives, namely: the US\$10 billion ASEAN-China investment cooperation fund, the US\$15 billion credit loan, and the 300,000 tons of rice for the emergency rice reserve. Through these initiatives, China is showing its sincerity to ASEAN to narrow the development gap among ASEAN. China has also consistently supported ASEAN's role in the driver's seat in regional integration.
- h. China hopes that this will be similarly greeted with sincerity by ASEAN because China takes this matter "seriously." Thus, the Director-General of the Asian Department last week "summoned" Thailand as ASEAN chair and Vietnam as country coordinator for ASEAN-China relations in order to clarify the issue because it "really matters" to China.

Comments

3. The DOC has always been hailed as an achievement in that it managed to draw China into cooperation with ASEAN in the SCS. With China's comments on 2d, it is increasingly clear that China does not see the multilateral character of the DOC in the same way that the Philippines does. Hence, China's interpretation of the DOC will undermine efforts of ASEAN to use the DOC as the basis of ASEAN-China cooperation in the SCS, and the goal of establishing a regional code of conduct in the SCS will be harder to achieve.
4. To this Embassy's knowledge, this is the first time that ASEAN Embassies were invited or summoned to the MFA individually to discuss matters related to the ASEAN-China summit. In the past, the MFA calls ASEAN Embassies as a group to brief them and discuss China's initiatives in the ASEAN-China summits.
5. These one-on-one meetings are strong Chinese moves to deal with individual ASEAN countries on the SCS issue. It should not come as a surprise that this format will be increasingly used in the future, especially if engagement in this manner will produce results for the Chinese side.
6. This new development bears watching. This Embassy will seek more information from other ASEAN Embassies who met with the Chinese MFA and report in due course.



EVANGELINE ONG JIMENEZ-DUCROCQ
Chargé d'Affaires, a.i.

Annex 62

Memorandum from the Embassy of the Philippines in Beijing to Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-137-2009-S (14 Oct. 2009)

CONFIDENTIALORIGINAL TO
ASPAC

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ACTION OFFICE

VERY URGENT AND CONFIDENTIAL COP

To : SFA (Secretary Romulo)
 Fr : Beijing PE
 Rt : OUP
 Cc : ASPAC, ASEAN
 Re : Proposed RP Strategy on the SCS, DOC
 Dt : 14 October 2009
 Cn : ZPE-137 -2009-S

CC	ASEAN
	OUP	Received by
	OCO
	CMOA	Date & Time

Background

1. In our ZPE-691-2009 dated 8 September 2009 (copy attached), this Embassy reported a noticeable change in China's South China Sea policy, viz:

- The SCS is an issue of concern only between China and some ASEAN countries, and not between China and ASEAN as an entity.
- China believes the SCS issue should be resolved through peaceful dialogue and meaningful negotiation but only "among countries directly involved."
- The Declaration on the Conduct of Parties in the South China Sea (DOC) is not a declaration between ASEAN and China but only among Parties with claims in the SCS.

2. This change in China's policy apparently caused the deletion of the item on the SCS from the agenda of the 15th ASEAN-China SOM Consultations in Nanjing, China on 24-26 June 2009.

3. This position was confirmed by Director General Ning Fukui of the MFA Boundary and Ocean Affairs Department during his visits to the capitals of ASEAN claimant countries in September 2009.

Issues

4. China's new position on the SCS clearly indicates that it no longer considers the disputed area an ASEAN-China issue despite the fact that the SCS has always figured prominently in various ASEAN fora in the past few years. Hence, China's new interpretation of the DOC as a declaration among claimant countries only could not only undermine efforts of ASEAN to use the DOC as the basis of ASEAN-China cooperation in the SCS; it could also make the DOC's goal of establishing a regional code of conduct in the SCS, pending the resolution of territorial disputes, harder to achieve.

Recommendations

5. If the Philippines wishes to retain the DOC in the agenda of ASEAN-China dialogues, the Department needs to formulate a comprehensive strategy or plan of action to develop and strengthen a united ASEAN stand in the face of China's efforts to pursue its agenda in the SCS by unilaterally announcing a policy affecting ASEAN countries and expecting ASEAN to accept it without discussion. If we wish the DOC to retain its importance as an instrument for ASEAN-China cooperation not to be eroded, or force, not to fall off the table, DFA officials need to present our proposed strategy to the (i) the other claimant countries; (ii) the ASEAN SOM leaders; and when an ASEAN position is crafted, (iii) to the ASEAN-China SOM; and eventually to the ASEAN-China leaders.

6. The Embassy respectfully recommends the following step-by-step approach:

SOM Level

- 6.1. Usec. Manalo to hold consultations with SOM leaders of ASEAN claimant countries prior to ASEAN SOM and the ASEAN Summit to exchange views on possible ASEAN response to China's new position on the SCS and DOC.
- 6.2. Usec. Manalo to consult his Vietnamese counterpart in his capacity as ASEAN's coordinator for ASEAN-China dialogue on the inclusion of the DOC in the agenda of ASEAN-China during Vietnam's hosting in 2009.
- 6.3. Usec. Manalo to emphasize to ASEAN SOM leaders the need to consolidate a united ASEAN stand on the importance of the SCS and the DOC as an ASEAN issue.

Ministerial and Summit Levels


7. We also respectfully recommend that we continue to raise the SCS issue up to the highest level in ASEAN. In their interventions at the ASEAN-China and ASEAN PlusThree Summits in Phuket, the President and the Secretary may wish to stress the following points:

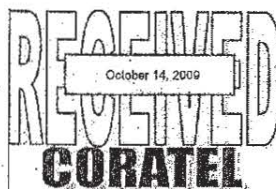
- 7.1. RP is committed to peaceful dialogue and consultations for the settlement of disputes in the SCS.
- 7.2. The DOC has always been hailed as an achievement in ASEAN-China cooperation in the SCS. The DOC is the product of

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negotiations between ASEAN and China and a pillar of ASEAN-China cooperation on political and security matters.

- 7.3. The SCS is a key political and security issue in ASEAN-China cooperation. It is not only a bilateral issue between ASEAN claimant countries and China because the issues involved affect the whole region.
- 7.4. The willingness of both sides to set aside conflicts and approach the SCS issue through peaceful dialogue was a turning point in ASEAN-China dialogue relations. Discussions on the DOC were critically instrumental in achieving the level of mutual trust that enabled progress in the political and economic discussions of ASEAN-China partnership. It is in the interest of this partnership that dialogue on the SCS is sustained.
- 7.5. ASEAN and China should continue to discuss the parameters of a regional conduct in the SCS. While negotiations are ongoing for a regional code of conduct, ASEAN and China can begin with the six proposed areas of cooperation in the DOC, which include marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operation, and combating transnational crime.
- 7.6. It is important to maintain sustained dialogue at all levels between ASEAN and China on the SCS. Continuous interaction is equally important to discuss new initiatives and to push forward already existing cooperative endeavors in the SCS.
8. Should the recommendations merit the Secretary's approval, this Embassy also requests authority from the Secretary to deliver the same points (above) to the Chinese Foreign Ministry as our response vis-à-vis China's new policy on the SCS..


SONIA CATAUMBER BRADY
Ambassador



Annex 63

Memorandum from Rafael E. Seguis, Undersecretary for Special and Ocean Concerns, Department of Foreign Affairs, Republic of the Philippines, to the Secretary of Foreign Affairs of the Republic of the Philippines (30 July 2010)

OFFICE OF THE UNDERSECRETARY FOR SPECIAL AND OCEAN CONCERNS

CONFIDENTIAL

MEMORANDUM FOR THE SECRETARY

CC : **UNDERSECRETARY, OUP**
ASSISTANT SECRETARY, ASPAC

FROM : **RAFAEL E. SEGUIS**
Undersecretary *RAE for HSB*

SUBJECT : **Report on the Call of Chinese DCM Bai Tian to CMOAS Secretary General, 30 July 2010**

DATE : **30 July 2010**

The Chinese Embassy's Deputy Chief of Mission, Mr. Bai Tian, called on CMOAS Secretary General Henry Bensurto on 30 July 2010, to make representations on the following:

- **Nido Petroleum Ltd. and Service Contract 54**
 - Chinese authorities have received reports that Australian company Nido Petroleum Ltd. is planning to sell crude oil that it extracted from the Tindalo oil well, which is covered by Service Contract 54a. It plans to start selling the oil this August 2010.
 - Mr. Bai Tian further asserted that Service Contract 54, 14, 58, 63, and other nearby service contracts are located "deep within China's 9-dash line." China considers the Philippines as violating and encroaching on China's sovereignty and sovereign rights in these areas.
 - China is requesting for detailed information on these service contracts.
 - China considers this as a very serious matter and that it reserves the right to unilaterally act on this matter to protect their interests.
 - China will send the Philippines a Note Verbale on this issue.
- **Service Contract 55 (SC 55)**
 - China would also like to seek clarification on SC 55 and would like to know further details of said contract area.

(Note: Based on a map obtained by CMOAS from the Department of Energy, part of the area covered by SC 55 is located within the JMSU area; this is probably why information on SC55 was specifically requested. China, however, did not make any reference to JMSU during the meeting.)

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- **GSEC 101**

- China considers the GSEC 101 issue as an obstacle to RP-China relations. China wants to sincerely resolve the issue in order for the bilateral relations to proceed to other productive endeavors. China is very much willing help out the new Philippine Government through cooperation in areas like infrastructure development, agriculture (rice self-sufficiency technologies), and the likes. But for as long as the GSEC 101 issue remains unresolved, China is unable to move forward with these cooperative undertakings. The GSEC 101 issue could also negatively affect other areas of cooperation.
- China sent its first Note Verbale on the issue in February, but until now the Government of the Philippines has not formally replied to this.
- China understands that the new Government is still in transition, but it hopes that due attention will be given to this issue.

- **Second Thomas Shoal**

- China reiterates its concern over the Philippines' alleged building of new structures in the Second Thomas Shoal. This, for them, is a violation of the DOC-SCS.

- **Chinese Fishermen**

- China is requesting the DFA to assist in the case of 9 Chinese Fishermen detained in Palawan. China alleges that the arrest of the fishermen is illegal as they are arrested in "disputed waters." They are seeking immediate release of the fishermen citing their innocence and their honest belief that they are in Chinese waters.
- China informed that former DOJ Secretary Agra has already issued a resolution on the case, but understandably, DOJ has yet to act on the matter because it has a new DOJ Secretary.
- China is demanding the immediate release of the fishermen.

DCM Bai Tian reiterated China's sincere commitment to work with the Philippine Government to solve the above mentioned matters and also to find a long term solution to the SCS issue.

The Sec Gen Bensurto assured the DCM that these matters will be conveyed to the Secretary and ASPAC. He also expressed the Philippines genuine desire to work with the Chinese Government to strengthen RP-China relations and to continue the process of dialogue with Chinese officials in finding a mutually acceptable and practicable solution to the SCS issue.

For the Secretary's information.

Annex 64

Armed Forces of the Philippines, *Photo Interpretation Report Number 10-37 (West York Island/Likas (RP))*
(30 Aug. 2010)

SECRET

300TH AIR INTELLIGENCE AND SECURITY GROUP, PAF
306TH AIR RECONNAISSANCE SQUADRON
 Colonel Jesus Villamor Air Base, Pasay City

**PHOTO INTERPRETATION
 REPORT NUMBER: 10 - 37**

I. BACKGROUND

- | | |
|------------------------|------------------------------------------------------------------------------------------------------------------|
| 1. AREA: | WEST YORK ISLAND/LIKAS (RP) |
| 2. LOCATION: | 11 07.0 N 115 01.0 E
236 NM Northwest of Puerto Princesa,
Palawan
210 NM Northwest of Ramos, Palawan |
| 3. DATE OF PHOTO: | 30 August 2010 |
| 4. TYPE OF PHOTO: | Oblique |
| 5. ALTITUDE: | 3,000 feet Above Sea Level |
| 6. ENCLOSURES: | Annotated Digital Photograph |
| 7. INTERPRETER'S CODE: | I F P I |

II. SIGNATURES

- | | <u>12 May 2009</u> | <u>30 Aug 2010</u> |
|-----------------------|----------------------------------|--------------------|
| 1. STRUCTURES: | | |
| Buildings | one (1) quonset type
building | no change |
| | one (1) rectangular structure | no change |
| Power Supply | one (1) solar
panel/cell | no change |
| 2. COMMUNICATIONS: | | |
| Antennae | one (1) dipole | no change |
| | one (1) dish antenna | no change |
| | one (1) UHF/VHF | no change |
| 3. MILITARY HARDWARE: | | |
| Vehicle (land/sea) | one (1) boat | no change |

SECRET

SECRET

4. OTHERS:

Land Area - 8 hectares (approx)
Type of Soil - sandy loam
Vegetation - tropical trees

III. REMARKS


1. WEST YORKISLAND/LIKAS, one of the islands occupied by RP is located approximately 44 NM Northeast of Kota/Loaita Island, 43 NM East of Pagasa/Thitu Island both RP occupied islands and 55 NM Northeast of Subi Reef (PROC).


2. Comparative analysis made between 12 May 2009 and the recent photo coverage dated 30 August 2010 yielded negative development occurred in the island. All previously reported signatures still remained unscathed.

3. The island with its vastness and rich resources is advantageous for the Philippine government. Its needs must be addressed and proper attention must be given for its maintenance and reinforcement of its defense posture.

VERIFIED BY:

APPROVED BY:


EWALD M MANAY
Major, PAF
Flt Ldr, Imagery & PLF


RODOLFO V LABACO JR
Lt Col, PAF
Squadron Commander

SECRET

Annex 65

Armed Forces of the Philippines, *Photo Interpretation Report Number 10-43 (Itu Aba Island (ROC))*
(31 Aug. 2010)

SECRET

300TH AIR INTELLIGENCE AND SECURITY GROUP, PAF
306TH AIR RECONNAISSANCE SQUADRON
 Colonel Jesus Villamor Air Base, Pasay City

**PHOTO INTERPRETATION
 REPORT NUMBER: 10 - 43**

I. BACKGROUND

- | | |
|------------------------|-----------------------------------------------------------------------------------------------------------|
| 1. AREA: | ITU ABA ISLAND (ROC) |
| 2. LOCATION: | 10 22.0 N 114 21.9 E
266 NM West of Puerto Princesa, Palawan
210 NM West of Balabac Island, Palawan |
| 3. DATE OF PHOTO: | 31 August 2010 |
| 4. TYPE OF PHOTO: | Oblique |
| 5. ALTITUDE: | 5,000 feet Above Sea Level |
| 6. ENCLOSURES: | Annotated Digital Photograph |
| 7. INTERPRETER'S CODE: | I F P I |

II. SIGNATURES

	<u>15 Apr 2009</u>	<u>31 Aug 2010</u>
1. STRUCTURES:		
Buildings	one (1) three-storey bldg	no change
	eleven(11) two-storey buildings of varied shapes and sizes	no change
	twenty (20) single-storey buildings of varied shapes and sizes	no change
	one (1) pagoda type	no change
Fuel Storage/Depot	POL Dam	no change
Firing Range	one (1)	no change

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Pier	three (3) one (1) operational	no change
Runway	Surface:	cemented
	Dimension: Length Width	1,150 mtrs (approx) 30 mtrs (approx)
	Orientation:	07 - 25

2. COMMUNICATIONS:

Antenna	one (1) control/commo tower	no change
	five (5) dish antenna	eight (8)
	one (1) trough type	no change
	one (1) directional finder	no change
	two (2) cross-slot type radar	no change

3. DEFENSE STRUCTURES:

Observation Post/ Tower	six (6)	no change
Coastal Bunkers/ Gun Emplacements	sixteen (16)	twenty (20)
Ammo Dump/ Air Raid Shelters	one (1)	no change

4. MILITARY HARDWARES:

Vehicle (land/sea)	two (2) dump trucks	non-existing
		five (5) speed boats
		two (2) motorized boats
		one (1) supply ship

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SECRET

Guns three (3) twelve (12)

5. OTHERS:

Land Area	43 hectares (approx)
Type of Soil	sandy loam
Vegetation	vegetated with tropical trees
Camouflage	natural and artificial
Recreational Facilities	basketball/volleyball court

III. REMARKS

1. ITU ABA/LIGAW is the largest island in the Spratly's and the only island occupied by Taiwan, Republic of China. It is geographically located approximately 11.4 NM North of Binago/Namyit Island and 6.5 NM West of Sand Cay both occupied by Socialist Republic of Vietnam (SRV).


2. Comparative analysis made between 15 April 2009 and 31 August 2010 revealed negative development occurred in the area in terms of its general features. Gleaned from this latest photo coverage were five (5) speed boats and two (2) motorized boats. Likewise, one (1) supply ship was also sighted .5 NM South of the island. Further, three (3) dish antenna were added to augment its communication system while there was an increased of nine (9) guns mounted strategically around the island. All other previously reported signatures remained intact.

3. The Taiwanese government is more focused in developing the island as a tourist destination as evidenced by a well-maintained and operational runway to be able to attract tourists.

VERIFIED BY:


EWALD M MANAY
 Major, PAF
 Flt Ldr, Imagery & PLF

APPROVED BY:


RODOLFO V LABACO JR
 Lt Col, PAF
 Squadron Commander

SECRET

Annex 66

Memorandum from Secretary General, Commission on Maritime and Ocean Affairs Secretariat, Department of Foreign Affairs of the Republic of the Philippines to the Secretary of Foreign Affairs of the Republic of the Philippines (7 Dec. 2010)

Kagawaran ng Agnayang Panlabas



Department of Foreign Affairs

#CT-12-08-16

FWS

OFFICE OF THE UNDERSECRETARY FOR SPECIAL AND OCEAN CONCERNS
COMMISSION ON MARITIME AND OCEAN AFFAIRS SECRETARIAT

CONFIDENTIAL

MEMORANDUM FOR THE SECRETARY

CC : THE UNDERSECRETARY, OUP
THE ASSISTANT SECRETARY, ASPAC

THRU : JOSE S. BRILLANTES
Undersecretary, OUSOC

FROM : HENRY S. BENSURTO, JR.
Secretary-General

SUBJECT : Meeting with Chinese DCM, 6 December 2010 on China's
Notes Verbales to the United Nations Asserting its 9-Dash
Line Claim in the South China Sea

DATE : 07 December 2010

Julia 12/15 11:20
→ June 12/15/10

DEC 15 2010

[Signature]

The Chinese Embassy's Deputy Chief of Mission, Mr. Bai Tian, called on the undersigned on 6 December 2010, at the DFA, to express the following:

- The Chinese Embassy received information that some countries would want to **express reservations** regarding China's 9-dash line. These countries purportedly would like to "paint an ugly face of China."
- DCM Bai Tian explained that China's Note Verbale to the United Nations on the 9-dash line are in reaction to the Extended Continental Shelf Submission of Malaysia and Vietnam and is not intended to antagonize claimant countries in the South China Sea.
- DCM Bai Tian further indicated that China has been exercising **self-restraint** in relation to the ECS submissions of both countries. This is to ensure peace and harmony in the South China Sea. China is committed towards joint cooperation in the South China Sea.
- China hopes that the Philippines will take a **constructive** attitude towards this matter and **refrain** from doing anything that would result in the escalation of tension in the South China Sea. The Philippines must be **vigilant** of any country's attempt to damage the relations of the Philippines and China.
- DCM Bai Tian expressed Beijing's hopes that the Philippines "is **not** considering reviving and highlighting the tensions in the South China Sea by reacting to China's Note Verbale."

In **response**, the undersigned expressed the following:

- Although the Chinese Note Verbale on the 9-dash line was a reaction to the Malaysian and Vietnamese ECS submissions, nonetheless, China's assertion of the 9-dash line impinges on territorial and maritime zones of the Philippines.

Thus, The Philippines would be constrained to react officially and in writing to China's 9-dash line claim.

- Any Philippine act in the SCS would be based on its own appreciation of the issue and not because of other countries' influence or pressure.
- If the Philippines does not officially react to the Chinese assertion of the 9-dash line, it could be accused of **acquiescence** to the Chinese claim. As such, it becomes imperative for the Philippines and other countries to also **state** their legal position on the matter lest they be interpreted as acquiescing to the 9-dash line claim.
- Any reaction to the 9-dash line claim should be viewed purely from the standpoint of a country's **legal obligation** to protect its claim and should **not** be interpreted necessarily as an **unfriendly act**.

The undersigned notes that as early as 2009, Chinese Embassy officials have been flagged that the Philippines would react officially to China's Note because of the aforementioned consideration. The fact that it delayed the issuance of a Note Verbale objecting to the 9-dash line is indication of the Philippines' friendly gesture to accommodate China to the extent possible.

- The Philippines is **committed** to maintaining peace and cooperation in the South China Sea.

The meeting concluded in a positive note, with both the DCM and undersigned assuring each other of their respective countries' commitment to furthering friendly relations and ensuring peace and harmony in the SCS.

For the Secretary.

Annex 67

Armed Forces of the Philippines, *Special Report: The Jackson Atoll and Reed Bank Incident in West Philippine Sea* (2011)

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SPECIAL REPORT

The Jackson Atoll and Reed Bank Incident in West Philippine Sea

RAY KERRING

Jackson Atoll lies 12 NM of Lawak Island, with an international name of Nanshan Island, in 10 degrees 30'N, 115 degrees 45'E. It has roughly rectangular shape and the diagonals measure 6.3nm and 5.9nm. The Chinese name, Wufang Jiao, for this atoll means that reefs can be found in five directions. Five drying coral patches outline the lagoon. Proceeding clockwise from the northeast they are called Dickinson Patch, Hampson, Deanne and Hoare Reefs. Their respective areas are 110, 120, 7, 190 and 140 hectares. Patch and Hoare Reefs uncover one meter, Dickinson and Deanne Reef uncover 0.6 meters and Hampson Reef is awash at low water.¹

The lagoon has depths varying from 25 to 46 meters with a few coral heads in Fly Patches between Hoare and Dickinson Reefs, on the northern perimeter. There are four entrances to the lagoon. Two lie on either side of Hoare Reef and the other two lie between Dickinson and Patch Reef and they are separated by Middle Shoal with a least depth of 7 meters. While the bottom of coral and sand provides good holding ground the lagoon provides no shelter from rough weather.²



Figure 1 Jackson Atoll
(Source: www.nansha.org.cn)

In 1995, China erected sovereignty markers on Jackson Atoll together with other two islets, Mischief Reef, and Half Moon Reef. All three lie close to Palawan.³ But the Philippine military destroyed the Chinese markers that had been erected on Jackson Atoll, Half Moon Shoal and Sabina Shoal. Beijing and Manila began talks that ended without agreement except to continue discussions.⁴

However, on 30 September 2003, Philippine Navy reported that China has planted a new marker in this Philippine-claimed atoll.

The marker is a cylindrical buoy, approximately six feet (1.8 meters) in diameter, with its lower

¹Hancock, D. J. "A Geographical Description of the ..." Google Books. Web: 29 Apr. 2011.

<<http://books.google.com/books?id=7Qu9B-tTYC>>

²Hancock, D. J. "A Geographical Description of the ..." Google Books. Web: 29 Apr. 2011.

<<http://books.google.com/books?id=7Qu9B-tTYC>>

³By 1998 the Spratly Islands confrontation was listed as one of eight flash-points around the world which had the potential for conflict as the PRC continued its creeping annexation of the islands, placing sovereignty markers or buoys on First and Second Thomas Shoals, Pennsylvania Shoal, Half Moon Shoal, and Sabina and Jackson Atoll. By late 1998, PRC bases had surrounded Philippine outposts and a British Royal Navy Commander analyzed pictures of the Chinese structures and announced that PRC "appeared to be preparing for war." The relationship between Manila and Beijing had thus deteriorated to the point where war seemed imminent. (Spratly Islands, Word IQ.com)

⁴Drumak, Daniel J. "The Spratly Islands Dispute: Who's ..." Google Books. Web: 29 Apr. 2011.

<<http://books.google.com/books?id=c5P4Uj41Iu8MC>>

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half colored green, the upper half light gray and with a smaller brownish cylinder on top.⁵ But the Philippines did not file a diplomatic protest against China's move at the time of report.

SIGNIFICANT DETAILS

Jackson Atoll incident

On 25 February 2011, the following four (3) Philippine fishing vessels and one (1) fishing carrier were conducting illegal fishing activities employing *hulbot-hulbot* and cyanide fishing methods at the vicinity off Jackson Atoll (Lat 10°31.626 N Long 115°47.281 E):

Table 1 Vessels Harassed by PLAN Vessel in vicinity off Jackson Atoll (Feb 2010)

Name of vessel	Boat Captain	Company	Owner	Company Address
F/V JAIME DLS	Robinson CAWALING	MARLYD DLS Fishing Corporation	Rogelio DELOS SANTOS	105 F Pascual St. Navotas City
F/V MAMA LYDIA	Indalecio LABISTE			
F/V MARICRIS-12	Russel DELA CRUZ	MARICRIS Fishing Corporation	Emil LIM	97 C Honorio Lopez, Balut, Tondo, Manila
F/C IKE JORDAN				

*F/V- Fishing Vessel, F/C-Fishing Carrier

While conducting fishing, the vessels were approached by a Chinese Missile Frigate with bow number 560 and directed them to leave the immediate area. The three (3) fishing vessels F/V JAIME DLS, F/V MAMA LYDIA DLS and F/C IKE JORDAN immediately departed. However, F/V MARICRIS-12 was unable to heave its anchor as it experienced technical problem with its anchor windlass. With this, the Chinese frigate fired three (3) warning shots with a distance of 0.3NM away from the vessel while announcing that it will shoot the latter. The boat captain of F/V MARICRIS ordered his men to cut off their anchor lines to depart immediately.

The next day, the Boat Captain of F/V JAIME DLS reported the said incident through the radio to PN detachment at Lawak Island. Consequently, the Petty Officer In Charge (POIC) of Lawak Detachment relayed the same to the Acting Commanding Officer of Naval Station Emilio Liwanag in Kaiyaan Island.

The Chinese warship 560 is a JIANGHU-V Class Missile Frigate or a Type 053H1G missile frigate, currently deployed with the PLA South Sea Fleet. It was built by the Guangzhou-based Huangpu Shipyard in the early 1990s under an emergency construction program. These vessels are currently undergoing a modernisation refit to replace their weapon systems with newer and more advanced designs. At least two hulls (560, 563) have completed their modernisation refit in 2008.⁶

⁵China Plants New Marker in Disputed Spratlys | Global Business News | Global Business Knowledge On Demand 05 Feb 2010 Web 28 Apr 2011 <http://globalbiznews.com/coms2/cp_0159_2589386/China-plants-new-marker-in.html>

⁶Type 053H1G (Jianghu V Class) Missile Frigate - SeaDefence.com | SeaDefence.com - The Chinese Military in the 21st Century Web 10 Apr 2011 <http://www.seadefence.com/html/vy/surface/type053h1g_jianghu5.asp>

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Figure 2 DONGGUAN-V 560
Source: Google Images- www.google.com.ph

Table 2 Specification of DONGGUAN-V 560

DONGGUAN-V 560	
DISPLACEMENT	Standard 1,425 tons; Full load 1,702 tons
DIMENSIONS	Length 103.22 m, Beam 10.8m, Draft 3.1m
PROPULSION	2 Type 12E390VA diesel engines rated at 14,400hp (m), 4 Type 16PA6V280BTC diesel generators, two shaft
SPEED	Maximum 26 knots; economic 18 knots
RANGE	4,000 miles at 15 kt; 2,700 miles at 18 kt
COMPLEMENT	200 (30 officers)
OPERATIONAL	Based in South Sea Fleet

The Reed Bank Incident

In a previously reported incident, sometime 010549H March 2011, seven (7) Chinese fishing vessels and two (2) Chinese marine surveillance vessels identified as ZHONGGUO 71 and ZHONGGUO 75 shadowed the M/V VERITAS VOYAGER while it was surveying the Reed Bank.

The M/V VERITAS VOYAGER is a Singaporean-flagged seismic survey vessel under contract with the Department of Energy conducting survey at the Reed Bank in KIG located at 136 nautical miles from the shoreline of Palawan, which is within the country's Exclusive Economic Zone.

On 021018H March 2011, the two marine surveillance vessels continued shadowing the M/V VERITAS VOYAGER 24 and conducted aggressive maneuvers such as steering a direct course against the M/V VERITAS VOYAGER and veering off to starboard then stopping abruptly at dead ahead. The M/V VERITAS VOYAGER explained to the Chinese vessels that they were working on a permitted survey area. However, one of the vessels demanded that

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they immediately stop and leave the area claiming that according to the UNCLOS, they are surveying in Chinese waters.⁷



Figure 3 The Zhong Guo Haijian 75 vessel of China Marine Surveillance
(Source: www.SinoDefence.com)

Table 3 Specifications of Zhong Guo Haijian 75

ZHONG GUO HAI JIAN 75					
IMO #	MMSI	Call Sign	Length	Beam	Type
9591791	412473820	BYDX	74.0m	10.0m	Patrol Vessel
<ul style="list-style-type: none"> • Surveillance vessel with the highest designed speed • 77.39 m long and 10.4 m wide with tonnage of 1,290 tons • Has two engines with 2,380 HP each • Navigation speed with parallel engines is not less than 20.6 knots • Has a seating capacity of 43 passengers • Endurance of 5,000 nautical miles and 30 days • Can navigate in unrestricted navigation area • Equipped with the first class security system and vessel network system • Has bow sideways propellers and non retractable fin stabilizers with the features of high speed, high mobility, and quick reaction 					

The surveillance vessel "ZHONG GUO HAI JIAN 75" belongs to the South China Sea branch of China Marine Surveillance since 26 October 2010. It is another important surveillance vessel besides "ZHONG GUO HAI JIAN 71" and "ZHONG GUO HAI JIAN 83"⁸

⁷ MRC incident report on the Harassment of M/V VERITAS VOYAGER by PRC Maritime Agency IVG Reed Bank, NIG did 02 March 2011
⁸ Maritime Safety Administration of the People's Republic of China

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With the two (2) consecutive incidents, hereunder is the chronology of events that transpired from 25 February to 02 March 2011.

Table 4 Chronology of Events

DTG	DETAILS
251545H Feb 2011	F/V JAIME DLS and F/V MAMA LYDIA DLS, F/V MARICRIS-12 and F/C IKE JORDAN, while anchored at vicinity off Jackson Atoll, Kalayaan Island Group (KIG) Latitude 10°31.626 N Longitude 115°47.281 E were approached by a PLA- Navy vessel with bow no. 560. Furthermore, said vessel introduced itself through the radio with a warning, announcing THIS IS CHINESE WARSHIP 560 YOU ARE IN THE CHINA TERRITORY LEAVE THE AREA IMMEDIATELY ". The three (3) fishing vessels F/V JAIME DLS, F/V MAMA LYDIA DLS and F/C IKE JORDAN immediately departed the area upon sensing danger. However, F/V MARICRIS-12 experienced problem with its anchor windlass leaving itself at the fishing ground. The PLA-Navy vessel, seeing that F/V MARICRIS-12 remained within the area, headed towards the fishing vessel repeatedly announcing "I WILL SHOOT YOU" . When unable to react, three (3) warning shots were fired by the PLA-Navy vessel with a distance of 0.3NM away from F/V MARICRIS. Upon sensing danger, the skipper of F/V MARICRIS ordered his men to cut off their anchor lines to depart immediately.
260700H Feb 2011	F/V JAIME DLS and F/V MAMA LYDIA DLS anchored at vicinity of Lawak Island, KIG Latitude 10°42.520 Longitude 115°47.280 while waiting for their fishing carrier, while F/V MARICRIS-12 and F/C IKE JORDAN lied-to at Latitude 10°36.600 Longitude 115°50.250 SE of Lawak Island.
260730H Feb 2011	The Boat Captain of F/V JAIME DLS reported the said incident through the radio to PN personnel aboard Lawak Island.
261100H Feb 2011	F/V MARICRIS-12 decided to return back at vicinity of Jackson Atoll to retrieve her anchor, while underway, the same warship was sighted patrolling at south-east of Lawak Island towards Patag Island. F/V MARICRIS returned to its former position and stayed thereat for two (2) days.
281600H Feb 2011	F/V MARICRIS-12 proceeded again to Jackson Atoll to retrieve her anchor, while retrieving her anchor the skipper noticed the presence of three (3) Chinese fishing vessels with color blue, red and green conducted fishing.
010549H Mar 2011	Seven (7) Chinese fishing vessels and two (2) Chinese marine surveillance vessels identified as as ZHONGGUO 71 and ZHONGGUO 75 shadowed the M/V VERITAS VOYAGER while it was surveying the Reed Bank.
021018H Mar 2011	The two PROC marine surveillance vessels, ZHONGGUO 71 and ZHONGGUO 75, continued shadowing the M/V VERITAS VOYAGER 24 and conducted aggressive maneuvers such as steering a direct course against the M/V VERITAS VOYAGER and veering off to starboard then stopping abruptly at dead ahead. The M/V VERITAS VOYAGER explained to the Chinese vessels that they were working on a permitted survey area. However, one of the vessels demanded that they immediately stop and leave the area claiming that according to the UNCLOS, they are surveying in Chinese waters. The M/V VERITAS VOYAGER crew informed the

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		Chinese that they would stop seismic survey operations and move to their recovery deployment area. This was done to gain a few hours to allow their management, the Compagnie Générale de Géophysique and Veritas (CGGV), and the DOE, to be advised of the situation and form a plan of action.
021430H 2011	March	Two (2) PAF OV-10 from the 570 th Air Wing conducted aerial patrol at the vicinity of Reed Bank and sighted an unidentified PROC vessel transiting <i>towards</i> the vicinity of the Southern Bank.
021445H 2011	Mar	the M/V VERITAS VOYAGER as positioned at vicinity 10 degs 10.66' N 116 degs 26.65' E or 44.88 nautical miles southeast off Lawak Island, KIG. Coast Watch Center West, which is based in Puerto Princesa City, obtained a similar report of the incident. It also reported that PNI 314 aircraft was dispatched to conduct naval air patrol at the vicinity of the Reed Bank.
021610H 2011	March	PNI 314 was on station at 10 degs 10' N 116 degs 26' 09.55"E and reported <u>negative</u> sighting of the two (2) PROC vessels.

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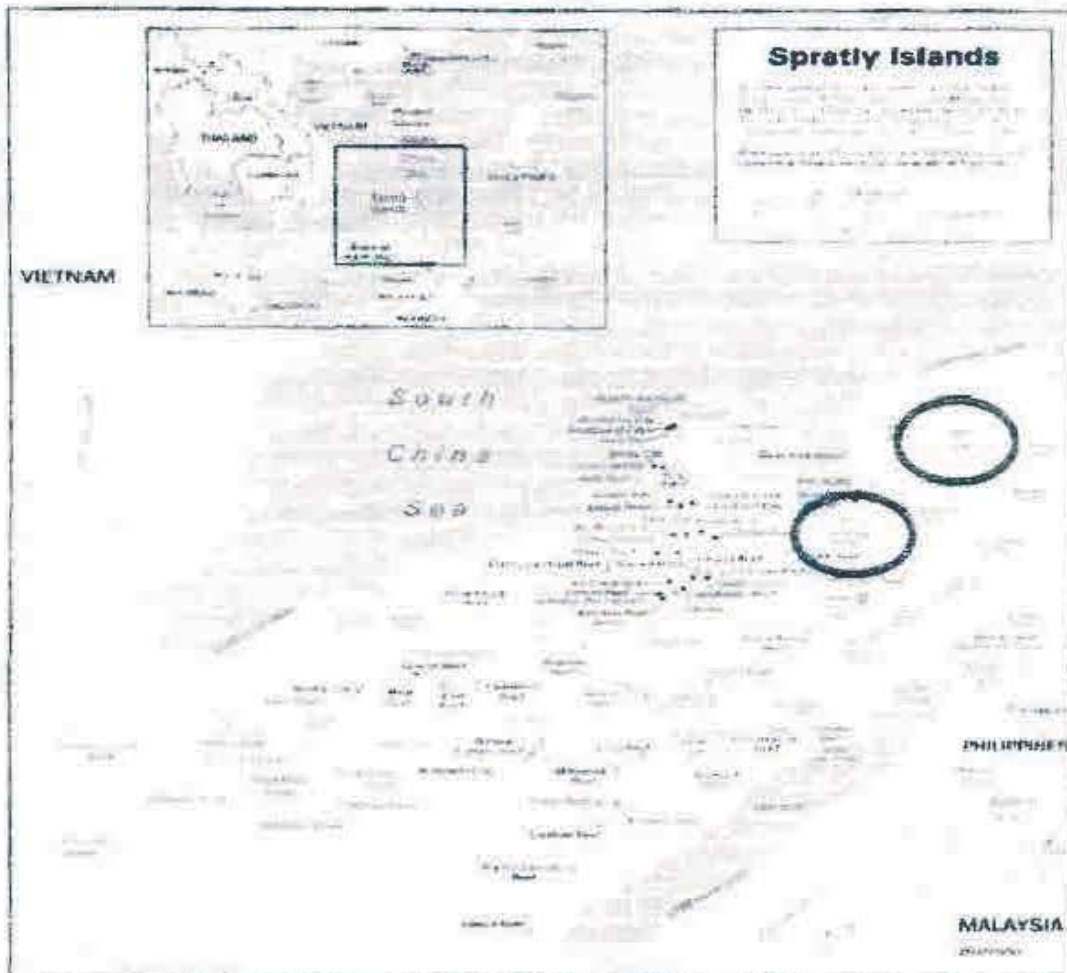


Figure 4 Harassment Incidents At Jackson Atoll and Reed Bank

ASSESSMENT

The Jackson Atoll incident transpired two (2) days before the Reed Bank incident, indicative of the sustained presence of Chinese PLA Naval vessels and maritime civil agencies in the Kalayaan Island Group. China's increased maritime assertiveness in the West Philippine Sea followed after it announced in 2010 that South China Sea (SCS) is one of its "core national interests" as the sea is home to valuable fishing grounds and largely unexploited oil and natural gas field. Evidently, the two incidents transpired in a fishing and oil exploration activities of Philippine vessels. It is then expected that China will continually be aggressive in defending its claim over the disputed Kalayaan Island Group through the deployment of its vessels in the area in order to send a strong message to other claimant countries to stay away from its claimed territory.

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Annex 68

Memorandum from Assistant Secretary, Asian and Pacific Affairs, Department of Foreign Affairs of the Republic of the Philippines, to Secretary of Foreign Affairs of the Republic of the Philippines (7 Feb. 2011)




OFFICE OF ASIAN AND PACIFIC AFFAIRS

CONFIDENTIAL

MEMORANDUM FOR THE SECRETARY

Through : The Undersecretary for Policy

Cc : CMOAS

From : 
CRISTINA G. ORTEGA
Assistant Secretary

Subject : **Meeting with Chinese MFA Department of Boundary and Ocean Affairs**

Date : 07 February 2011

Beijing PE reported that Deputy Director-General Yi Xianling of the Chinese Foreign Ministry's Department of Boundary and Ocean Affairs (DBOA) invited Beijing PE's CDA Almojuela to a meeting on 31 January 2011 to exchange views on the **South China Sea** (Annex A).

DDG Yi's messages are as follows:

1. Since cooperation between China and the Philippines in the South China Sea has always been the best (among all the claimants), both sides should discuss how to settle their disputes and **engage in joint development** in the area;
2. The SCS issue should be handled through **bilateral negotiations**. If disputes are discussed through multilateral channels, this will damage the good bilateral relations between two countries and affect the peace and stability in the region;
3. Reiterated China's position on the **"9-dash line"**; Disputes on the outer limits of the continental shelf **cannot be resolved through multilateral channels**; Parties concerned should exercise restraint so as not to amplify the issue;
4. The Philippines should take prudent action on **GSEC 101**;
5. **JMSU** had fruitful results. While JMSU may have expired, its expiration is just legally a technical problem;
6. China's proposals related to the Declaration on the Conduct of Parties (DOC) are reasonable and hopes that the **Guidelines** on the DOC be concluded;
7. DDG Yi extended **invitation** for **CMOAS Secretary-General** or any other PH official to visit Beijing to exchange views; Expressed willingness for him and other officials of DBOA to visit Manila to consult with the Department and other government officials on the issue.

For the Secretary.

Annex 69

Memorandum from Nathaniel Y. Casem, Colonel, Philippine Navy, to Flag Officer in Command, Philippine Navy (Mar. 2011)



**PUNONGHIMPILAN HUKBONG DAGAT NG PILIPINAS
PANGALAWANG PUNO NG KALUPUNANG DAGATNIN, PAMALAYAN
Naval Station Jose V Andrada
2335 Roxas Boulevard, Maynila**

N2D-0311-001

MEMORANDUM for –

The Flag Officer In Command, PN

SUBJECT: Reed Bank Incident

Reference: Unsigned C,WESCOM letter re above subject dtd 02 March 2011.

1. O/a 021200H March 2011, Forum Energy PLC, a UK- based oil and gas exploration and production company and presently conducting 2- Dimensional (2D) and 3- Dimensional (3D) seismic surveys at the Reed Bank with M/V Veritas Voyager, as survey ship, two (2) chase vessels and one logistics ship suddenly stopped the conduct of survey. The said vessel had already completed its 2D survey and had accomplished 65% of the 3D survey and is expected to finish on 13 March 2011. After the operation was stopped, the said vessels immediately proceeded to the recovery area. (Please refer to enclosure 1 for the position of the vessel). The sudden stoppage in the operation was due to the presence of two (2) Chinese reconnaissance vessels believed to be patrol boats based on the information available as follows:

	ZHONGGUO 71	ZHONGGUO 75
Type of Ship	Patrol Ship	Coast Guard Ship
IMO Number	9355678	9591791
Flag	China	China
MMSI Number	413211000	412473820
Call Sign	BNTF	BYDX
Length	74.0 m	77.0 m
Beam	10.0 m	10.0 m

2. Relative to this incident, the following events were reported by MV Veritas Voyager:

- O/a 01 0549H March 2011, seven (7) Chinese fishing vessels and two (2) Marine surveillance vessels entered the survey area. These vessels came closer to the survey and chase vessels to have a look at the ongoing survey operations then headed away southward. One of the Veritas Voyager crew who knows how to speak Mandarin communicated with the marine surveillance vessels and was informed that they were on a routine surveillance patrol, and asked who they were and what they were doing.

- O/a 01 0509H March 2011, the two (2) marine surveillance vessels followed the Veritas Voyager for an hour staying in the position at approximately

two (2) Nautical Miles off its starboard beam. The two (2) vessels then increased speed and headed off southwest. The mandarin speaking crew onboard MV Veritas Voyager was able to communicate to the surveillance vessel on the details of their towed spread.

- O/a 02 0942H March 2011, the two(2) (Chinese) surveillance vessels approached MV Veritas Voyager again and informed them that they are operating in the territorial waters of China under the UN charter. The Party Manager replied that the Veritas Voyager was operating in the territory of the Philippines with all the required permits. The Marine surveillance vessels then ordered the Veritas Voyager to stop the production and leave the area. After consultation with CGGV senior management, the Party Manager, informed the Chinese Surveillance vessels that they would stop production and proceed to the recovery area.

- O/a 021018H March 2011, MV Veritas Voyager reported that they terminated the operation as of 0936H due to the two Chinese Surveillance vessels that have been tracking them and insisting that they should stop the survey. The Mandarin speaking navigator onboard the Voyager explained what they were working for Forum Energy on a permitted survey area. However, the Chinese surveillance vessels demanded them to stop immediately and leave the area, stating that according to UN treaty, MV Veritas Voyager is operating in waters belonging to the People's Republic of China. Hence the crew of MV Veritas Voyager told them that they would stop the acquisition. In addition, the Chinese vessels have made aggressive actions against the MV Veritas Voyager by steering at a direct course (Head on) and turning away at the last minute.

- The last known position of MV Veritas Voyager and its two (2) chase and logistics vessels is at Lat 10 Deg 24 Min 30 Sec, Long 116 Deg 32 min 30 sec or 105 Nautical Miles Northwest off Apuraoan Point or 60 Nautical Miles South-South West off Reed Bank.

3. **Actions Taken:** O/a 021355H March 2011 PN Islander 314 took off ABAB to conduct aerial reconnaissance on the last known position of MV Veritas Voyager. O/a 021540H March 2011, said aircraft was able to establish contact with MV Veritas Voyager. However, said aircraft wasn't able to locate the Chinese vessels. Additionally PAF OV 10s 630 and 142 also took off ABAB o/a 02 1445H March 2011 to conduct aerial reconnaissance in the area and also wasn't able to locate the Chinese vessels. Moreover, PS 74 departed Puerto Princesa city enroute to Reed Bank on 02 1618H March 2011 to conduct Sovereignty Patrol in the area and is expected to arrive thereat on 031800H March 2011. OV10s are also scheduled to conduct reconnaissance at Reed Bank on 030600H March 2011.

4. **Assessment:** This incident strongly indicates that PROC is continuously asserting its claim despite the fact that Reed Bank is located at 135 Nautical Miles from the shoreline of Palawan which is within the country's Exclusive Economic Zone. Hence, the need to strengthen our defense posture in the AOR to enforce the country's sovereignty as well as fishery laws must be given primary importance.

5. **Recommendations:** Since the seismic survey is nearing its completion within 11 days, the conduct of the survey could still be continued as long as additional patrol vessels and aircraft will be made available that can provide deterrent options against intruding vessels. However, with only one (1) patrol vessel, one (1) PNI 314 and two (2) OV 10s, this Command cannot sustain the required actions. In this regard, recommend that additional air and naval assets be deployed to this Command for the sustainment of the conduct of air and naval patrols to pursue our national interest in the area.

6. For the information of the FOIC, PN.

NATHANIEL Y CASEM
Colonel, PN(M)(GSC)
AC of NS for Intelligence, N2

cc:

VCOM, PN
CNS, PN
N3

Annex 70

Memorandum from Acting Assistant Secretary of the Department of Foreign Affairs of the Republic of the Philippines to the Secretary of Foreign Affairs (10 Mar. 2011)

Kagawaran ng Ugnayang Panlabas



Department of Foreign Affairs

OFFICE OF ASIAN AND PACIFIC AFFAIRS

CONFIDENTIAL/URGENT

MEMORANDUM FOR THE SECRETARY

Through : The Undersecretary for Policy
Cc : CMOAS *M. J. MARY*

From : *[Signature]*
MEYUARDO LB. MONTEALEGRE
Acting Assistant Secretary

Subject : **China's reply to PH's note verb ale re Reed Bank incident**

Date : 10 March 2011

DEPARTMENT OF FOREIGN AFFAIRS
Office of the Undersecretary for Policy

RECEIVED
MAR 11 2011

Chinese Embassy Chargé d'Affaires, a.i. Mr. Bai Tian called on ASPAC late afternoon of 9 March 2011 to convey China's reply to PH's note verbale regarding the 2 March 2011 Reed Bank incident. The following are the major points he conveyed:

1. China has indisputable sovereignty over the waters of Nansha Islands where Reed Bank is situated

Since ancient times, China has indisputable sovereignty over the Nansha islands and its adjacent waters. The GSEC 101 (SC 72) area is situated in the adjacent waters of the Nansha Islands (Spratlys).

On 2 March, **Chinese maritime surveillance vessels** were in the area. The vessels **dissuaded** the Forum vessel from further work. This was an action that China **had to take** to safeguard its sovereignty and sovereign rights as a result of the unilateral action from the Philippine side.

2. PH unilateral action in the area is contrary to its commitment to China. PH has not given an official reply to Chinese representations on the matter

China has made repeated representations with the Philippines on the GSEC 101 issue since 2002. In 2007, 2009 and February 2010, former Foreign Affairs Secretary Romulo conveyed to China that PH Government will not grant to Forum Energy the conversion of the GSEC 101 into a service contract. Secretary Romulo said that GSEC 101 **will not be an issue** in PH-China relations.

However, PH **went against its commitment** and converted GSEC 101 into a service contract in February 2010. China made repeated representations for the cancellation of the contract, but PH declined to reply officially to Chinese representations. Forum is now pursuing activities in the area.

3. In consideration of overall bilateral relations, China has exercised restraint and sincerity on the issue

Looking at the issue from the context of maintaining the overall good relations between PH and China, and maintaining peace and stability in the area, China has exercised maximum self-restraint and sincerity on the issue.

Its vessels **left the area** in order to avoid escalating the issue. This demonstrates China's goodwill and sincerity in wanting to maintain good relations with PH.

4. China is willing to have cooperation with PH following the principle of "setting aside disputes and pursuing joint development"

China expressed willingness to have cooperation in the area by following the principle of "**shelving disputes and pursuing joint development**" as a pre-requisite for cooperation.

5. Is it PH intention to escalate tensions by undertaking high profile unilateral actions?

Since February 2010, PH has not replied officially to Chinese representations on the matter but proceeded to undertake unilateral action by sending the seismic survey ship to conduct activities. It even sent military and coast guard vessels to the area. China is perplexed and disappointed with Philippine actions. Does the Philippines want to escalate the issue?

6. PH is not handling the issue in a low profile manner. To avoid creating bigger pressures on the options of both governments, PH should properly guide media reporting on the 2 March 2011 incident in a positive way

Contrary to DFA commitment to handle the GSEC 101 issue in a low profile manner, Wescom Commander General Sabban gave strongly-worded statements to the media. An unidentified DFA official also divulged the CDA's meeting with Undersecretary Basilio to the media. These reports have hugged headlines and aroused the attention of both peoples.

Such action is not conducive to the resolution of the issue in a **low profile manner** and has **created bigger pressures** from the media on the solutions of both Governments to the problem. It has created unnecessary impediments for both sides to find a way out of the issue. If not handled well, the issue will further **escalate** and may bring unpleasant results for both sides, which is dangerous.

China requests that PH actively **guide media reporting** in a positive way so that the issue will not be played up.

7. **The SCS issue is the only outstanding issue in PH-China relations. Both countries should look at the issue from a higher and broader vantage point**

The SCS issue is the **only outstanding issue** between PH and China. It is a difficult issue that could undermine bilateral relations. In handling the issue, both countries should proceed from the overall pursuit of maintaining close and cooperative relations, and maintaining peace and stability in the area.

8. **China's hopes**

8.1 PH to **stop its survey activities** in the area of GSEC 101/ Reed Bank (Liyuetan) and refrain from taking further action to prevent escalation of the issue.

8.2 PH to take a responsible approach on the issue and give a positive response to China's request, and together, explore feasible and reasonable **models of cooperation** in the area.

8.3 PH to refrain from further **unilateral action** to avoid escalation.

8.4 PH to actively **guide media reporting in a positive way** so that the issue will not be played up.

8.5 CMOAS Sec Gen Bensurto's **visit to Beijing** in the week of 21 March would be helpful in boosting understanding between the two sides regarding the GSEC 101 and SCS issue.

COMMENTS/ RECOMMENDATIONS:

1. Since Forum's current activities are limited to a **few days**, it should just **complete** its operations quietly and expeditiously.

2. China's argument that PH went against its previous **commitment** is valid since the Philippine Government did assure the Chinese Government that GSEC 101 would not be an issue in bilateral relations.
3. PH efforts to make China understand why **Reed Bank is not part of the waters of the Spratlys, and therefore, not disputed area** should continue.
4. However, given China's stated position on the matter, it is expected that Forum would **not be able** to productively and smoothly continue its activities in the coming years on its own.
5. It may be time for PH to work with China in coming up with **joint development/cooperative formulas** in **other areas** of the SCS that are **clearly disputed**.
6. PH could officially propose the concept of "**Zone of Peace, Freedom, Friendship, and Cooperation**" (ZPFFC) as a formula and framework for cooperation in the South China Sea (*concept paper annexed*).
7. The ZPFFC concept will **not have** negative implications on Philippine **sovereignty** and future energy contracts in the area, while satisfying China's quest to pursue cooperation in the SCS.
8. ASPAC agrees with the Chinese Embassy that **PH-China relations**, which have been carefully nurtured over the years, are very **valuable**. The SCS issue should not be handled in isolation, but within the overall context of developing mutually beneficial **strategic** and cooperative relations with China in pursuit of our national interest.
9. DFA to take an active hand in **guiding** sober and informed **public discussion** on the matter.

Respectfully enclosed are the following:

1. Complete notes for the meeting;
2. Chinese MFA Spokesperson's replies to reporters' queries on the matter. It may be noted while the replies reiterated China's position on sovereignty, they also emphasize dialogue and cooperation; and
3. Draft Memorandum for the President.

For the Secretary's consideration.

Annex 71

Memorandum from Secretary General, Commission on Maritime and Ocean Affairs Secretariat, Department of Foreign Affairs of the Republic of the Philippines to the Secretary of Foreign Affairs of the Republic of the Philippines (28 Mar. 2011)

Kagawaran ng Ugnayang Panlabas



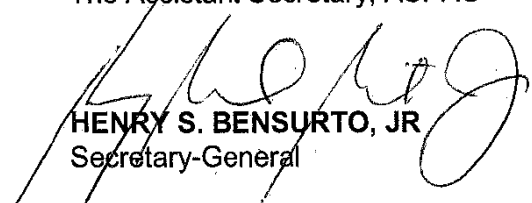
Department of Foreign Affairs

Cyff 28.03.11
8:10 p.m.

COMMISSION ON MARITIME AND OCEAN AFFAIRS SECRETARIAT

CONFIDENTIAL**MEMORANDUM FOR THE ACTING SECRETARY**

Through : The Undersecretary for Policy
Cc : The Undersecretary, OUSOC
The Assistant Secretary, ASPAC

From :  **HENRY S. BENSURTO, JR**
Secretary-General

Subject : **Meeting with China on Maritime Issues**

Date : 28 March 2011

As instructed by the President and the Secretary, I visited Beijing on 22-24 March 2011 to undertake consultations on the South China Sea and other maritime issues with my counterpart, Ambassador Ning Fukui, Director-General of the Ocean and Boundary Affairs Department of the Chinese Ministry of Foreign Affairs.

Agenda

China tabled six agenda items, as follows:

1. PH's draft maritime legislations on Archipelagic Sea Lanes and Maritime Zones
2. Reed Bank/GSEC 101/ SC 72
3. PH's planned submission of note verbale to protest China's nine-dash line claim over South China Sea (SCS)
4. Efforts to avoid "internationalization" of the SCS
5. Establishment of mechanism for consultation on the SCS and maritime issues
6. Maritime cooperation.

Positions expressed

The views expressed by both sides on agenda items 1 to 3 were **divergent**. In effect, the two Panels **agreed to disagree** on these 3 issues. PH noted China's views on the 4th item, and promised to report and study China's proposals on items 5 and 6.

Both Panels likewise agreed that the **lines of communication** between the two countries should remain **open** and that there should be a **continuing dialogue** on the SCS.

1. On PH's Maritime Legislations

China expresses the view that the two bills on PH Maritime Zones and Archipelagic Sea Lanes might have implications on the Chinese sovereignty. If passed into law, the two legislations will infringe on Chinese sovereignty in the SCS. As such, they are null and void.

PH, on the other hand, stated that the two legislations are **not expansionary** and only intended to **comply** with its **international obligation** to **harmonize** PH domestic legislations with the United Nations Convention on the Law of the Sea (UNCLOS). PH noted the Chinese concerns but stated that the matter of passing the two bills into laws is "**something that the Philippines has to do**" and fundamental to its existence as a nation-state and as a responsible member of the international community.

2. On the Reed Bank/GSEC 101 Issue

*China stated that it has sovereignty over the so-called "Nansha Islands." According to them, "Nansha" is a "comprehensive whole" that includes the Reed Bank. China is concerned with the survey and exploration that are reportedly being undertaken by PH in the GSEC 101 area. China cannot and will never accept this. China has always approached the issue from a broader perspective and adopted an attitude of restraint. This however should not be misinterpreted by other countries as a reason to undertake unilateral action on the area. If this happens, China will have reason to do **exploration** as well on **areas it deems as its own**. Joint development is the best and most practical way to approach the issue pending the resolution of the disputes. China is open to any PH proposal on this matter.*

PH expressed the view that while its relations with China is an important component of PH foreign policy, the same should be founded on **mutual respect** for each other's **sovereignty** and **dignity**. In this context, PH stated the following points:

- PH exercises **sovereignty** and **jurisdiction** over the Kalayaan Island Group (KIG);
- Even while PH exercises sovereignty and jurisdiction over the KIG, nonetheless, the Reed Bank – where GSEC 101/SC 72 is situated – is **not part** of the "adjacent waters" of the Spratlys (Nansha) islands, using UNCLOS as a standard.

- Reed bank is neither an island nor a rock nor a low tide elevation. It is completely submerged under water and a **continental shelf** by definition. Indeed, it is part of the continental shelf of Palawan.
- PH, in the context of friendly relations with China, is **open** to Chinese investment in the Reed Bank under **PH laws**.
- However, with respect to the **disputed features** (e.g. islands, islets) in the Spratlys, PH is **open** to exploring possible modalities or mechanisms for managing disputes in the said area including ideas on joint cooperation.

3. Possible PH Protest on the Chinese 9-Dash Line

*China expressed concern over the reported PH plan to file a protest against the 9-dash line. Amb. Ning explained that the Chinese Note Verbale articulating the 9-dotted line was **not directed against** the Philippines, but was something that it had to do in **reaction** to the submission by Vietnam and Malaysia for extended continental shelf (ECS) in the SCS. China considers the submissions for ECS by Vietnam and Malaysia as undermining its interest in the SCS.*

PH noted the Chinese explanation. However, because China's 9-dotted line claim in the SCS has implications on Philippine sovereignty and jurisdiction in the SCS, PH is left with no choice but to express its position on the 9-dash line claim of China. To do otherwise, could be **misinterpreted as acquiescence** on the part of PH over the Chinese 9-dotted line claim. Thus, the Note to be issued by PH expressing its position on the 9-dotted line claim of China is something **inevitable** that PH ought and should do. Such act, however, should not be viewed by China as something directed against it, but rather as something that PH need to do in order to protect its sovereignty.

4. Internationalization of the SCS issue

China expressed concern over efforts by some countries to make the SCS a regional/international issue under the pretext of "freedom of navigation", and by incorporating the said issue in multilateral fora including the East Asia Summit (EAS). It views the SCS as complicated and should be addressed through dialogue and consultations. The SCS is not an issue between China and the whole of ASEAN. It is not a regional security issue that should be included in the agenda of the ASEAN Regional Forum (ARF) and the EAS.

PH indicated that its actions on the SCS are dictated by its own consideration of the country's national interest, and not because of the influence of any third country. PH has no intention of escalating tension in the SCS. It is nonetheless logical in the natural order of things for any human being or any country for that matter to consider other options, if a particular approach does not bring about the desired results.

5. Establishment of Mechanism for Consultation

China proposed the establishment of a **small-working group** as consultation mechanism on maritime issues between the two Foreign Ministries. The group could meet twice a year. The meetings could be at the level of the Director General (Assistant Secretary or Secretary General).

PH noted the importance of keeping the line of communications open between the two countries. The **process of dialogue** is also important not only for knowing and understanding the differences between the parties, but also in trying to identify points where there may be some **convergence**, which could serve as **building blocks** for possible cooperation. The Secretary General, however, indicated that it has no authority to agree on anything. Therefore, he will **convey** this suggestion to the President and the Secretary of Foreign Affairs.

6. Maritime Cooperation

China indicated that the two countries can cooperate in areas such as maritime environmental protection, safety of navigation, marine scientific research, disaster mitigation and preparedness, and search and rescue. China is open to conducting these activities on a bilateral or tripartite basis with Vietnam. Specifically, China expressed hope that PH, China and Vietnam could proceed with the implementation of the Tripartite Joint Exploration and Marine Scientific Research Expedition (JOMSRE). A dispute management mechanism (including the establishment of a hotline) on fishing in disputed waters could also be explored. China expressed interest on PH's views on joint-cooperation.

PH noted the Chinese proposals but reiterated that the Panel has no mandate to agree on anything. The SecGen promised to **convey** the Chinese proposals to the President and the Secretary of Foreign Affairs. On a strictly personal note, the SecGen noted the idea of Zone of Peace, Freedom, Friendship, and Cooperation (ZoPFFaC) in the SCS.

Atmosphere of consultations

Despite divergent views on the SCS, the consultations were conducted in a **friendly, open, frank and candid manner**. I believe the meeting was helpful in boosting understanding of each other's positions.

Both sides agreed that dialogue and consultations were important in building mutual confidence, avoiding misunderstanding and maintaining peace and stability in the South China Sea. Both sides agreed to keep the lines of communication open.

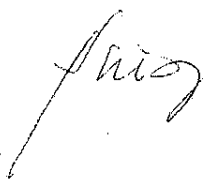
Dialogue is also a process. As expected, the initial phase should be an exchange of ideas on each other's position – **to agree to disagree**.

The second or next phases of discussions should be on exploring **points of convergence** with the end in view of exploring possible mechanisms for **managing disputes** in the SCS and **prevent** the same from **escalating** into a full conflict. However, dialogue with China should be made in consideration of the ongoing **multilateral discussions** on the implementing guidelines of the ASEAN-China DOC.

Recommendations:

1. PH should **stay the course** with its process of passing the two bills on **Maritime Zones** and **Archipelagic Sea Lanes** as these are **critical** and **fundamental** in putting the Philippine archipelagic house in order.
2. **Accept** China's proposal to establish a **working group consultation mechanism on maritime issues** between the two foreign ministries at the Assistant Secretary/DG/CMOA SG level (Item 5). This is not new. In the late nineties, before the signing of the Declaration on the Conduct of Parties in the South China Sea (DOC-SCS) in 2002, PH and China held Experts Group Meetings on CBMs in the South China Sea and a Working Group Meetings on Fisheries.
3. If deemed consistent with PH's commitments under the DOC-SCS, this working group meeting could **study** China's proposals on **maritime cooperation** (Item 6).
4. In case, PH agrees with the constitution of a small working group, PH could float its initiative of **Zone of Peace, Freedom, Friendship, and Cooperation (ZoPFFaC)** as possible **framework of cooperation** in the SCS (**Annex A**). However, this should be done only after **prior consultation** with the other ASEAN member countries.
5. On China's views regarding "internationalization of the SCS," PH should maintain the position that the South China Sea is an issue with **regional security ramifications**. It is also an issue that affects ASEAN-China relations. As such, it is valid for the ARF or for ASEAN to discuss it.

For the Secretary's consideration.



ZONE OF PEACE, FREEDOM, FRIENDSHIP AND COOPERATION (ZoPFFaC)

The part of the PMSS which has direct impact on the South China Sea is its concept of Zone of Peace, Freedom, Friendship and Cooperation (ZPFFC). It presupposes that the establishment of a stable regional security environment in the SCS is *sine qua non* for the security of the Philippine archipelago.

ZPFFC is both a **Vision** and a proposed concept on **Architecture of Cooperation** for the South China Sea (SCS).

As a Vision, it envisages to transform the South China Sea (SCS) from a region of conflict into a zone of peace, freedom, friendship and cooperation among the littoral states in the region.

It seeks to achieve this by providing the **Framework** through which territorial disputes are converted into opportunities for cooperation.

ARCHITECTURE FOR COOPERATION

As architecture for cooperation, ZPFFC provides the framework through which collaborative activities designed to prevent or de-escalate tension and promote cooperation and friendship among the claimant countries could be made possible.

FIRST, the claimant-states set aside their disputes;

SECOND, the claimant-states engage in specific collaborative or cooperative activities to promote friendship and understanding among them.

Claimant states could set aside their territorial disputes operationally by unraveling the disputed territories from those that are or ought to be not. This could be done by 1) recognizing the distinction between the nature of and claim over land (islands, islets) *vis-à-vis* water (including continental shelves); and 2) understanding the rules and principles governing each regime under international law, in particular the UN Convention on the Law of the Sea (UNCLOS).

Only when the territorially-disputed islands (including its adjacent waters) are sorted from the rest of the waters of the South China Sea could cooperative activities be effected as may be appropriate for each area.

A. Areas under Dispute¹

There are 2 groups of islands in the South China Sea which are more or less disputed: 1) **Spratlys**, and; 2) **Paracels**.

The **Spratlys group of islands is claimed wholly** by China and Vietnam. The Philippines, Malaysia and Brunei **claim part** of it. Vietnam and China have also contesting claims over **Paracels**.

The waters (and continental shelves) beyond the disputed islands (except those adjacent to the islands) are and ought to be not in dispute².

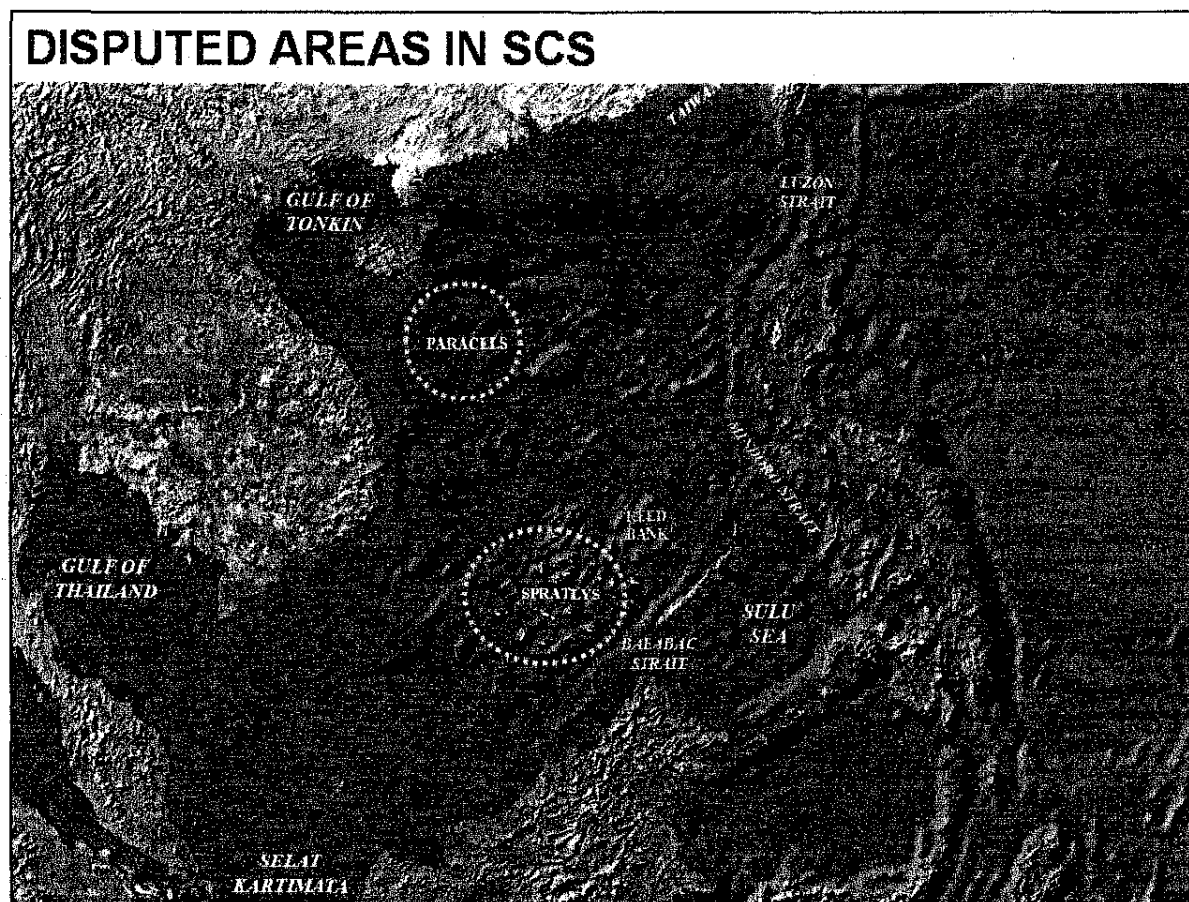


FIGURE 26

¹ See **Figure 26**

² Reed Bank is geographically outside the Spratlys area. *Neither* does it form part of the adjacent water *nor* continental shelf of any of the *islands* or *rocks* in the Spratlys under UNCLOS. Geologically speaking, Reed Bank forms part of the continental shelf of the main Philippine archipelago.

B. Enclave: Disaggregating the Disputed Islands from the Maritime Area of the SCS³

The disputed islands could be segregated from the rest of the waters of the SCS by enclaving the said islands (and adjacent waters). This could be done either of two ways: 1) drawing imaginary straight baselines around the occupied islands to enclose them collectively as one grouping; or 2) drawing imaginary straight baselines on each and every island occupied by any of claimant countries.

The disputed adjacent waters could be determined by applying Article 121 of the UN Convention on the Law of the Sea (UNCLOS).

**Article 121
Regime of islands**

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

In terms of determining the impact of islands and low tide elevations on delimitation, their treatment in the context of the following case precedents (decided by the International Court of Justice and arbitral tribunals) cited by Rodman Bundy in his article Preparing for a Delimitation Case: The Practitioner's View may be helpful:⁴

- “In the 1977 Anglo-French arbitration, the Channel Islands were partially enclaved with twelve mile territorial seas while the Scilly Islands were accorded a “half-effect” for purposes of delimiting the seaward portion of the boundary;”
- “In the 1981 Dubai-Sharjah arbitration, the island of Abu Musa received a twelve mile territorial sea without further effect on the continental shelf boundary;”
- “In the 1982 *Tunisia-Libya* case, the island of Djerba had no effect on the course of the delimitation line and the Kerkennah Islands were given a modified version of the ‘half-effect’;”
- “In the 1984 *Gulf of Maine* case, Seal Island received a **reduced effect** for purposes of constructing the boundary;”

³ See *Figure 27*

⁴ Bundy, *Op Cit.*, p. 106

- “In the 1985 *Libya-Malta case*, the main island of Malta received **less than full equidistance** treatment and the small rock, Filfla, was **ignored** altogether;”
- “In the 1992 *Canada-France arbitration* concerning delimitation between Newfoundland and the islands of St. Pierre and Miquelon, the islands were accorded 24-mile **partial enclaves** and a strip of continental and EEZ entitlement corresponding to the limited length of their coastal front;
- “In the 1993 *Eritrea-Yemen arbitration*, the Yemeni islands of Al-Zubayr and Jabal el-Tair had **no effect** on the final delimitation line;”
- “In the 2001 *Qatar-Bahrain case*, the tiny island of Qit’at Jaradah had **no effect** on the delimitation line.”

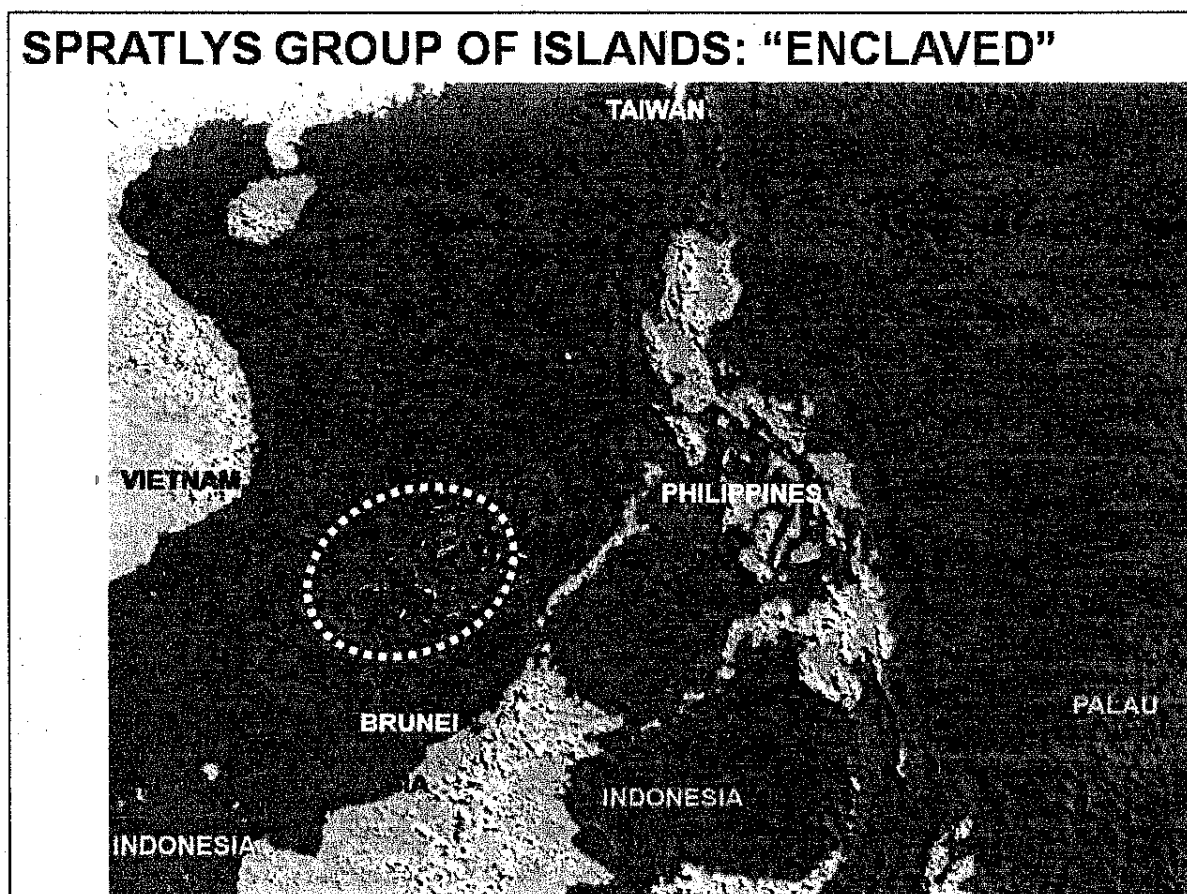


FIGURE 27

COOPERATIVE APPROACH: DUALITY OF REGIME⁵

Once the territorially disputed islands are enclaved, appropriate cooperative activities under the dual regimes of 1) Code of Conduct (COC), and; 2) Part IX of UNCLOS, could be implemented in the enclave and the rest of the waters of the SCS, respectively.

Declaration of Conduct on the South China Sea (DOC-SCS). The DOC-SCS would be specifically applied in the enclave. The enclave could be designated as Joint Cooperation Area (JCA).

- The **joint activities** under the DOC could be applied to the JCA; or
- The **Implementing Guidelines** of the DOC could be re-drafted in such a way that it applies to the JCA; or
- A separate **Code of Conduct (COC)** could be drafted out of the DOC-SCS for specific application in the JCA; or
- The Implementing Guidelines could be converted into a Code of Conduct with specific application in the JCA.

The COC in the JCA could contain the following features:

1. **demilitarization** of the enclave
2. establishment of a **Joint Committee** among the claimant states for joint management of the enclave

The JCA could also be the area for joint development (Joint Development Area or JDA) and other activities such as marine scientific research, protection of the marine environment, safety of navigation and communication at sea, search and rescue operation, humane treatment of all persons in danger or distress at sea, fight against transnational crimes as well as cooperation among military officials.

In addition, a Trans-boundary Marine Peace Park (TMPP-SCS) could be established in the enclave area. It would be a **concrete** implementation of DOC-SCS and a beginning of a more vigorous cooperation in the SCS.

With TMPP-SCS in place, the 'management mechanism' under the TMPP can likewise serve as 'dispute settlement mechanism' in the enclave area.

UNCLOS Part IX. With respect to the other maritime areas of the South China Sea, Part IX of UNCLOS could be applied.

⁵ See **Figure 28**

Article 123
Cooperation of States bordering enclosed or semi-enclosed seas

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

Joint activities that could be undertaken in this area include search and rescue (SAR), oil spill preparedness, marine scientific research (MSR) and other conservation projects. Structures for purposes of coordinating activities in the area could also be constituted among the concerned littoral states pursuant to Article 123 of UNCLOS.

**CONCEPT OF ZONE OF PEACE, FREEDOM, FRIENDSHIP
AND COOPERATION (ZPFFC): DUALITY OF REGIME**

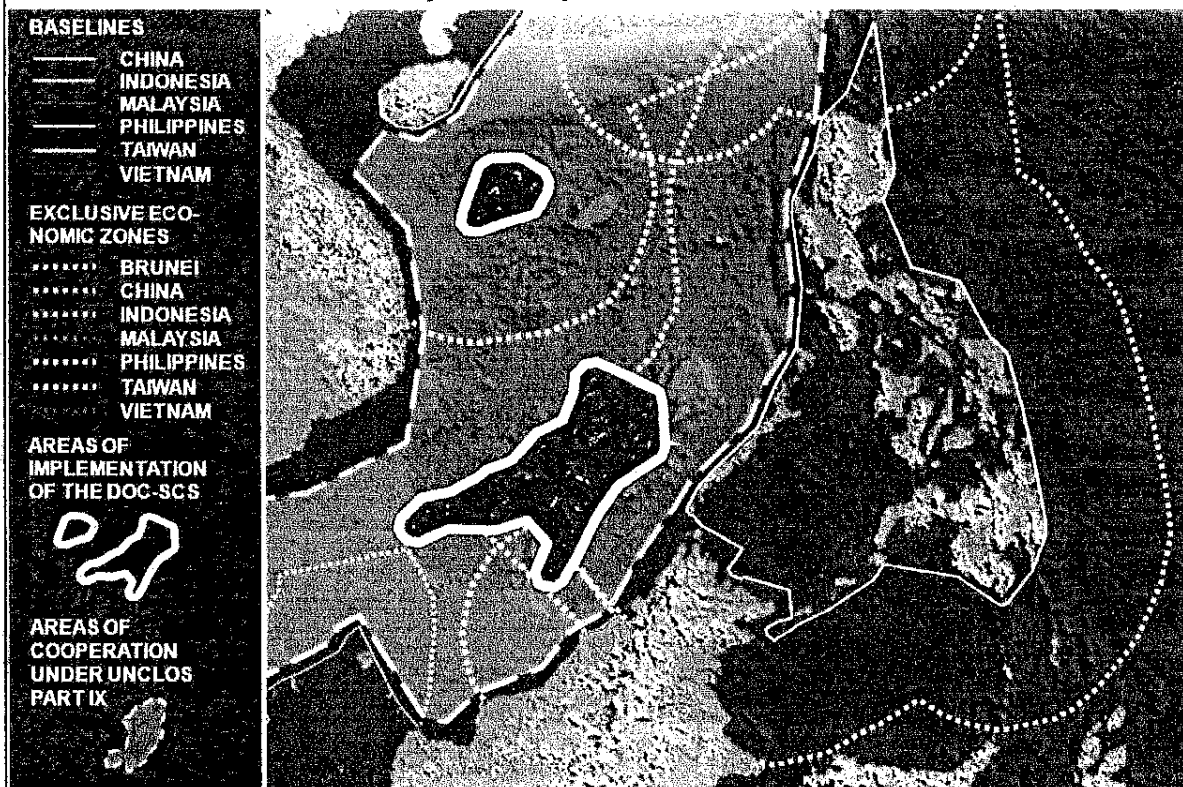


FIGURE 28

Annex 72

Memorandum from the Embassy of the Republic of the Philippines in Beijing to the Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-064-2011-S (21 June 2011)

4/8

SECRET

Urgent

To: SFA
Rt: ASPAC
Fr: Beijing PE
Re: Meeting with Asian Department, 21 June 2011
Dt: 21 June 2011
Pg: 1 of 8
Fr: ZPE - 064-2011-S

FYI, the undersigned was invited to a meeting with MFA Asian Department Deputy Director General Hong Liang on 21 June 2011. Mr. Hong assumed his position recently, and is one of MFA's Philippine experts, having served as a Director handling Philippine affairs for a few years until 2007 and as a son-in-law of former Chinese Ambassador to the Philippines, Mr. Wang Yingfan. The meeting was conducted in a cordial and friendly matter, with DDG Hong Liang occasionally inserting anecdotes on high-level meetings between the two countries and the "sincere" views and intentions of Chinese leaders towards the Philippines.

Attached are the Embassy's notes on the meeting. The highlights of his message are as follows:

1. **West Philippine Sea/South China Sea disputes.** The current situation between the two countries is a case of misunderstanding. The reports that there were Chinese warships and that Chinese authorities fired at fishing boats are not true. MFA has made clarifications with the military/maritime authorities about this matter, and have instructed the Chinese embassy to meet the DFA to deny the reports. China regrets that despite this, the Philippines will not take back its statements based on these reports.
2. **"Lack of mutual trust".** The situation shows that currently there is a lack of mutual trust between the Philippines and China on the issue of the South China Sea. The two sides used to have a mechanism for confidence-building measures on this matter, but this was discontinued. Both sides also undertook the JMSU with Vietnam which was a good step in the right direction, and although this endeavor has been put on hold, the process is there.
3. **Consensus - no unilateral action that will complicate the situation.** Bilaterally, and under the DOC, the Philippines and China have reached a consensus that neither side will take unilateral actions to complicate the situation in the SCS. This is a consensus that has been repeatedly affirmed by officials and published.

China abides by this consensus and will not take any unilateral action that will complicate the situation in the SCS.

China owns its words and will honor its promise. China has the sincerity to honor its promises.

4. **Verify reports with China.** If the Philippine (PH) side has any information on the SCS that concerns it, it could use diplomatic channels to clarify/verify these information with China (CHN) through the PH embassy in Beijing or the Chinese embassy in Manila.

If PH concerns (on the basis of wrong information) are published first to the media, the matter becomes complicated to address.

5. **China's exercise of restraint on statements.** China exercised utmost restraint in issuing statements in response to PH actions. China issued few statements.

On the other hand, PH side notably Malacañang issued numerous statements on the recent developments. Some information were incorrect, and some were misleading to the media and the public. This is not good for bilateral relations and not good for the settlement of disputes.

If PH has to issue statement, CHN has no problem if the basis is correct and precise information.

6. **A new CBM on maritime issues: what is PH answer to CHN proposal?** China, through the Department of Boundary and Ocean Affairs, has proposed to DFA-CMOAS a PH-CHN consultation mechanism on maritime issues. MFA is awaiting the Philippines' response to this proposal.

PH and CHN need a mechanism like this to serve as an (1) internal communication channel, and (2) consultations process for the peaceful resolutions of disputes.

7. **No change in China's policy on the South China Sea.** China's policy on the SCS has not changed. It holds very firmly that the settlement of disputes will be realized through peaceful negotiations, according to relevant international laws including UNCLOS.
8. **PH and China rights under UNCLOS.** While PH has legal rights under UNCLOS, China also has "historical rights" which are acknowledged under UNCLOS. Historical rights cannot be denied, and must be respected.

PH and CHN can use any relevant clause in UNCLOS to support their claims, but UNCLOS itself is not enough to solve the disputes. There must be peaceful negotiations and both parties must strive to pursue consensus and principles enshrined in the DOC.

9. **China wishes to win PH trust and confidence.** China understands PH interests and concerns in the SCS. China would like to win the trust and confidence of the Philippines because it is a very close neighbor. China hopes that PH will trust China and agree to set up a bilateral consultation mechanism soon.
10. **Way forward.** It is important for both sides to follow consensus reached and move forward through peaceful negotiations. Not one country can pursue the issue of sovereignty. The issue of sovereignty can provoke feelings of the people and may have implications for domestic political stability so the matter of disputed territories must be dealt with wisely and parties must seek the proper solution to resolve them peacefully.

Thus, parties must shelve disputes — national sovereignty issues — and pursue joint development and cooperation in disputed territories. Sovereignty issues should not be seen in black and white terms.

The Philippines, China and Vietnam's tripartite JMSU was a step in the right direction. The process is there and the way is always open for parties to bring it forward.

11. **Premium on bilateral relations.** PH –CHN bilateral relations are more important than the two countries' disputes in the SCS. The dispute is not the "everything" about the relationship. Both countries should not allow this to drag the relationship — both sides can do bigger things beyond this to achieve a broader, brighter future for the relationship.

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12. Visit of SFA to China. CHN attaches great importance to the forthcoming visit of SFA Albert F. Del Rosario to China on 7 – 8 July. Both sides must create a favorable atmosphere for this visit by "calming down". The statements coming from Manila are not helpful in making this visit a success. China, for its part, has been very cautious and restrained with its words. CHN policy vis-à-vis the Philippines has been consistent. The two sides signed an agreement for a strategic partnership in 2005 during the visit of President Hu Jintao to Manila; both sides must pursue this consensus. Related to the visit, China has also proposed a joint press release that will give a clear statement to PH and CHN as well as the international community that the bilateral relations are strong. It was mentioned that MFA plans to arrange media interviews with SFA by Chinese journalists in the Philippines ahead of his visit to help give positive signals on the relationship.

13. SFA Visit as a preparation for State Visit. China sees the SFA visit as an important preparation for the State Visit of President Benigno S. Aquino III to China at the end of August. China believes that the State Visit will bring the relations to a new high.

Summary, comments and recommendations

A key message of this MFA representation is that China desires a good atmosphere for the forthcoming visits of the SFA and the President to China, and it is asking the Philippines to tone down the tenor of statements of Philippine officials to enable both sides to prepare the ground for the success of these visits. China understands the nature of the media in the Philippines, but believes that further statements issued by officials as well as political leaders will not be constructive. On its part, China has issued very few statements.

It was equally emphasized that:

- China abides by the consensus on the SCS, and will honor its commitments;
- China wants to earn PH trust and goodwill because it is a close neighbor;
- There is a need for a bilateral consultation mechanism to build confidence and to serve as an "internal channel" to discuss maritime issues and concerns; and,
- Over-all bilateral relations are more important than the disputes in the SCS.

As it is clear that steps towards a stronger and more predictable "*modus vivendi*" on the West Philippine Sea/ SCS are on the agenda of the forthcoming SFA visit, Beijing PE respectfully recommends that SFA talking points on the issue include the following:

- Philippine response to the Chinese proposal for a consultation mechanism on maritime issues, at the level of the Secretary General of the CMOAS and DG of the MFA Department of Boundary and Ocean Affairs;
- Philippine concept of a Zone of Peace, Freedom, Friendship and Cooperation (ZoPFF/C) and proposed general principles and terms; and,
- An exhortation for China to do its utmost efforts (i.e., exercise more flexibility) to see to the conclusion of ASEAN-China discussions on the guidelines of the DoC, so that parties can mark the 10th anniversary of the signing of the document with a satisfactory milestone.

For Deforaf's consideration.


ALEX G. CHUA
 Chargé d' affaires, a.i.

CONFIDENTIAL**Notes on the Meeting Between Philippine Embassy Beijing Chargé d' Affaires Alex G. Chua and Chinese Foreign Ministry's Asian Department's Deputy Director General Hong Liang
21 June 2011, Beijing**

1. Upon the request of the Chinese Foreign Ministry's Asian Department, Chargé d' Affaires Alex G. Chua met with Deputy Director General Hong Liang on 21 June 2011 at the Chinese Foreign Ministry to discuss recent development on Philippines-China bilateral issues. CDA Chua was accompanied by Minister and Consul General Maria Teresa T. Almojuela and First Secretary and Consul Noel M. Novicio.

2. DDG Hong mainly discussed the following issues: current state of bilateral relations, Northrail, South China Sea and forthcoming official visits to China of the Secretary and H.E. the President.

Developments on Northrail Project

3. DDG Hong informed CDA Chua that, according to media reports in Manila yesterday, 20 June 2011, the Northrail project has finally been disapproved by Malacanang. (During the meeting, Embassy immediately sent a message to ASPAC's China Division to verify the alleged report.)

4. DDG Hong recalled that during the state visit to the Philippines of President Hu Jintao in 2005, the agreement on China's assistance to build the Northrail was signed. He described the project as a "symbol of our friendship", and the Chinese government attaches great importance to its completion.

5. He said that the Chinese government understands that there are some problems to the project and it hopes that the Philippine government can finish its review soon. He stressed that the Chinese government hopes to continue the project and complete it as soon as possible for the benefit of national development in the Philippines.

6. CDA Chua expressed doubts about the veracity of media reports saying that the Northrail project has been canceled by Malacanang. He pointed out that the Secretary of Public Work and Highways (Rogelio L. Singson) was recently in Beijing and in his meeting with Ministry of Commerce's Vice Minister shared positive developments regarding this matter.

Status of Bilateral Relations

7. DDG Hong described Philippines-China bilateral relations as "developing smoothly in the last five years", stressing that recent developments indicate that

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bilateral relations are in very good track. He said that President Aquino's forthcoming visit to China at the end of August will open a new chapter to the bilateral relations. He also stressed the following:

- High-level visits between the two sides are being maintained. China sent a special envoy (National People's Congress Vice Chairperson Yan Junqi) to attend the inauguration of President Aquino. Recently, NPC Vice Chairman Jiang Shusheng and Defense Minister and State Councillor Liang Guanglie paid official visits to the Philippines (on 27 May-2 June 2011 and 21-25 May 2011, respectively.) During Minister Liang's successful visit, he discussed with his counterpart (Defense Secretary Voltaire Gazmin) and the President bilateral issues, including the South China Sea issue. Minister Liang also extended an invitation for his counterpart to visit China.
- Philippines-China economic ties are moving from strength to strength. In 2010, bilateral trade reached US\$27 billion and posted double-digit growth.
- As a sign of Chinese sincerity to the development of bilateral relations, more and more Philippine bananas are reaching the Chinese market every year as a result of the consensus reached by then Premier Zhu Rongji and then President Joseph Estrada.
- According to Chinese statistics, in 2010, at least 1.2 million people, mostly tourists, from both sides visited China and the Philippines, strengthening people-to-people exchanges.
- Solution of sensitive issues – the case of Filipino drug traffickers executed in China, the return to China of mainland Chinese and Taiwanese suspects involved in a telecom fraud, and the hostage crisis – through consultation and cooperation provided new strength to the bilateral relations. Chinese side really appreciated the understanding and support of the Philippine government on the telecom fraud case, and the Philippines' observance of the one-China policy.

South China Sea

8. DDG Hong acknowledged that the Philippines and China have misunderstandings on the South China Sea issue. He, however, reiterated that China's policy on the SCS has not changed – to settle the disputes with relevant countries through peaceful negotiations based on relevant provisions of international law, including UNCLOS. He also emphasized the following:

- DFA still made a public statement after China has already denied that it had sent warships to the SCS and fired at Filipino fishermen. This regrettable incident indicates lack of mutual trust and confidence.
- Then Ambassador (now Vice Minister) Fu Ying and then National Security Adviser Rollo Golez had discussed the SCS issue deeply and lengthily. The main point of their joint statement was that neither side should take unilateral action to complicate the issue.
- China always honors its promise. It will not take unilateral action to complicate the issue.
- Whenever there are reports on Chinese "activities" in the SCS, it is important to communicate internally either in Manila or Beijing through diplomatic channels to ensure accuracy of information.
- China has made very few public statements on the issue. However, the Office of the President and the DFA, including its website, have issued a lot of public statements. Some of these statements are not correct and misleading to the media and the public. These statements are not good for the bilateral relations and affect the friendship of the two countries and the feelings of the Chinese people.
- Because confidence building measures initiated in the past have remained frozen in the last few years, China and the Philippines may need more internal channels to discuss and settle maritime disputes. China hopes to receive a positive response from the Philippines regarding the proposal to set up a China-Philippines maritime consultation mechanism, a bilateral body proposed by Director General Ning Fukui of the Chinese Foreign Ministry's Department of Boundary and Ocean Affairs during his bilateral consultations with CMOAS Secretary General Henry Bensusurto in Beijing in March 2011.
- China's 9-dash line claim and map is based on the 1948 declaration by the Koumintang government. UNCLOS also has a provision that historic rights cannot be denied and should be respected. UNCLOS is there, and the parties can use any clause that is useful to support its claim.
- China understands that the Philippine claim is based on its 200 mile EEZ. China hopes, however, that its historic rights in the SCS be respected by the Philippines.
- The Convention cannot solve the problem in the SCS. It can only be solved through peaceful negotiations. But it is also important to consider the principles enshrined in the DOC – that all claimants should settle their disputes through peaceful negotiations.

7/

- JMSU has expired, but the process is still there. (China wants to continue the JMSU into the next phase and elevate it into an inter-governmental agreement.) China understands Philippine interests and concerns in the SCS and these can be maintained or obtained. In the process of joint development, China can give more to the Philippines because we are neighbors. China hopes that the Philippines can trust it and set up the proposed bilateral maritime consultative mechanism as soon as possible.
- Only way forward is to shelve the dispute and sovereignty issue and move for joint development. Not one country can pursue the issue of sovereignty. The issue can provoke feelings of the people and may have implications for domestic political stability. The matter of disputed territories should be dealt with wisely and must seek proper solution to resolve them peacefully. China and the Philippines should shift focus from sovereignty dispute to joint development.
- China and the Philippines should bear in mind that overall bilateral relations is more important than bilateral dispute in the SCS. Both sides should not allow bilateral dispute in the SCS to hijack the whole bilateral relations and instead should work together for the broader development of bilateral relations.
- Third party involvement on the SCS issue, like the U.S., will only complicate the situation which is not in the interest of the Philippines. China and the Philippines should have the confidence to solve the issue between them because the dispute is between China and the Philippines.

Visit of Secretary Albert F. Del Rosario to China

9. DDG Hong said that China attaches great importance to the forthcoming visit of the Secretary to China in July. He emphasized that it is very important to have favorable atmosphere in the bilateral relations before the visit. It is, therefore, necessary for the two sides to work together to calm down current issues on the SCS. He also stressed the following:

- China hopes to achieve more consensus not only on the SCS issue but on bilateral relations during Secretary Del Rosario's visit to China. It is, therefore, important to observe restraint in issuing public statements on the SCS.
- Both sides can work together to prepare for the visit of Secretary Del Rosario, which China hopes can be an important turning point in the bilateral relations.

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- During the visit of Secretary Del Rosario, both sides can convey the message that China-Philippines relations are strong and that they reaffirmed that the only way to solve the SCS issue is through peaceful negotiations.
- Secretary Del Rosario's successful visit will prepare for the state visit of President Aquino. In 2005, during the state visit of President Hu to the Philippines, China and the Philippines reached a consensus for a strategic cooperation. China hopes that during President Aquino's visit to China, the bilateral relations will be upgraded to a new high. Both sides, therefore, should work together in the same direction hand-in-hand.

10. In response, CDA Chua assured DDG Hong that his comments will be conveyed to the Department immediately. He assured DDG Hong that the Embassy will work with the Chinese Foreign Ministry on the peaceful resolutions of issues affecting bilateral relations. He emphasized that the Philippines also attaches great importance to the bilateral relations. He said that any issue affecting bilateral relations, including the SCS, can be solved through peaceful negotiations.

11. CDA Chua acknowledged DDG Hong's statement on China's adherence to international law in solving the SCS issue because it is the desire of the Philippines to resolve the disputes within a rules-based international legal system.

12. CDA Chua assured DDG Hong of the Embassy's cooperation in creating a favorable atmosphere for the visit of the Secretary to Beijing.

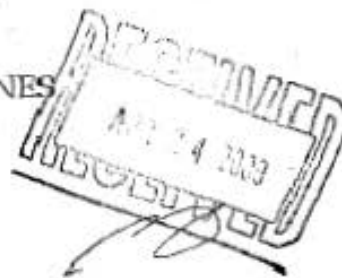
13. DDG Hong recommended that as a first step, the Secretary may wish to grant interviews with Manila-based Chinese journalists before his visit. These activities will definitely send positive signals on China-Philippines bilateral relations. Both sides should also work together on the contents of a joint press statement to be issued before the visit. It is important to manage government statements that are constructive to bilateral relations. It is a very important period in the bilateral relations and creating a very favorable atmosphere is important to ensure the success of the Secretary's visit.

Annex 73

Magallona v. Ermita, Supreme Court of the Philippines, Comments of the Respondents on the Petition, G.R.
No. 187167 (16 July 2011)

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

EN BANC



PROF. MERLIN M. MAGALLONA,
ET AL.,

Petitioners,

G.R. NO. 187167

- versus -

HON. EDUARDO ERMITA, ET AL.,
Respondents.

X ----- X

COMMENT OF THE RESPONDENTS
ON THE PETITION

COME NOW respondents EDUARDO ERMITA, ET AL.,
through counsel, unto this Honorable Court, respectfully state:

A.

NO CASE FOR CERTIORARI OR PROHIBITION
ALLEGED IN THE PETITION

1.00. The petition purports to be a petition for certiorari and
prohibition praying, as follows:

WHEREFORE, Petitioners respectfully pray that:

1. Pending the resolution of this Petition, a
Temporary Restraining Order and/or Writ of Preliminary
Prohibitory Injunction be IMMEDIATELY ISSUED,
prohibiting Respondents from implementing or invoking
Republic Act 9522;

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2. Upon due hearing, the instant Petition be GRANTED declaring Republic Act No. 9522 unconstitutional, and permanently enjoining the implementation of the said law.

x x x x x x x x x

1.01. The provisions of the Rules of Court pursuant to which the petition is brought provide as follows:

SECTION 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion* amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby* may file a verified petition in the proper court, alleging the facts* with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

x x x x x x x x x

SEC. 2. *Petition for prohibition.* – When the proceedings* of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion* amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby* may file a verified petition in the proper

* Emphasis ours.

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court, alleging the facts* with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

x x x x x x x x x

(Rule 65)

1.02. The petition should be dismissed for the following reasons:

a. As a petition for certiorari —

1) Not any of the respondents is exercising “judicial or quasi-judicial functions”;

2) Not any of the respondents is alleged to have “acted” and the “action” he has taken is “without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction”; and

3) Not any of the petitioners is a “person aggrieved thereby”, that is, by an “act” done by any of the respondents without or in excess of its or his jurisdiction, or with grave abuse of discretion.

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b. As a petition for prohibition –

1) Not any of the respondents is alleged to have been engaged in any “proceedings”, regarding R.A. 9522, in the exercise of judicial, quasi-judicial or ministerial functions; and

2) Not any of the petitioners is alleged to be a “person aggrieved” by any “proceeding” in which any of the respondents, or the respondents collectively, has been engaged.

1.03. Except for respondent, the Hon. Hilario Davide, Jr., as Permanent Representative to the Permanent Mission of the Republic of the Philippines to the United Nations, who is sought to be enjoined from depositing and registering with the Secretary General of the United Nations (a) Republic Act No. 9522 and (b) the geographic coordinates and the charts and maps indicating the baselines defined by Republic Act No. 9522, in accordance with Section 4 of the assailed law,¹ no other respondent is sought to be enjoined from performing any particular act.

¹ Paragraph 132 of the petition.

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1.04. The petition, therefore, does not sufficiently allege a "case" of "certiorari" or "prohibition". Petitioners have not alleged "rights which are legally demandable and enforceable" against the respondents, either individually or collectively. There is thus no "actual controversy" between the petitioners and the respondents either collectively or individually, which calls for the exercise of "judicial power" under Article VIII of the Constitution. The petition merits outright dismissal.

1.05. Compliance with the procedural requirements to institute a "case", including petitions for certiorari or prohibition, becomes even more compelling when the petition seeks to have the Court nullify a law in the exercise of its power of judicial review. Under the Constitution, a "law" is the joint act of the "Legislative" and "Executive" Departments whose members, by their election to their respective positions, have the direct mandate of the people. Thus, it has been ruled:

It is hornbook doctrine that the exercise of the power of judicial review **requires the concurrence of the following requisites***, namely: (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional question; (3) the plea that the function be exercised at the earliest opportunity; and (4) the necessity that the constitutional question be passed upon in order to decide the case.

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As correctly pointed out by respondents, **judicial review cannot be exercised *in vacuo***. The function of the courts is to determine controversies between litigants and not to give advisory opinions.* The power of judicial review can only be exercised in connection with a *bona fide* case or controversy which involves the statute sought to be reviewed.

Even with the presence of an actual case or controversy, the Court may refuse to exercise judicial review unless the constitutional question is brought before it by a party having the requisite standing to challenge it.* Legal standing or *locus standi* is defined as a "personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged." For a citizen to have standing, he must establish that he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.

(*Automotive Industry Workers Alliance vs. Romulo*, 449 SCRA 1 [2005], at pp. 9-10; See also *Jumamil vs. Cafe*, 470 SCRA 475 [2005], *Didipio Earth Savers vs. Gozun*, 485 SCRA 586 [2006], *Bayan vs. Zamora*, 342 SCRA 449 [2005], *Montesclaros vs. COMELEC*, 384 SCRA 289 [2002], *Cutaran vs. DENR*, 350 SCRA 697 [2001])

1.06. Not any of the above requirements is met by the petition. The Court is asked to exercise its power of judicial review "*in vacuo*". The questions raised in the petition are academic, more appropriately discussed in the classroom, between professor and students.

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1.07. Apart from the fatal procedural inadequacies, the challenge to the constitutionality of R.A. 9522 is without merit. In demonstrating this, the failure of petitioners to comply with procedural requirements becomes even more pronounced.

B.

**R.A. 9522 IS CONSTITUTIONAL:
 PETITIONERS HAVE MISREAD THE LAW,
 OR WORSE, HAVE READ INTO THE LAW
 PROVISIONS WHICH ARE NOT THERE**

2.00. Petitioners would have the Court declare as unconstitutional Republic Act No. 9522 (R.A. 9522) for the following primary reasons:

V

REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR RADICALLY REVISING THE DEFINITION OF THE 'PHILIPPINE ARCHIPELAGO' UNDER THE TREATY OF PARIS, IN VIOLATION OF ARTICLE I OF THE CONSTITUTION INCORPORATING THE SAID DEFINITION OF THE TREATY OF PARIS.

VI

REPUBLIC ACT NO. 9522 WEAKENS OUR TERRITORIAL CLAIM TO THE KALAYAAN ISLAND GROUP (KIG), AND ALTOGETHER ABANDONS OUR CLAIM TO SABAH.

(At p. 30)

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R.A. 9522, as a consequence, allegedly "dismembers a large portion of the national territory of the Philippines..."²

2.01. Petitioners have obviously misread R.A. 9522, or worse, have read into R.A. 9522, provisions which are not there.

2.02. R.A. 9522, in language that is simple and clear, exposes the apprehensions of petitioners as unfounded. Its entire text reads, as follows:

FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)

REPUBLIC ACT NO. 9522

**AN ACT
TO AMEND CERTAIN PROVISIONS OF REPUBLIC ACT
NO. 3046, AS AMENDED BY REPUBLIC ACT NO. 5446,
TO DEFINE THE ARCHIPELAGIC BASELINES OF
THE PHILIPPINES, AND FOR OTHER PURPOSES**

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 1 of Republic Act No. 3046, entitled "An Act to Define the Baselines of the Territorial Sea of the Philippines", as amended by Section 1 of Republic Act No. 5446, is hereby amended to read, as follows:

SECTION 1. The baselines of the Philippine archipelago are hereby defined and described specifically, as follows:

² Petition, p. 29.

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Basepoint Number	Station Name	Location	World Geodetic System of 1984 (WGS 84) Coordinates		Distance to next basepoint (M)
			Latitude (N)	Longitude (E)	
1	PAB-01	Amianan Is.	21° 6' 57.73"	121° 57' 27.71"	70.03
2	PAS-02	Balintang Is.	19° 57' 38.19"	122° 9' 46.32"	99.17
3	PAS-04	Iligan Pt.	18° 18' 35.30"	122° 20' 19.07"	71.83
4	PAB-05A	Ditolong Pt.	17° 7' 16.30"	122° 31' 28.34"	1.05
5	PAB-05S	Ditolong Pt.	17° 6' 14.79"	122° 31' 43.84"	0.39
6	PAS-05	Ditolong Pt.	17° 5' 51.31"	122° 31' 42.66"	3.29
7	PAB-06	Spires Is.	17° 2' 36.91"	122° 31' 3.28"	9.74
8	PAB-06B	Digollorin Pt.	16° 53' 18.03"	122° 27' 56.61"	3.51
9	PAB-06C	Digollorin Rk.	16° 49' 56.11"	122° 26' 50.78"	2.40
10	PAB-07	Divuisa Pt.	16° 47' 38.86"	122° 26' 4.40"	30.94
11	PAS-08	Dijohan Pt.	16° 18' 44.33"	122° 14' 16.69"	116.26
12	PAB-10A	Tinaga Is.	14° 29' 54.43"	122° 57' 51.15"	80.29
13	PAB-11	Horodaba Rk.	14° 6' 29.91"	124° 16' 59.21"	0.54
14	PAB-12	Matulin Rk.	14° 6' 10.40"	124° 17' 26.28"	96.04
15	PAB-13	Atalaya Pt.	12° 41' 6.37"	125° 3' 53.71"	6.79
16	PAB-13A	Bacan Is.	12° 36' 18.41"	125° 8' 50.19"	5.52
17	PAB-14	Finch Rk.	12° 32' 33.62"	125° 12' 59.70"	0.80
18	PAB-14A	Cube Rk.	12° 31' 57.45"	125° 13' 32.37"	4.90
19	PAB-14D	NW Manjud Pt.	12° 28' 36.42"	125° 17' 12.32"	1.30
20	PAB-15	SE Manjud Pt.	12° 27' 37.51"	125° 18' 5.23"	7.69
21	PAB-16A	E Sora Cay	12° 21' 41.64"	125° 23' 7.41"	5.68
22	PAB-16B	Panablizon	12° 17' 27.17"	125° 27' 0.12"	5.21
23	PAB-16C	Alugon	12° 13' 21.95"	125° 30' 19.47"	1.94
24	PAB-16D	N Bunga Pt.	12° 11' 48.16"	125° 31' 30.88"	0.54
25	PAB-17A	E Bunga Pt.	12° 11' 20.67"	125° 31' 48.29"	5.71
26	PAB-18A	SE Tubabao Is.	12° 6' 7.00"	125° 34' 11.94"	83.84
27	PAB-19C	Sulnan Is.	10° 45' 16.70"	125° 58' 8.78"	56.28
28	PAB-19D	N Tuason Pt.	9° 49' 59.58"	126° 10' 6.39"	57.44
29	PAB-20A	Arangasa Is.	8° 53' 16.62"	126° 20' 48.81"	40.69
30	PAB-21B	Sanco Pt.	8° 13' 11.53"	126° 28' 53.25"	30.80
31	PAB-22	Bagoso Is.	7° 42' 45.02"	126° 34' 29.03"	12.95
32	PAB-22C	Languyan	7° 29' 49.47"	126° 35' 59.24"	0.54
33	PAB-23	Languyan	7° 29' 16.93"	126° 35' 59.50"	0.76
34	PAB-23B	Languyan	7° 28' 30.97"	126° 35' 57.30"	1.02
35	PAB-23C	N Baculin Pt.	7° 27' 29.42"	126° 35' 51.71"	10.12
36	PAB-24	Pusan Pt.	7° 17' 19.80"	126° 36' 18.16"	1.14
37	PAB-24A	S Pusan Pt.	7° 16' 14.43"	126° 35' 57.20"	63.28
38	PAB-25B	Cape San Agustin	6° 17' 14.73"	126° 12' 14.40"	1.28
39	PAB-25	Cape San Agustin	6° 16' 8.35"	126° 11' 35.06"	67.55
40	PAB-26	SE Sarangani Is.	5° 23' 34.20"	125° 28' 42.11"	0.43
41	PAB-27	Panguil Bato Pt.	5° 23' 21.80"	125° 28' 19.59"	3.44
42	PAB-28	Tapundo Pt.	5° 21' 55.66"	125° 25' 11.21"	3.31

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43	PAB-29	W Calia Pt.	5° 21' 58.48"	125° 21' 52.03"	0.87
44	PAB-30	Manamills.	5° 22' 2.91"	125° 20' 59.73"	1.79
45	PAB-31	Marampog Pt.	5° 23' 26.18"	125° 19' 44.29"	78.42
46	PAB-32	Pola Pt.	6° 9' 8.44"	124° 15' 42.81"	122.88
47	PAB-33A	Kauluan Is.	6° 26' 47.22"	122° 13' 34.50"	29.44
48	PAB-34A	TonQuil Is.	6° 2' 33.77"	121° 56' 36.20"	2.38
49	PAB-35	Tongquil Is.	6° 1' 8.15"	121° 54' 41.45"	1.72 "
50	PAB-35A	Tongquills.	6° 0' 17.88"	121° 53' 11.17"	85.94
51	PAB-38A	Kinapusan Is.	5° 12' 8.70"	120° 41' 38.14"	55.24
52	PAB-39	Manuk Manka Is.	4° 47' 39.24"	119° 51' 58.08"	43.44
53	PAB-40	Frances Reef	4° 24' 53.84"	119° 14' 50.71"	0.61
54	PAB-40A	Frances Reef	4° 25' 3.83"	119° 14' 15.15"	15.48
55	PAB-41A	Baiapa Reef	4° 36' 9.01"	119° 3' 22.75"	6.88
56	PAB-42A	PaQuan Is.	4° 42' 52.07"	119° 1' 44.04"	3.40
57	PAB-43	Alice Reef	4° 45' 55.25"	119° 3' 15.19"	2.28
58	PAB-44	Alice Reef	4° 47' 5.36"	119° 5' 12.94"	18.60
59	PAB-45	Omapoy Rk.	4° 55' 10.45"	119° 22' 1.30"	23.37
60	PAB-46	Bukut Lapis Pt.	5° 2' 23.73"	119° 44' 18.14"	44.20
61	PAB-47	Pearl Bank	5° 46' 35.15"	119° 39' 51.77"	75.17
62	PAB-48	Baguan Is.	6° 5' 58.41"	118° 26' 57.30"	8.54
63	PAB-48A	Taganak Is.	6° 4' 14.08"	118° 18' 33.33"	13.46
64	PAB-49	Great BakkunQaan Is.	6° 11' 4.65"	118° 6' 54.15"	3.97
65	PAB-50	Lihiman Is.	6° 13' 39.90"	118° 3' 52.09"	5.53
66	PAB-51	SibaunQ Is.	6° 17' 43.99"	118° 0' 5.44"	41.60
67	PAB-52	MuliQi Is.	6° 52' 14.53"	118° 23' 40.49"	75.06
68	PAB-53	South ManQsee Is.	7° 30' 26.05"	117° 18' 33.75"	26.00
69	PAB-54	Balabac Is.	7° 48' 30.69"	116° 59' 39.18"	6.08
70	PAB-54A	Balabac Great Reef	7° 51' 27.17"	116° 54' 17.19"	1.18
71	PAB-54B	Balabac Great Reef	7° 52' 19.86"	116° 53' 28.73"	2.27
72	PAB-55	Balabac Great Reef	7° 54' 36.35"	116° 53' 16.64"	7.42
73	PAB-60	Ada Reef	8° 2' 0.26"	116° 54' 10.04"	10.85
74	PAB-61	Secam Is.	8° 11' 18.36"	116° 59' 51.87"	30.88
75	PAB-62	Latud Pt.	8° 37' 56.37"	117° 15' 51.23"	7.91
76	PAB-63	SW Tatub Pt.	8° 44' 17.40"	117° 20' 39.37"	11.89
77	PAB-63A	W Sicud Pt.	8° 53' 32.20"	117° 28' 15.78"	13.20
78	PAB-64	Tarumpitao Pt.	9° 2' 57.47"	117° 37' 38.88"	81.12
79	PAB-64B	Dry Is.	9° 59' 22.54"	118° 36' 53.61"	82.76
80	PAB-65C	Binangcolan Pt.	11° 13' 19.82"	119° 15' 17.74"	74.65
81	PAB-67	Pinnacle Rk.	12° 19' 35.22"	119° 50' 56.00"	93.88
82	PAB-68	Cabra Is.	13° 53' 21.45"	120° 1' 5.86"	115.69
83	PAB-71	Hermana Mayor Is.	15° 48' 43.61"	119° 46' 56.09"	9.30
84	PAB-72	Tamboho Pt.	15° 57' 51.67"	119° 44' 55.32"	12.06
85	PAB-73B	Rena Pt.	16° 9' 57.90"	119° 45' 15.76"	0.25
86	PAB-73	Rena Pt.	16° 10' 12.42"	119° 45' 11.95"	6.43
87	PAB-74	Rocky Ledge.	16° 16' 34.46"	119° 46' 19.50"	0.65

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88	PAB-74A	Piedra Pt.	16° 17' 12.70"	119° 46' 28.52"	1.30
89	PAB-75	Piedra Pt.	16° 18' 29.49"	119° 46' 44.94"	1.04
90	PAB-75C	Piedra Pt.	16° 19' 28.20"	119° 47' 7.69"	0.63
91	PAB-75D	Piedra Pt.	16° 20' 4.38"	119° 47' 20.48"	80.60
92	PAB-76	Dile Pt.	17° 34' 24.94"	120° 20' 33.36"	6.86
93	PAB-77	Pinget Is.	17° 41' 17.56"	120° 21' 2.02"	14.15
94	PAB-78	Badoc Is.	17° 55' 4.13"	120° 24' 40.56"	35.40
95	PAB-79	Cape Boieador	18° 29' 32.42"	120° 33' 42.41"	1.77
96	PAB-79B	Bobon	18° 30' 52.88"	120° 34' 55.35"	53.23
97	PAB-80	Calagangan Pt.	19° 10' 14.78"	121° 12' 52.64"	98.07
98	PAB-82	Ibayat Is.	20° 43' 15.74"	121° 46' 57.80"	25.63
99	PAB-83	Amianan Is.	21° 7' 17.47"	121° 56' 43.85"	0.08
100	PAB-84	Amianan Is.	21° 7' 18.41"	121° 56' 48.79"	0.25
101	PAB-85	Amianan Is.	21° 7' 12.04"	121° 57' 3.65"	0.44

SEC. 2. The baselines in the following areas² over which the Philippines likewise exercises sovereignty and jurisdiction shall be determined as "Regime of Islands"³ under the Republic of the Philippines consistent with Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS):

- a. The Kalayaan Island Group as constituted under Presidential Decree No. 1596; and
- b. Bajo de Masinloc, also known as Scarborough Shoal.

SEC. 3. This Act affirms that the Republic of the Philippines has dominion, sovereignty and jurisdiction over all portions of the national territory as defined in the Constitution and by provisions of applicable laws including, without limitation, Republic Act No. 7160, otherwise known as the Local Government Code of 1991, as amended.

SEC. 4. This Act, together with the geographic coordinates and the charts and maps indicating the aforesaid baselines, shall be deposited and registered with the Secretary General of the United Nations.

SEC. 5. The National Mapping and Resource Information Authority (NAMRIA) shall forthwith produce and publish charts and maps of the appropriate scale clearly representing the delineation of basepoints and baselines as set forth in this Act.

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SEC. 6. The amount necessary to carry out the provisions of this Act shall be provided in a supplemental budget or included in the General Appropriations Act of the year of its enactment into law.

SEC. 7. If any portion or provision of this Act is declared unconstitutional or invalid, the other portions or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 8. The provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, and all other laws, decrees, executive orders, rules and issuances inconsistent with this Act are hereby amended or modified accordingly.

SEC. 9. This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in any two (2) newspapers of general circulation.

Approved,

2.03. R.A. 9522 does and says nothing more.

2.04. The "Philippine archipelago" enclosed by the baselines in Section 1 of R.A. 3046, as now amended further by R.A. 9522, is the same archipelago enclosed by the baselines in Section 1 of R.A. 3046, as amended by R.A. 5446. To be sure, there are a few changes so that the baselines would conform to Article 47 of the LOSC. But the archipelago is the same.

2.05. Petitioners misunderstand the function of "baselines". The establishment of baselines is not a mode of acquiring, asserting, or revising territory over which a state exercises sovereignty. The drawing of baselines assumes the existence of the territory, coastal,

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island or archipelagic. Baselines are drawn for the purpose of defining or establishing from what points the breadth of maritime areas over which a state has sovereign or jurisdictional rights are measured. Thus, as provided in Law of the Sea Convention of 1994 (LOSC):

As to the territorial sea generally –

Article 3. *Breadth of the territorial sea*

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines* determined in accordance with this Convention.

Article 4. *Outer limit of the territorial sea*

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

As to those of archipelagos –

Article 48. *Measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf*

The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines* drawn in accordance with article 47.

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As to islands —

Article 121. Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.³

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

2.06. When R.A. 3046 was enacted in 1961, island archipelagos, such as the Philippine archipelago, unlike "coastal" archipelagos³, had not acquired any distinct recognition under international law.⁴ There was consequently no internationally recognized mode of drawing baselines to enclose the islands and the waters comprising the archipelago.

³ Fisheries case, Judgment of December 18th, 1951: I.C.J. Reports 1951, p. 116.

⁴ Part IV of the LOSC now recognizes as a distinct maritime regime the waters of island archipelagos.

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2.07. The LOSC in its Part IV, upon the urging of island archipelagos, principally the Philippines and Indonesia, has given distinct recognition in international law to island archipelagos. It provided for relevant rules, including the drawing of archipelagic baselines, as follows:

Article 47. Archipelagic baselines

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

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2.08. Since the baselines drawn pursuant to Section 1, R.A. 3046, even as amended by R.A. 5446, do not comply with all of the requirements of Article 47 (for the simple reason that it did not yet exist when R.A. 3046 was enacted in 1961 and R.A. 5446 in 1968), there was need to amend Section 1, R.A. 3046, as amended by R.A. 5446, as follows:

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x x x The amendment of the baselines law was necessary to enable the Philippines to draw the outer limits of its maritime zones including the extended continental shelf in the manner provided by Article 47 of the LOSC. As defined by R.A. 3046, as amended by R.A. 5446, the baselines suffer from some technical deficiencies, to wit:

1. The length of the baseline across Moro Gulf (from Middle of 3 Rock Awash to Tongquil Point) is 140.06 nautical miles (Fig. 1). This exceeds the maximum length allowed by Article 47(2) of the LOSC, which states that *"The length of the baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles"*.
2. The selection of basepoints is not optimal. At least 9 basepoints can be skipped or deleted from the baselines system. This will enclose an additional 2, 195 nautical miles of water.
3. Finally, the basepoints were drawn from maps existing in 1968, and not established by geodetic survey methods. Accordingly, some of the points, particularly along the west coasts of Luzon down to Palawan were later found to be located either inland or on water, not on low-water line and drying reefs as prescribed by Article 47.⁵

2.09. R.A. 9522 was enacted so that the "technical deficiencies" would be rectified and baselines enclosing the Philippine Archipelago would be in accord with the requirements of Article 47

⁵ Enclosed as Annex "A" is a map showing the baselines drawn pursuant to R.A. 3046, as amended by R.A. 5446 (in red ink) and the baselines drawn pursuant to R.A. 9522 (in green ink) which demonstrates the changes made pursuant to R.A. 9522. For information, the alleged limits of the Treaty of Paris (in black ink) as well as the limit of the 200 mile exclusive economic zone provided in LOSC (in green ink) are also shown.

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of the LOSC. This would assure that the lines from which the "breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured" would have international recognition.⁶ The importance of this can not be overemphasized. For beyond the outer limits of the maritime areas would be maritime areas of neighboring states or the international seabed area, referred to in the LOSC, as the area "beyond the limits of national jurisdiction".⁷

2.10. While Article 46 of the LOSC defines an "archipelagic state" and an "archipelago", the status of an "archipelago" with the rights arising therefrom under Article 49, do not arise *ipso facto* from such fact.

2.11. Article 47 provides:

Article 47. *Archipelagic baselines*

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water

⁶ Article 48, LOSC

⁷ Article 1; Part XI, LOSC

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to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

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While Art. 49 provides:

Article 49. *Legal status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil*

1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47,* described as archipelagic waters, regardless of their depth or distance from the coast.

2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.

3. This sovereignty is exercised subject to this Part.

4. The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

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Under the above provision, the archipelagic state has the option of vesting in its "archipelago" the status of an "archipelago" under Part IV of the LOSC. That option is exercised by drawing the "straight baselines" provided in Article 47. If the archipelagic state does not draw the baselines provided in Article 47, then the islands comprising the archipelago will be regarded merely as "islands" under Article 121. Should the islands be separated from each other by more than 24 nautical miles (each island generating a territorial sea of 12 nautical miles), other states would enjoy in the seas beyond the territorial sea of each island the "freedom of the high seas" provided in Article 87.

2.12. Article 48 of the Law of the Sea Convention (LOSC) provides as follows:

Article 48. *Measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf*

The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf **shall be measured from archipelagic baselines drawn in accordance with article 47.***

To establish the limits of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of the Philippine archipelago, the baselines enclosing the islands and waters of the archipelago must be drawn in accordance with Article 47. Without

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such baselines, the status of the Philippine archipelago as an “archipelago” under Article 46 (b) of the LOSC and the exercise of resulting sovereign rights under Article 49, will be in question.

2.13. Moreover, the limits of its territorial sea, contiguous zone, and exclusive economic zone would be uncertain. Its maritime borders, in relation to those of neighboring states, such as Indonesia,⁸ Malaysia,⁹ Vietnam,¹⁰ Taiwan¹¹ and Japan,¹² or the international seabed area, would not be defined. The confusion and conflict that will inevitably result puts in peril the integrity of the Philippine archipelago itself. The need, therefore, to amend R.A. 3046, as amended, to conform to the requirements of the LOSC is evident and was immediate.

2.14. Far from “radically revising the definition of the Philippine Archipelago...”, R.A. 9522 assures its integrity as an “archipelago”, entitled to the respect and recognition as such by other states, by drawing the baselines which enclose the islands and waters comprising it, in accordance with Article 47 of the LOSC.

⁸ Government Regulation Number 36/2002

⁹ Baselines of Maritime Zones Act 2006

¹⁰ Statement of 12 November 1982 by the Government of the Socialist Republic of Vietnam on the Territorial Sea Baseline of Vietnam

¹¹ Law on the Territorial Sea and Contiguous Zone of the Republic of China

¹² Law on the Territorial Sea and Contiguous Zone (Law No. 30 of 1977, as amended by Law No. 73 of 1996)

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2.15. As to the Kalayaan Island Group, over which title and sovereignty of the Philippines has been declared in P.D. 1596 on June 11, 1978, far from weakening our sovereign rights over the island group, R.A. 9522 reasserts and strengthens these rights by providing for the determination of baselines over the area. Section 2 of R.A. 9522 provides, as follows:

SEC. 2. The baselines in the following areas* over which the Philippines likewise exercises sovereignty and jurisdiction shall be determined as "Regime of Islands"¹⁴ under the Republic of the Philippines consistent with Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS):

- a. The Kalayaan Island Group as constituted under Presidential Decree No. 1596; and
- b. Bajo de Masinloc, also known as Scarborough Shoal.

Prior to the enactment of R.A. 9522, there has been no official pronouncement as to how the incident baselines of the islands comprising the group shall be determined.

2.16. Two ways of dealing with the problem are reflected in bills filed in the House of Representatives and the Senate, as follows: (a) to maintain the "archipelago" enclosed by the baselines in R.A. 3046 but amending the baselines to conform to Article 47 and to consider the "Kalayaan Group of Islands" as "islands" under Article 121 of the Law of the Sea Convention, or (b) to consider both the "archipelago" enclosed by the baselines in R.A. 3046, as amended, and the Kalayaan Group of Islands, as a single archipelago by

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drawing straight baseline connecting the outermost points of the outermost islands of both the Philippine archipelago and the Kalayaan Group of Islands.

2.17. The Congress ultimately decided, as shown in Section 2 of R.A. 9522, not to consider both the archipelago enclosed by the baselines in Section 1 of R.A. 3046, as amended, and the Kalayaan Group of Islands as a **single archipelago** but to regard the Kalayaan Group of Islands separately under the Regime of Islands provided in Article 121 of the LOSC. Among the reasons were the following:

a. Article 46 (b) defines an “archipelago” as follows:

Article 46. Use of terms

For the purpose of this Convention:

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(b) *archipelago* means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

There can be no question that the “Philippine archipelago”, as we have always known it, and enclosed by the baseline drawn in R.A. 3046 is an “archipelago”

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under the above definition. But whether that "archipelago" and the Kalayaan Group of Islands, together, constitute an "archipelago" is uncertain. It must be remembered that the Kalayaan Group of Islands" came to be part of the Philippines only upon the enactment on June 11, 1978 of P.D. No. 1596. It has never, through the centuries of its existence, been regarded as part of the Philippine archipelago.

b. Under Article 47, it is in fact required, that the baselines "shall not depart to any appreciable extent from the general configuration of the archipelago". This makes more emphatic that what are enclosed by the baselines is an "archipelago" with a configuration as such.

c. Technical studies have shown that there is no tie-point with low tide elevation (bare at low tide) that could connect the Kalayaan Group of Islands with the main archipelago.

d. Several, in fact a majority, of the basepoints are located in islands presently occupied by other countries (not the Philippines).

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2.18. As to Sabah, petitioners have overlooked that Section 2 of R.A. 5446 provided, as follows:

SECTION 2. The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is **without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah,* situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.***

R.A. 9522 has not repealed nor amended the above provision.

----- oOo -----

2.19. Petitioners argue, as follows:

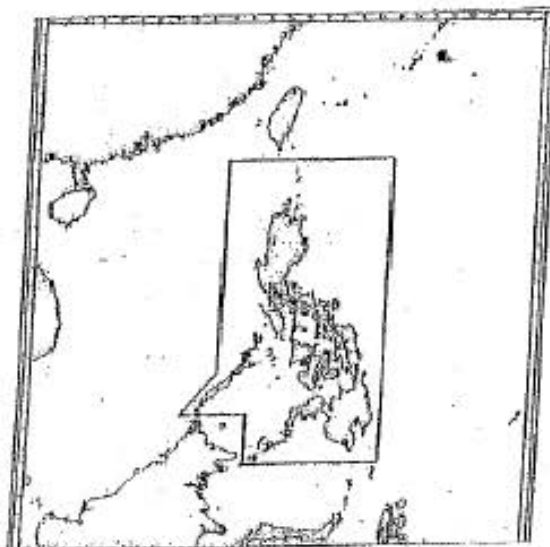
R.A. 9522 radically revises the definition of the 'Philippine Archipelago' by excluding large areas of waters set forth in the Treaty of Paris

79. R.A. 9522 radically revises the metes and bounds of the '*Philippine archipelago*' as defined under the Treaty of Paris by excluding large areas of waters that were set forth in the Treaty of Paris as part and parcel of the '*Philippine archipelago*'.

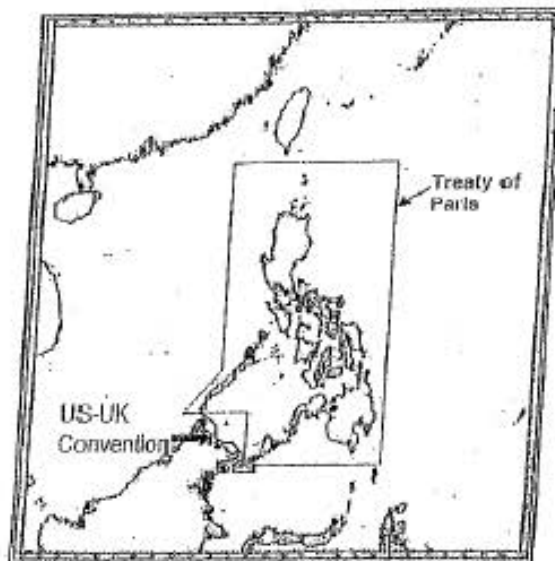
80. The '*Philippine archipelago*' as defined under Treaty of Paris takes the form of a rectangle that measures 600 miles in width and 1200 miles in length. Inside this rectangle lie the 7,100 islands comprising the Philippine Islands. This is illustrated below:

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81. Due to the Treaty of Washington, and the Convention concluded between the Great Britain and the United States, the Philippine territory expanded as illustrated below:



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82. R.A. 9522 radically revises the definition of the 'Philippine archipelago' under the Treaty of Paris in two ways.

83. First, since R.A. 9522 never referred to the Treaty of Paris, its enactment is an open and express rejection of the said Treaty which had been built into the Preamble of R.A. 3046^a, as amended. Hence, R.A. 9522 chopped away huge swaths of the Philippine national territory, limiting its reach only to the areas within the outermost points enumerated in the said law. This can be clearly seen from the illustration below which shows the area defined by R.A. 9522 with the wider rectangular expanse of the national territory defined under Article III of the Treaty of Paris.



84. Second, R.A. 9522 essentially declares the Philippines as an "archipelagic state" under the UNCLOS, making use of the straight baselines method to delineate the national territory. The method entails drawing straight lines connecting the outermost points of the outermost islands following the general contour of the archipelago.

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85. In conformity with the straight baselines method, R.A. 9522 identifies the outermost points through which the baselines delineating the Philippine territory should be drawn. The result is a roughly triangular delineation which excludes large areas of waters within the 600 miles by 1200 miles rectangle enclosing the '*Philippine archipelago*' as defined in the Treaty of Paris.

86. Hence, R.A. 9522 constitutes a drastic reduction of Philippine territory and a treasonous surrender of Philippine sovereignty, which is incomprehensible given that the Treaty of Paris has been consistently incorporated in all of our organic charters from the 1935 Constitution up to the present 1987 Constitution.

(At pp. 45-49)

2.20. R.A. 9522, already quoted in full above, in its Section 1, only amends Section 1 of R.A. 3046, as amended by R.A. 5446. No other provision is amended. It does not define, modify, or alter the extent of the "National Territory", defined in Article I of the Constitution which provides:

ARTICLE I

NATIONAL TERRITORY

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

No mention is made, unlike the 1935 Constitution, of the territory "ceded to the United States by the Treaty of Paris...", much less a description of the territory ceded.

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2.21. And if, and that is a big IF, by the accession of the Philippines to the LOSC on December 10, 1992, and the concurrence of the Batasang Pambansa on February 27, 1984 there is an implied modification of the limits of our territorial sea and the nature of the waters within the baselines described in R.A. 3046, then the Petition is misdirected. It should have been instead addressed at the accession of the Philippines to the LOSC.

2.22. Parenthetically, the basic premise of the petition, that is, what is referred to as the "Treaty of Paris" proposition rests on contested premises.

2.23. The relevant provision of the "Treaty of Peace Between the United States of America and the Kingdom of Spain (Treaty of Paris)" signed in Paris on 10 December 1898, reads as follows:

ARTICLE III

Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:*

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty seventh (127th) degrees meridian of longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degree and forty five minutes (4°45') north latitude, thence along the parallel of four degrees and forty five (4°45')

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north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty five minutes ($119^{\circ}35'$) east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes ($119^{\circ}35'$) east of Greenwich to the parallel of latitude seven degrees and forty minutes ($7^{\circ}40'$) north, thence along the parallel of latitude seven degrees and forty minutes ($7^{\circ}40'$) north to its intersection with the one hundred and sixteen (116^{th}) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10^{th}) degree parallel of north latitude with the one hundred and eighteenth (118^{th}) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118^{th}) degree of meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118^{th}) degree meridian of longitude east of Greenwich to the point of beginning.

The United States will pay to Spain the sum of twenty million dollars (\$20,000,000) within three months after the exchange of the ratifications of the present treaty.

2.24. The "Treaty of Paris" proposition, upon which the Petition is founded, avers that what was ceded, and consequently now forms part of the "national territory" includes not only the "islands lying with the following line" and the "waters" within the lines, but also the "water" seaward of the "baselines" articulated in the "Whereas" clauses of R.A. 3046.

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2.25. In remarks made at an annual meeting of the Philippine Society of International Law,¹³ Dr. Florentino P. Feliciano, a foremost authority in international law, and former member of the Court, addressing the "Treaty of Paris" proposition observed, as follows:

Republic Act No. 3046 represents one particular attempted adjustment of these two sets of interests. This attempted adjustment should be carefully examined. Republic Act No. 3046 embraces two distinct claims: first, the claim to employ straight base lines from which the territorial sea is to be measured; second, **an assertion that all the waters seaward from such base lines and comprehend within certain latitude and longitude lines are territorial waters of the Philippines.***

1. We turn first to the use of straight lines for delimiting the territorial sea, that is, for marking the boundaries between, on one hand, internal waters and, on the other hand, the territorial waters of the Philippines. Dr. Coquia at the outset of his paper, referred to the "essentially unilateral character of the acts of delimitation due to the dependence upon the geographic, historical and economic circumstances of each state." A plea is also made, upon the authority of the Anglo-Norwegian Fisheries Case, that the Philippines be acknowledged as possessing a "wide latitude" in the matter of delimiting its territorial waters.

The delimitation of the waters claimed by a state as its territorial or maritime belt must, of course, be a unilateral act. **This is not, however, to say that the claimant state is free under the law of nations to act according to its own unlimited discretion in delimiting its maritime belt. Such a view would clearly make international law largely irrelevant.*** Thus, the International Court in the same Anglo-Norwegian Fisheries case said:

¹³ A copy of the paper of Dr. Florentio P. Feliciano entitled "Comments on Territorial Waters of Archipelagos" is attached as Annex "B".

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"It does not at all follow that, in the absence of rules having the technically precise character alleged by the United Kingdom Government, the delimitation undertaken by the Norwegian Government in 1935 is not subject to certain principles which make it possible to judge as to its validity under international law. *The delimitation of sea areas has always an international aspect; it cannot be depended merely upon the will of the coastal states as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal state is competent to undertake it, the validity of the delimitation with regard to other states depends upon international law.*"*

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2. The assertion that all waters seaward from the baselines specified in Republic Act No. 3046 to the latitude and longitude lines set out in the Treaty of Paris of 1898 are territorial waters, appears to rest on two principal bases.

The first basis is a particular interpretation of the Treaty of Paris. This interpretation appears to be that by the Treaty of Paris. Spain ceded a particular slice of the surface of the globe comprehending both the land and water areas embraced within the imaginary latitude and longitude lines described in Article 3 of the Paris Treaty. It may be suggested that this interpretation is not the only possible, nor even the most plausible, reading of Article 3 of the Paris Treaty which simply said "Spain cedes to the United States the *archipelago* known as the Philippine Islands and comprehending the *islands* lying within the following lines: ..." The natural import of these words is, it is submitted, that what was intended to be ceded was the land area found within the said imaginary lines. The regular geometric nature of the line suggests that its purpose was not so much to mark a political boundary but rather to make certain that all the islands comprising the archipelago were included in the transfer. It would also seem open to doubt whether Spain had, prior to the Treaty of Paris, claimed and treated the waters within these imaginary lines as territorial waters of

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its colonial possession.* Historic evidence, as distinguished from our simple assertion, that Spain had indeed characterized such waters as its territorial waters has as yet to be presented. It may be relevant to note that Article I of the Spanish Law of Waters of August 32, 1866 includes as part of the national domain the coast of the sea, "that is, the maritime zone encircling the coast, to the full width recognized by international law." Since the prevailing rule at the time of the Treaty of Paris was that of a fairly limited maritime belt, it would, I suggest, be necessary in order to sustain our official interpretation of the Treaty of Paris, to show that not only had Spain immemorially claimed such waters as territorial waters as an exception to prevailing customary law but also that other countries had acquiesced to such a claim on the part of Spain. The homely rule of the civil law is that "*Nemo det quod non habet*"

The second basis, that of historic title, raises closely related problems. So-called "historic title" or title to "historic waters" is clearly analogous to prescription. Most international law scholars agree that the indispensable components of historic title include, firstly, long continuous usage under claim of sovereignty, and secondly, recognition and acquiescence on the part of other states. International law, of course, has not prescribed any specific length of time for the maturation of prescriptive or historic title. There is no question, however, that a substantial period of time must be allowed to pass, since the function of the time element is precisely to afford a basis for inferring acquiescence or tolerance on the part of other states. Clearly, the problem is one of evidence, of careful scientific inquiry into the practice of Spain when we were her possession and of the response of other states*, if any. So far as I know (and here I may be mistaken), this kind of historical inquiry has yet to be done; our assertion has anticipated proof.

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A capital aspect of an assessment of the reasonableness of a claim of authority is the relation of the scope of authority or competence claimed and the practical, realistic requirements of the interests sought to be protected by the assertion of such competence. The scope of authority claimed should be relevant to and necessary for the protection of the legitimate interests involved. Applying this index of reasonableness (and it is of course not the only index), the suggestion may be made that the necessity of our claim for the protection of the interests which we have invoked as justification for such claim, is less than clear.*

A claim to treat certain waters as territorial waters is a claim to complete, continuous and permanent authority over such waters; it is in fact a claim to subject such waters to the full sovereignty of the claimant state, subject only to the somewhat tenuous right of innocent passage in favor of foreign merchant vessels. The components of this extremely broad, all-purpose authority have been listed as follows:

"1. Exclusive rights of exploitation and control over animal and mineral resources of the marginal belt.

"2. The competence to exclude passage through the marginal belt by qualifying the character of the passage sought or by suspending any passage at all. This competence is widely acknowledged to be most extensive in the case of warships, however inoffensive the projected passage may be. And it includes competence to exclude all passage by aircraft.

"3. Authority to subject navigation in the belt to the regulation of the coastal state.

"4. An indeterminate competence over events and persons aboard passing vessels.

"5. An equally indeterminate competence over the vessel itself for the purpose of judging claims against it.

"6. A competence commensurate with the obligation to maintain safety of navigation in the belt.

"7. Authority to protect against pollution from passing ships.

"8. Authority to prescribe and apply regulations concerning security, customs and health.

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"9. Authority to control belligerent use of neutral waters, a control that might be onerous and even embarrassing to the claimant during times of violence."

Consider the interest of security. If this interest be conceived in terms of security from military attack by a hostile power, the development of aircraft and of missiles of tremendous range and velocity and the engrafting of these weapons to naval craft, tend rather clearly to make irrelevant any particular width of territorial waters, however expanded. If, however, it would seem sufficient to couple a relatively narrow territorial sea to a special contiguous zone which foreign warships may not enter without previous notification to and authorization from the coastal authorities. Moreover, a very wide territorial sea does not, by itself, in any way reduce the physical difficulties of surveillance and policing, unless, indeed, it be assumed that the potential hostile power is scrupulously respectful of international law. The effective capability for controlling access depends upon the number of vessels and aircraft and men available to the coastal state. The real problem, it appears, is one of having adequate authority or legal competence to control access: Dr. Coquia referred to the satisfaction of having the law on your side should positive countering measures be necessary. The suggestion that may be offered is that completely adequate authority can be had by the establishment of a contiguous zone for security purposes, and that the all-embracing authority of a claim of sovereignty is unnecessary.

Consider next the interest in exclusive exploitation of the biological resources of adjacent waters. That the Philippines needs a large amount of fish is not, I think, open to dispute. There are, I believe, at least three assumptions implicitly underlying Dr. Coquia's reference to this need as justification for our claim to territorial waters.

(1) Firstly, that there is not enough fish in these waters for both domestic and foreign fishermen. Put a little differently, the assumption is that to permit both domestic

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and foreign fishermen to fish in these waters may be seriously to deplete the exploitable fish population.

(2) Secondly, that exclusion of foreign fishermen will result in a greater catch for the domestic fishermen.

(3) Thirdly, that exclusion of foreign fishermen is the only means open, in view of assumption number 1, for ensuring realization of assumption number 2.

It may be that first assumption is a valid one; the point I make is that its validity should be demonstrated. For that purpose it would be necessary to secure reliable data on the identity, location, mobility and probable size of the exploitable fish stocks, both the maximum sustainable yield and the optimum level of production, the intensities of present and realistically expected fishing activities, and so on. It seems relevant to observe that marine biologists and fishery economists differ greatly as to the very notion of depletion or over-fishing. Most recently, for instance, scientists, notably Professors Beverton and Holt, have put forward the so-called "cumetric theory" in respect of fishing, the burden of which is that the meaningful limits on exploitation of fish stocks (excluding the anadromous species) are not biological but economic in nature.

As to the second assumption, it is perhaps clear that nationalization of fishery resources, by itself, will not necessarily mean greater local catches. The increase of local catches depends upon the commitment of more capital, improved boats and gear, and technical skills; it is a function, in other words, of a variety of political and economic decisions not of simple exclusion of foreign fishermen. Fish populations, it should be borne in mind, are "open-ended" and on-going biological systems and differ from mineral and inorganic resources. Unless fish are harvested, they go to waste.

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As to the third assumption, the fundamental problem is one of rational conservation and development. Since fish populations are migratory in nature and pay no heed to political boundaries, it should be evident that any particular width of territorial waters bears but a minimum relation to effective and rational conservation measures. Success in conservation requires international cooperation on the one hand; on the other hand, it does not seem to demand complete exclusion.

It is of course possible that subsequent study and experimentation may validate Dr. Coquia's three implicit assumptions. The suggestion here essayed is, however, not contingent upon Dr. Coquia being proved mistaken. For the thrust of the suggestion is that even a demand for exclusive exploitation of marine resources may in all probability be met and satisfied without the expansive and all-embracing claim we have made. Such a demand may, again, be served by establishment of a reasonably conceived special contiguous zone for fishery purposes.

In sum, a claim to territorial waters is an unnecessarily blunt and rigid instrument. There is available the much more selective and flexible device of the contiguous zone for the protection of legitimate coastal interests without unreasonably restricting the equally legitimate inclusive interests of the rest of the world.

2.26. Similar reservations were made at that conference by representatives of Spain and the United Kingdom.

2.27. Indeed, the "Treaty of Paris" proposition of the petitioners has not been accepted or recognized by either the United States or Spain, the parties thereto. No state is known to have supported this proposition. The "lines" were drawn to simply

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describe the location of the "islands" which constitute the archipelago ceded by Spain to the United States. Apart, therefore, for the fact that the "Treaty of Paris" proposition upon which the petition is founded is without causal connection to R.A. 9522, the proposition has not been shown to have the plausibility to merit the concurrence and support of responsible authority.

----- oOo -----

2.28. As additional notes on this matter.

2.29. Petitioners may have in fact overlooked that Section 2 of R.A. 3046 which provides:

SECTION 2. All waters within the baselines provided for in Section one hereof are considered inland or internal waters of the Philippines.

and Section 2 of R.A. 5446, which provides:

SECTION 2. The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.

were not explicitly repealed or amended.

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2.30. Similarly, petitioners have overlooked that the 1987 Constitution enacted after the adoption of the LOSC on April 30, 1982, has explicitly recognized "archipelagic waters", indeed provided, as follows in its Section 2, Article XII, as follows:

The State shall protect the nation's marine wealth in its archipelagic waters*, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

Notably, there is no mention, in this context, of "internal waters".

Concluding –

2.31. R.A. 9522 does not amend – certainly, does not radically reduce or "dismember", the national territory, but assures that the limits of the maritime areas of the Philippines are respected by other states. No provision of the Constitution, least of all Article I, the "National Territory", has been violated by its enactment into law.

2.32. As shown by the following table, moving into the maritime regime under the Law of the Sea Convention of 1994 rather than being frozen by a rigid adherence to the Treaty of Paris proposition, has expanded the maritime areas¹⁴ over which the Philippines has sovereign rights:

¹⁴ Article 56, as to the exclusive economic zone; Article 2, as to territorial sea; Article 49, as to archipelagic water.

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	Treaty of Paris Proposition with baselines under RA 5446 (sq. Nautical miles)*	LOSC with Baselines under RA 9522 (sq. Nautical miles)*
Within Baselines (Internal or archipelagic waters)	166,858	171,435
Territorial Sea	274,136**	32,106***
Exclusive Economic Zone****		382,669
TOTAL	440,994	586,210

NOTE:

*The maritime areas indicated in the table are projected from the Philippine archipelago (Exclusive of Kalayaan Island Group and Bajo de Masinloc)

**Territorial Sea was measured from the baselines to the lines appearing in the Treaty of Paris

***Twelve (12) nautical miles from the baselines

****EEZ areas were measured applying median lines in overlapping zones

C.

AND IN OPPOSITION TO THE ISSUANCE OF A
TEMPORARY RESTRAINING ORDER AND/OR
WRIT OF PRELIMINARY INJUNCTION

3.00. The Petition prays:

WHEREFORE, Petitioners respectfully pray that:

1. Pending the resolution of this Petition, a Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction be IMMEDIATELY ISSUED, prohibiting Respondents from implementing or invoking Republic Act 9522;

x x x

x x x

x x x

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and in support thereof alleges:

132. Unless the implementation of Republic Act 9522 is enjoined, the Permanent Representative to the United Nations in New York City, Hon. Hilario Davide, Jr., will deposit and register with the Secretary General of the United Nations (a) Republic Act 9522, and (b) the geographic coordinates and the charts and maps indicating the baselines defined by Republic Act 9522, in accordance with Section 4 of the assailed law.

133. The registration and deposit of Republic Act 9522 and other related documents before the UN Secretary-General will forever close the door to any Philippine efforts to obtain the acceptance by the international community of our Constitutionally-defined national territory.

134. More importantly, the registration and deposit of R.A. 9522 before the UN Secretary-General, will immediately bind the Philippines to the UNCLOS III regime, leading to the dismemberment of the Philippine national territory as defined in the 1987 Constitution.

135. Hence, if the implementation of Republic Act 9522 is not immediately enjoined, Petitioners and millions of Filipinos will suffer great or irreparable injury before the matter can be heard by the Honorable Court. Thus, Petitioners respectfully ask the Honorable Court to immediately enjoin the implementation of Republic Act 9522, pending the resolution of this petition.

(At pp. 67-68)

3.01. Respondents replead all of the foregoing allegations of this Comment.

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3.02. Preliminary injunction may only issue upon compliance with the following requisites provided in Rule 58 of the Rules of Court:

SEC. 3. *Grounds for issuance of preliminary injunction.*— A preliminary injunction may be granted when it is established.

(a) That the appellant is entitled to the relief demanded*, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant*; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.*

SEC. 4. *Verified application and bond for preliminary injunction or temporary restraining order.*— A preliminary injunction or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded*; and

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3.03. On April 3, 2009, in accordance with its Section 4, the Philippine Government through the Philippine Mission to the United Nations, deposited an original duplicate copy of R.A. 9522 with the Secretary-General of the United Nations through the UN Division for Ocean Affairs and the Law of the Sea (DOALOS).¹⁵ Where the acts sought to be enjoined have already become *fait accompli*, or accomplished or consummated, injunction would not lie.¹⁶

3.04. Nonetheless, for several other reasons, respondents oppose the application for the issuance of injunction as follows:

a. Petitioners are not entitled to the relief demanded;

b. No act being performed by any of the respondents and that the continuance of the act would work injustice to the applicant is alleged in the petition;

c. Injunction is not generally issued against the enforcement of a law even alleged to be unconstitutional; and

¹⁵ Attached as Annex "C" is a Certification issued by the Secretary of the Department of Foreign Affairs dated April 22, 2009 to this effect.

¹⁶ See *Transfield Philippines vs. Luzon Hydro Corporation*, 443 SCRA 307 (2004); *Cameland Sugar Corp. vs. Alon*, 533 SCRA 28 (2007); *Go vs. Looyuko*, 537 SCRA 445 (2007) and *Bustamante vs. Court of Appeals*, 381 SCRA 171 (2002).

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d. The issuance of a writ of preliminary injunction would, on the contrary, be against the national interest to the damage and prejudice not only of the respondents but even more importantly to the Republic of the Philippines.

- a. **Petitioners Are Not Entitled To The Relief Demanded –**
- b. **No Act Being Performed By Any Of The Respondents And That The Continuance Of The Act Would Work Injustice To The Applicant Is Alleged In The Petition –**

3.05. Petitioners do not show in their petition that they are “entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of ...” It is not enough that a “right” is alleged; that right must be “present”, “clear and unmistakable”.

Thus, in *Nisce vs. Equitable PCI Bank, Inc.*, 516 SCRA 231 (2007), the Supreme Court held, as follows:

The plaintiff praying for a writ of preliminary injunction must further establish that he or she has a present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages.* In the absence of proof of a legal right and the injury sustained by the plaintiff, an order for the

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issuance of a writ of preliminary injunction will be nullified. Thus, where the plaintiff's right is doubtful or disputed, a preliminary injunction is not proper. The possibility of irreparable damage without proof of an actual existing right* is not a ground for a preliminary injunction.

(At pp. 253)

Similarly, in *Republic vs. Caguioa*, 536 SCRA 194 (2007), the Supreme Court ruled, to wit:

Section 3 of Rule 58 of the Revised Rules of Court provides:

For a writ of preliminary injunction to issue, the plaintiff must be able to establish that (1) there is a clear and unmistakable right to be protected,* (2) the invasion of the right sought to be protected is material and substantial, and (3) there is an urgent and paramount necessity for the writ to prevent serious damage.

Conversely, failure to establish either the existence of a clear and positive right* which should be judicially protected through the writ of injunction, or of the acts or attempts to commit any act which endangers or tends to endanger the existence of said right, or of the urgent need to prevent serious damage, is a sufficient ground for denying the preliminary injunction.

(At pp. 211-212)

and in *Tomawis vs. Tabao-Caudang*, 533 SCRA 68 (2007), thus:

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action. As a rule, to justify the injunctive relief prayed for, the movant must show:

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(1) the existence of a right *in esse* or the existence of a right to be protected*; and (2) that the act against which injunction is to be directed is a violation of such right. A "clear legal right" means one clearly founded on or granted by law or is enforceable as a matter of law.* The *onus probandi* is on movant to show that there exists a right to be protected, which is directly threatened by the acts sought to be enjoined. Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage.

(At pp. 84-85)

3.06. The petition seeks to have R.A. 9522 declared unconstitutional. There is no showing in the petition as heretofore explained, that R.A. 9522 has produced the consequences alleged. The complaint of the petitioners is that R.A. 9522 has radically diminished the extent of the territory of the Philippines. As heretofore shown, R.A. 9522 merely provides for baselines of the Philippine archipelago and does not seek to define much less reduce the extent of the national territory.

**c. Injunction Is Not Generally Issued
 Against The Enforcement Of A Law Even
 Alleged To Be Unconstitutional –**

3.07. A well established principle is that enforcement of a law can not be enjoined.

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*In Sto. Domingo vs. De Los Angeles:*¹⁷

Upon these facts, we find in-existent any oppressive exercise of authority by petitioners-officials, which could constitute the basis for the injunctive relief that was granted by respondent Judge. Contrary to the criterion that he followed, the mere fact that a statute is alleged to be unconstitutional or invalid, does not of itself entitle a litigant to have the same enjoined.*

*In Executive Secretary vs. Court of Appeals:*¹⁸

In *Social Security Commission v. Judge Bayona*, we ruled that a law is presumed constitutional until otherwise declared by judicial interpretation. The suspension of the operation of the law is a matter of extreme delicacy* because it is an interference with the official acts not only of the duly elected representatives of the people but also of the highest magistrate of the land.

In *Younger v. Harris, Jr.*, the Supreme Court of the United States emphasized, thus:

Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and, hence, unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. 752 *Beal v. Missouri Pacific Railroad Corp.*, 312 U.S. 45, 49, 61 S.Ct. 418, 420, 85 L.Ed. 577.

¹⁷ 96 SCRA 139, 147 (1980).

¹⁸ 429 SCRA 81, 102-103 (2004).

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And similarly, in *Douglas, supra*, we made clear, after reaffirming this rule, that:

"It does not appear from the record that petitioners have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith" 319 U.S., at 164; 63 S.Ct., at 881.

The possible unconstitutionality of a statute, on its face, does not of itself justify an injunction against good faith attempts to enforce it, unless there is a showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief.* The "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort," and is generally disfavored.

To be entitled to a preliminary injunction to enjoin the enforcement of a law assailed to be unconstitutional, the party must establish that it will suffer irreparable harm in the absence of injunctive relief and must demonstrate that it is likely to succeed on the merits, or that there are sufficiently serious questions going to the merits and the balance of hardships tips decidedly in its favor.* The higher standard reflects judicial deference toward "legislation or regulations developed through presumptively reasoned democratic processes." Moreover, an injunction will alter, rather than maintain, the status quo, or will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits. Considering that injunction is an exercise of equitable relief and authority, in assessing whether to issue a preliminary injunction, the courts must sensitively assess all the equities of the situation, including the public interest. In litigations between governmental and private parties, courts go much further both to give and withhold relief in furtherance of public interest than they are

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accustomed to go when only private interests are involved. **Before the plaintiff may be entitled to injunction against future enforcement, he is burdened to show some substantial hardship.***

Finally, in *Social Justice Society vs. Atienza*:¹⁹

There are two requisites for the issuance of a preliminary injunction: (1) the right to be protected exists *prima facie* and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented will cause an irreparable injustice.

The act sought to be restrained here was the enforcement of Ordinance No. 8027. It is a settled rule that an ordinance enjoys the presumption of validity and, as such, cannot be restrained by injunction. Nevertheless, when the validity of the ordinance is assailed, the courts are not precluded from issuing an injunctive writ against its enforcement. However, we have declared that the issuance of said writ is proper only when:

... the petitioner assailing the ordinance has made out a case of unconstitutionality strong enough to overcome, in the mind of the judge, the presumption of validity,* in addition to a showing of a clear legal right to the remedy sought.... (Emphasis supplied)

xxx xxx xxx

Nowhere in the judge's discussion can we see that, in addition to a showing of a clear legal right of Chevron and Shell to the remedy sought, he was convinced that they had made out a case of unconstitutionality or invalidity strong enough to overcome the presumption of

¹⁹ 545 SCRA 92 (2008).

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validity of the ordinance. Statutes and ordinances are presumed valid unless and until the courts declare the contrary in clear and unequivocal terms. **The mere fact that the ordinance is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined.** The presumption is all in favor of validity.* The reason for this is obvious:

The action of the elected representatives of the people cannot be lightly set aside.* The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.

3.08. This is particularly true in the instant case where R.A. 9522 was enacted to assure that the limits of the maritime areas of the Philippines, the territorial sea and the exclusive economic zone, are fully in accord with the LOSC in order to command the recognition and respect of other states. No hint even is made, for indeed there would no basis, that R.A. 9522 would be enforced in bad faith or to harass or injure the petitioners.

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d. The Issuance Of A Writ Of Preliminary Injunction Would On The Contrary Be Against The National Interest To The Damage And Prejudice Not Only Of The Respondents But Even More Importantly To The Republic Of The Philippines –

3.09. The bringing into alignment the baselines of the Philippine archipelago defined in R.A. 3046, as amended by R.A. 5446, with the provisions of Article 47 of the LOSC should have been done soon after the LOSC came into force on November 16, 1994. Since then, because under Article 48 of the LOSC, the breadth of the territorial sea, the contiguous zone and the exclusive economic zone shall be measured from baselines drawn according to Article 47, the limits of the afore-mentioned maritime areas of the Philippines have been vulnerable to question under international law, and more particularly, by neighboring states. As a consequence, for example, because of the overlapping maritime areas of the Philippines and Indonesia, negotiations to define a mutually acceptable boundary had not been concluded.

3.10. Over the years, several bills, both in the House of Representatives and the Senate, to amend R.A. 3046, as amended by R.A. 5446, have been filed. It took many congresses, covering a span of many years, with numerous hearings and extensive debate, before R.A. 9522 was enacted. The injunction sought would undo all these efforts to the prejudice and irreparable injury of the Republic.

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PRAYER

WHEREFORE, it is respectfully prayed that the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction be denied and that the petition be dismissed.

Other reliefs as may be just or equitable in the premises are likewise prayed for.

Makati City for the City of Manila, April 23, 2009.

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More

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Annex 74

Magallona v. Ermita, Supreme Court of the Philippines, Judgment, G.R. No. 187167 (16 July 2011)

EN BANC

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SHERYL BALOT, RUBY AMOR
BARRACA, JOSE JAVIER BAUTISTA,
ROMINA BERNARDO, VALERIE
PAGASA BUENAVENTURA, EDAN
MARRI CAÑETE, VANN ALLEN
DELA CRUZ, RENE DELORINO,
PAULYN MAY DUMAN, SHARON
ESCOTO, RODRIGO FAJARDO III,
GIRLIE FERRER, RAOULLE OSEN
FERRER, CARLA REGINA GREPO,
ANNA MARIE CECILIA GO, IRISH
KAY KALAW, MARY ANN JOY LEE,
MARIA LUISA MANALAYSAY,
MIGUEL RAFAEL MUSNGI,
MICHAEL OCAMPO, JAKLYN HANNA
PINEDA, WILLIAM RAGAMAT,
MARICAR RAMOS, ENRIK FORT**

G.R No. 187167

Present:

*CORONA, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA, and
SERENO, JJ.*

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**REVILLAS, JAMES MARK TERRY
RIDON, JOHANN FRANTZ RIVERA IV,
CHRISTIAN RIVERO, DIANNE MARIE
ROA, NICHOLAS SANTIZO, MELISSA
CHRISTINA SANTOS, CRISTINE MAE
TABING, VANESSA ANNE TORNNO,
MARIA ESTER VANGUARDIA, and
MARCELINO VELOSO III,**

Petitioners,

- versus -

**HON. EDUARDO ERMITA, IN HIS
CAPACITY AS EXECUTIVE
SECRETARY, HON. ALBERTO
ROMULO, IN HIS CAPACITY AS
SECRETARY OF THE DEPARTMENT
OF FOREIGN AFFAIRS, HON.
ROLANDO ANDAYA, IN HIS CAPACITY
AS SECRETARY OF THE DEPARTMENT
OF BUDGET AND MANAGEMENT,
HON. DIONY VENTURA, IN HIS
CAPACITY AS ADMINISTRATOR OF
THE NATIONAL MAPPING &
RESOURCE INFORMATION
AUTHORITY, and HON. HILARIO
DAVIDE, JR., IN HIS CAPACITY AS
REPRESENTATIVE OF THE
PERMANENT MISSION OF THE
REPUBLIC OF THE PHILIPPINES**

Promulgated:

G.R No. 187167

TO THE UNITED NATIONS,

Respondents.

July 16, 2011

X -----X

DECISION**CARPIO, J.:****The Case**

This original action for the writs of certiorari and prohibition assails the constitutionality of Republic Act No. 9522¹ (RA 9522) adjusting the country's archipelagic baselines and classifying the baseline regime of nearby territories.

The Antecedents

In 1961, Congress passed Republic Act No. 3046 (RA 3046)² demarcating the maritime baselines of the Philippines as an archipelagic State.³ This law followed the framing of the Convention on the Territorial Sea and the Contiguous Zone in 1958 (UNCLOS I),⁴ codifying, among others, the sovereign right of States parties over their "territorial sea," the breadth of which, however, was left undetermined. Attempts to fill this void during the second round of negotiations in Geneva in 1960 (UNCLOS II) proved futile. Thus, domestically, RA 3046 remained unchanged for nearly five decades, save for legislation passed in 1968 (Republic Act No. 5446 [RA 5446]) correcting typographical errors and reserving the drawing of baselines around Sabah in North Borneo.

In March 2009, Congress amended RA 3046 by enacting RA 9522, the statute now under scrutiny. The change was prompted by the need to make RA 3046 compliant with the terms of the United Nations Convention on

the Law of the Sea (UNCLOS III),⁵ which the Philippines ratified on 27 February 1984.⁶ Among others, UNCLOS III prescribes the water-land ratio, length, and contour of baselines of archipelagic States like the Philippines⁷ and sets the deadline for the filing of application for the extended continental shelf.⁸ Complying with these requirements, RA 9522 shortened one baseline, optimized the location of some basepoints around the Philippine archipelago and classified adjacent territories, namely, the Kalayaan Island Group (KIG) and the Scarborough Shoal, as “regimes of islands” whose islands generate their own applicable maritime zones.

Petitioners, professors of law, law students and a legislator, in their respective capacities as “citizens, taxpayers or x x x legislators,”⁹ as the case may be, assail the constitutionality of RA 9522 on two principal grounds, namely: (1) RA 9522 reduces Philippine maritime territory, and logically, the reach of the Philippine state’s sovereign power, in violation of Article 1 of the 1987 Constitution,¹⁰ embodying the terms of the Treaty of Paris¹¹ and ancillary treaties,¹² and (2) RA 9522 opens the country’s waters landward of the baselines to maritime passage by all vessels and aircrafts, undermining Philippine sovereignty and national security, contravening the country’s nuclear-free policy, and damaging marine resources, in violation of relevant constitutional provisions.¹³

In addition, petitioners contend that RA 9522’s treatment of the KIG as “regime of islands” not only results in the loss of a large maritime area but also prejudices the livelihood of subsistence fishermen.¹⁴ To buttress their argument of territorial diminution, petitioners facially attack RA 9522 for what it excluded and included – its failure to reference either the Treaty of Paris or Sabah and its use of UNCLOS III’s framework of regime of islands to determine the maritime zones of the KIG and the Scarborough Shoal.

Commenting on the petition, respondent officials raised threshold issues questioning (1) the petition’s compliance with the case or controversy requirement for judicial review grounded on petitioners’ alleged lack of *locus standi* and (2) the propriety of the writs of certiorari and prohibition to assail the constitutionality of RA 9522. On the merits, respondents defended RA 9522 as the country’s compliance with the terms of UNCLOS III, preserving Philippine territory over the KIG or Scarborough Shoal. Respondents add that RA 9522 does not undermine the country’s security, environment and economic interests or relinquish the Philippines’ claim over Sabah.

Respondents also question the normative force, under international law, of petitioners’ assertion that what Spain ceded to the United States under the Treaty of Paris were the islands and *all the waters* found within the boundaries of the rectangular area drawn under the Treaty of Paris.

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We left unacted petitioners' prayer for an injunctive writ.

The Issues

The petition raises the following issues:

1. Preliminarily –

1. Whether petitioners possess *locus standi* to bring this suit; and
2. Whether the writs of certiorari and prohibition are the proper remedies to assail the constitutionality of RA 9522.

2. On the merits, whether RA 9522 is unconstitutional.

The Ruling of the Court

On the threshold issues, we hold that (1) petitioners possess *locus standi* to bring this suit as citizens and (2) the writs of certiorari and prohibition are proper remedies to test the constitutionality of RA 9522. On the merits, we find no basis to declare RA 9522 unconstitutional.

On the Threshold Issues

Petitioners Possess Locus

Standi as Citizens

Petitioners themselves undermine their assertion of *locus standi* as legislators and taxpayers because the petition alleges neither infringement of legislative prerogative¹⁵ nor misuse of public funds,¹⁶ occasioned by the passage and implementation of RA 9522. Nonetheless, we recognize petitioners' *locus standi* as citizens with constitutionally sufficient interest in the resolution of the merits of the case which undoubtedly raises issues of

national significance necessitating urgent resolution. Indeed, owing to the peculiar nature of RA 9522, it is understandably difficult to find other litigants possessing “a more direct and specific interest” to bring the suit, thus satisfying one of the requirements for granting citizenship standing.¹⁷

The Writs of Certiorari and Prohibition

Are Proper Remedies to Test

the Constitutionality of Statutes

In praying for the dismissal of the petition on preliminary grounds, respondents seek a strict observance of the offices of the writs of certiorari and prohibition, noting that the writs cannot issue absent any showing of grave abuse of discretion in the exercise of judicial, quasi-judicial or ministerial powers on the part of respondents and resulting prejudice on the part of petitioners.¹⁸

Respondents’ submission holds true in ordinary civil proceedings. When this Court exercises its constitutional power of judicial review, however, we have, by tradition, viewed the writs of certiorari and prohibition as proper remedial vehicles to test the constitutionality of statutes,¹⁹ and indeed, of acts of other branches of government.²⁰ Issues of constitutional import are sometimes crafted out of statutes which, while having no bearing on the personal interests of the petitioners, carry such relevance in the life of this nation that the Court inevitably finds itself constrained to take cognizance of the case and pass upon the issues raised, non-compliance with the letter of procedural rules notwithstanding. The statute sought to be reviewed here is one such law.

RA 9522 is Not Unconstitutional

RA 9522 is a Statutory Tool

to Demarcate the Country’s

Maritime Zones and Continental

Shelf Under UNCLOS III, not to

Delineate Philippine Territory

Petitioners submit that RA 9522 “dismembers a large portion of the national territory”²¹ because it discards the pre-UNCLOS III demarcation of Philippine territory under the Treaty of Paris and related treaties, successively encoded in the definition of national territory under the 1935, 1973 and 1987 Constitutions. Petitioners theorize that this constitutional definition trumps any treaty or statutory provision denying the Philippines sovereign control over waters, beyond the territorial sea recognized at the time of the Treaty of Paris, that Spain supposedly ceded to the United States. Petitioners argue that from the Treaty of Paris’ technical description, Philippine sovereignty over territorial waters extends hundreds of nautical miles around the Philippine archipelago, embracing the rectangular area delineated in the Treaty of Paris.²²

Petitioners’ theory fails to persuade us.

UNCLOS III has nothing to do with the acquisition (or loss) of territory. It is a multilateral treaty regulating, among others, sea-use rights over maritime zones (*i.e.*, the territorial waters [12 nautical miles from the baselines], contiguous zone [24 nautical miles from the baselines], exclusive economic zone [200 nautical miles from the baselines]), and continental shelves that UNCLOS III delimits.²³ UNCLOS III was the culmination of decades-long negotiations among United Nations members to codify norms regulating the conduct of States in the world’s oceans and submarine areas, recognizing coastal and archipelagic States’ graduated authority over a limited span of waters and submarine lands along their coasts.

On the other hand, baselines laws such as RA 9522 are enacted by UNCLOS III States parties to mark-out specific basepoints along their coasts from which baselines are drawn, either straight or contoured, to serve as geographic starting points to measure the breadth of the maritime zones and continental shelf. Article 48 of UNCLOS III on archipelagic States like ours could not be any clearer:

Article 48. Measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. – The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf **shall be measured from archipelagic baselines** drawn in accordance with article 47. (Emphasis supplied)

Thus, baselines laws are nothing but statutory mechanisms for UNCLOS III States parties to delimit with precision the extent of their maritime zones and continental shelves. In turn, this gives notice to the rest of the international community of the scope of the maritime space and submarine areas within which States parties exercise treaty-based rights, namely, the exercise of sovereignty over territorial waters (Article 2), the jurisdiction to enforce customs, fiscal, immigration, and sanitation laws in the contiguous zone (Article 33), and the right to exploit the living and non-living resources in the exclusive economic zone (Article 56) and continental shelf (Article 77).

Even under petitioners' theory that the Philippine territory embraces the islands and *all the waters* within the rectangular area delimited in the Treaty of Paris, the baselines of the Philippines would still have to be drawn in accordance with RA 9522 because this is the only way to draw the baselines in conformity with UNCLOS III. The baselines cannot be drawn from the boundaries or other portions of the rectangular area delineated in the Treaty of Paris, but from the "outermost islands and drying reefs of the archipelago."²⁴

UNCLOS III and its ancillary baselines laws play no role in the acquisition, enlargement or, as petitioners claim, diminution of territory. Under traditional international law typology, States acquire (or conversely, lose) territory through occupation, accretion, cession and prescription,²⁵ not by executing multilateral treaties on the regulations of sea-use rights or enacting statutes to comply with the treaty's terms to delimit maritime zones and continental shelves. Territorial claims to land features are outside UNCLOS III, and are instead governed by the rules on general international law.²⁶

***RA 9522's Use of the Framework
of Regime of Islands to Determine the
Maritime Zones of the KIG and the
Scarborough Shoal, not Inconsistent
with the Philippines' Claim of Sovereignty
Over these Areas***

Petitioners next submit that RA 9522's use of UNCLOS III's regime of islands framework to draw the baselines, and to measure the breadth of the applicable maritime zones of the KIG, "weakens our territorial claim" over that area.²⁷ Petitioners add that the KIG's (and Scarborough Shoal's) exclusion from the Philippine archipelagic baselines results in the loss of "about 15,000 square nautical miles of territorial waters," prejudicing the livelihood of subsistence fishermen.²⁸ A comparison of the configuration of the baselines drawn under RA 3046 and RA 9522 and the extent of maritime space encompassed by each law, coupled with a reading of the text of RA 9522 and its congressional deliberations, *vis-à-vis* the Philippines' obligations under UNCLOS III, belie this view.

The configuration of the baselines drawn under RA 3046 and RA 9522 shows that RA 9522 merely followed the basepoints mapped by RA 3046, save for at least nine basepoints that RA 9522 skipped to optimize the

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location of basepoints and adjust the length of one baseline (and thus comply with UNCLOS III's limitation on the maximum length of baselines). Under RA 3046, as under RA 9522, the KIG and the Scarborough Shoal lie outside of the baselines drawn around the Philippine archipelago. This undeniable cartographic fact takes the wind out of petitioners' argument branding RA 9522 as a statutory renunciation of the Philippines' claim over the KIG, assuming that baselines are relevant for this purpose.

Petitioners' assertion of loss of "about 15,000 square nautical miles of territorial waters" under RA 9522 is similarly unfounded both in fact and law. On the contrary, RA 9522, by optimizing the location of basepoints, *increased* the Philippines' total maritime space (covering its internal waters, territorial sea and exclusive economic zone) by 145,216 square nautical miles, as shown in the table below:²⁹

	Extent of maritime area using RA 3046, as amended, taking into account the Treaty of Paris' delimitation (in square nautical miles)	Extent of maritime area using RA 9522, taking into account UNCLOS III (in square nautical miles)
Internal or archipelagic waters	166,858	171,435
Territorial Sea	274,136	32,106
Exclusive Economic Zone		382,669
TOTAL	440,994	586,210

Thus, as the map below shows, the reach of the exclusive economic zone drawn under RA 9522 even extends way beyond the waters covered by the rectangular demarcation under the Treaty of Paris. Of course, where

there are overlapping exclusive economic zones of opposite or adjacent States, there will have to be a delineation of maritime boundaries in accordance with UNCLOS III.³⁰



Further, petitioners' argument that the KIG now lies outside Philippine territory because the baselines that RA 9522 draws do not enclose the KIG is negated by RA 9522 itself. Section 2 of the law commits to text the Philippines' continued claim of sovereignty and jurisdiction over the KIG and the Scarborough Shoal:

SEC. 2. The baselines in the following areas **over which the Philippines likewise exercises sovereignty and jurisdiction** shall be determined as "Regime of Islands" under the Republic of the Philippines consistent with Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS):

- a) The Kalayaan Island Group as constituted under Presidential Decree No. 1596 and
- b) Bajo de Masinloc, also known as Scarborough Shoal. (Emphasis supplied)

Had Congress in RA 9522 enclosed the KIG and the Scarborough Shoal as part of the Philippine archipelago, adverse legal effects would have ensued. The Philippines would have committed a breach of two provisions of UNCLOS III. First, Article 47 (3) of UNCLOS III requires that “[t]he drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.” Second, Article 47 (2) of UNCLOS III requires that “the length of the baselines shall not exceed 100 nautical miles,” save for three per cent (3%) of the total number of baselines which can reach up to 125 nautical miles.³¹

Although the Philippines has consistently claimed sovereignty over the KIG³² and the Scarborough Shoal for several decades, these outlying areas are located at an appreciable distance from the nearest shoreline of the Philippine archipelago,³³ such that any straight baseline loped around them from the nearest basepoint will inevitably “depart to an appreciable extent from the general configuration of the archipelago.”

The principal sponsor of RA 9522 in the Senate, Senator Miriam Defensor-Santiago, took pains to emphasize the foregoing during the Senate deliberations:

What we call the Kalayaan Island Group or what the rest of the world call[] the Spratlys and the Scarborough Shoal are outside our archipelagic baseline because *if we put them inside our baselines we might be accused of violating the provision of international law which states: “The drawing of such baseline shall not depart to any appreciable extent from the general configuration of the archipelago.” So sa loob ng ating baseline, dapat magkalapit ang mga islands. Dahil malayo ang Scarborough Shoal, hindi natin masasabing malapit sila sa atin although we are still allowed by international law to claim them as our own.*

This is called contested islands outside our configuration. We see that our archipelago is defined by the orange line which [we] call[] archipelagic baseline. Ngayon, tingnan ninyo ang maliit na circle doon sa itaas, that is Scarborough Shoal, itong malaking circle sa ibaba, that is Kalayaan Group or the Spratlys. *Malayo na sila sa ating archipelago kaya kung ilihis pa natin ang dating archipelagic baselines para lamang masama itong dalawang circles, hindi na sila magkalapit at baka hindi na tatanggapin ng United Nations because of the rule that it should follow the natural configuration of the archipelago.*³⁴ (Emphasis supplied)

Similarly, the length of one baseline that RA 3046 drew exceeded UNCLOS III’s limits. The need to shorten this baseline, and in addition, to optimize the location of basepoints using current maps, became imperative as discussed by respondents:

[T]he amendment of the baselines law was necessary to enable the Philippines to draw the outer limits of its maritime zones including the extended continental shelf in the manner provided by Article 47 of [UNCLOS III]. As defined by R.A. 3046, as amended by R.A. 5446, the baselines suffer from some technical deficiencies, to wit:

1. The length of the baseline across Moro Gulf (from Middle of 3 Rock Awash to Tongquil Point) is 140.06 nautical miles x x x. This exceeds the maximum length allowed under Article 47(2) of the [UNCLOS III], which states that “The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.”
2. The selection of basepoints is not optimal. At least 9 basepoints can be skipped or deleted from the baselines system. This will enclose an additional 2,195 nautical miles of water.
3. Finally, the basepoints were drawn from maps existing in 1968, and not established by geodetic survey methods. Accordingly, some of the points, particularly along the west coasts of Luzon down to Palawan were later found to be located either inland or on water, not on low-water line and drying reefs as prescribed by Article 47.³⁵

Hence, far from surrendering the Philippines’ claim over the KIG and the Scarborough Shoal, Congress’ decision to classify the KIG and the Scarborough Shoal as “Regime[s] of Islands’ under the Republic of the Philippines consistent with Article 121”³⁶ of UNCLOS III manifests the Philippine State’s responsible observance of its *pacta sunt servanda* obligation under UNCLOS III. Under Article 121 of UNCLOS III, any “naturally formed area of land, surrounded by water, which is above water at high tide,” such as portions of the KIG, qualifies under the category of “regime of islands,” whose islands generate their own applicable maritime zones.³⁷

Statutory Claim Over Sabah under

RA 5446 Retained

Petitioners’ argument for the invalidity of RA 9522 for its failure to textualize the Philippines’ claim over Sabah in North Borneo is also untenable. Section 2 of RA 5446, which RA 9522 did not repeal, keeps open the door for drawing the baselines of Sabah:

Section 2. The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act **is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.** (Emphasis supplied)

***UNCLOS III and RA 9522 not
Incompatible with the Constitution's
Delineation of Internal Waters***

As their final argument against the validity of RA 9522, petitioners contend that the law unconstitutionally “converts” internal waters into archipelagic waters, hence subjecting these waters to the right of innocent and sea lanes passage under UNCLOS III, including overflight. Petitioners extrapolate that these passage rights indubitably expose Philippine internal waters to nuclear and maritime pollution hazards, in violation of the Constitution.³⁸

Whether referred to as Philippine “internal waters” under Article I of the Constitution³⁹ or as “archipelagic waters” under UNCLOS III (Article 49 [1]), the Philippines exercises sovereignty over the body of water lying landward of the baselines, including the air space over it and the submarine areas underneath. UNCLOS III affirms this:

Article 49. Legal status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil. –

1. **The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines** drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.
2. **This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.**

x x x x

4. The regime of archipelagic sea lanes passage established in this Part **shall not in other respects affect the status of the archipelagic waters**, including the sea lanes, **or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.** (Emphasis supplied)

The fact of sovereignty, however, does not preclude the operation of municipal and international law norms subjecting the territorial sea or archipelagic waters to necessary, if not marginal, burdens in the interest of maintaining unimpeded, expeditious international navigation, consistent with the international law principle of freedom of navigation. Thus, domestically, the political branches of the Philippine government, in the competent discharge of their constitutional powers, may pass legislation designating routes within the archipelagic waters to regulate innocent and sea lanes passage.⁴⁰ Indeed, bills drawing nautical highways for

sea lanes passage are now pending in Congress.⁴¹

In the absence of municipal legislation, international law norms, now codified in UNCLOS III, operate to grant innocent passage rights over the territorial sea or archipelagic waters, subject to the treaty's limitations and conditions for their exercise.⁴² Significantly, the right of innocent passage is a customary international law,⁴³ thus automatically incorporated in the corpus of Philippine law.⁴⁴ No modern State can validly invoke its sovereignty to absolutely forbid innocent passage that is exercised in accordance with customary international law without risking retaliatory measures from the international community.

The fact that for archipelagic States, their archipelagic waters are subject to both the right of innocent passage and sea lanes passage⁴⁵ does not place them in lesser footing *vis-à-vis* continental coastal States which are subject, in their territorial sea, to the right of innocent passage and the right of transit passage through international straits. The imposition of these passage rights through archipelagic waters under UNCLOS III was a concession by archipelagic States, in exchange for their right to claim all the waters landward of their baselines, *regardless of their depth or distance from the coast*, as archipelagic waters subject to their *territorial sovereignty*. More importantly, the recognition of archipelagic States' archipelago and the waters enclosed by their baselines as one cohesive entity prevents the treatment of their islands as separate islands under UNCLOS III.⁴⁶ Separate islands generate their own maritime zones, placing the waters between islands separated by more than 24 nautical miles beyond the States' territorial sovereignty, subjecting these waters to the rights of other States under UNCLOS III.⁴⁷

Petitioners' invocation of non-executory constitutional provisions in Article II (Declaration of Principles and State Policies)⁴⁸ must also fail. Our present state of jurisprudence considers the provisions in Article II as mere legislative guides, which, absent enabling legislation, "do not embody judicially enforceable constitutional rights x x x."⁴⁹ Article II provisions serve as guides in formulating and interpreting implementing legislation, as well as in interpreting executory provisions of the Constitution. Although *Oposa v. Factoran*⁵⁰ treated the right to a healthful and balanced ecology under Section 16 of Article II as an exception, the present petition lacks factual basis to substantiate the claimed constitutional violation. The other provisions petitioners cite, relating to the protection of marine wealth (Article XII, Section 2, paragraph 2⁵¹) and subsistence fishermen (Article XIII, Section 7⁵²), are not violated by RA 9522.

In fact, the demarcation of the baselines enables the Philippines to delimit its exclusive economic zone, reserving solely to the Philippines the exploitation of all living and non-living resources within such zone. Such a maritime delineation binds the international community since the delineation is in strict observance of UNCLOS III. If the maritime delineation is contrary to UNCLOS III, the international community will of

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course reject it and will refuse to be bound by it.

UNCLOS III favors States with a long coastline like the Philippines. UNCLOS III creates a *sui generis* maritime space – the exclusive economic zone – in waters previously part of the high seas. UNCLOS III grants new rights to coastal States to exclusively exploit the resources found within this zone up to 200 nautical miles.⁵³ UNCLOS III, however, preserves the traditional freedom of navigation of other States that attached to this zone beyond the territorial sea before UNCLOS III.

RA 9522 and the Philippines' Maritime Zones

Petitioners hold the view that, based on the permissive text of UNCLOS III, Congress was not bound to pass RA 9522.⁵⁴ We have looked at the relevant provision of UNCLOS III⁵⁵ and we find petitioners' reading plausible. Nevertheless, the prerogative of choosing this option belongs to Congress, not to this Court. Moreover, the luxury of choosing this option comes at a very steep price. Absent an UNCLOS III compliant baselines law, an archipelagic State like the Philippines will find itself devoid of internationally acceptable baselines from where the breadth of its maritime zones and continental shelf is measured. This is recipe for a two-fronted disaster: *first*, it sends an open invitation to the seafaring powers to freely enter and exploit the resources in the waters and submarine areas around our archipelago; and *second*, it weakens the country's case in any international dispute over Philippine maritime space. These are consequences Congress wisely avoided.

The enactment of UNCLOS III compliant baselines law for the Philippine archipelago and adjacent areas, as embodied in RA 9522, allows an internationally-recognized delimitation of the breadth of the Philippines' maritime zones and continental shelf. RA 9522 is therefore a most vital step on the part of the Philippines in safeguarding its maritime zones, consistent with the Constitution and our national interest.

WHEREFORE, we **DISMISS** the petition.

SO ORDERED.

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ANTONIO T. CARPIO

Associate Justice

WE CONCUR:

RENATO C. CORONA

Chief Justice

(Pls. see concurring opinion)

PRESBITERO J. VELASCO, JR.

Associate Justice

TERESITA J. LEONARDO-

DE CASTRO

Associate Justice

ARTURO D. BRION

Associate Justice

DIOSDADO M. PERALTA

Associate Justice

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LUCAS P. BERSAMIN

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

I certify that Mr. Justice Abad
left his concurring vote.

ROBERTO A. ABAD

Associate Justice

MARTIN S. VILLARAMA, JR.

Associate Justice

(on leave)

JOSE PORTUGAL PEREZ

Associate Justice

JOSE C. MENDOZA

Associate Justice

MARIA LOURDES P. A. SERENO

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

RENATO C. CORONA

Chief Justice

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[1](#)Entitled “An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baselines

<http://sc.judiciary.gov.ph/jurisprudence/2011/august2011/187167.html>[1/27/2014 1:19:42 PM]

of the Philippines, and for Other Purposes.”

2 Entitled “An Act to Define the Baselines of the Territorial Sea of the Philippines.”

3 The third “Whereas Clause” of RA 3046 expresses the import of treating the Philippines as an archipelagic State:

“WHEREAS, all the waters around, between, and connecting the various islands of the Philippine archipelago, irrespective of their width or dimensions, have always been considered as necessary appurtenances of the land territory, forming part of the inland waters of the Philippines.”

4 One of the four conventions framed during the first United Nations Convention on the Law of the Sea in Geneva, this treaty, excluding the Philippines, entered into force on 10 September 1964.

5 UNCLOS III entered into force on 16 November 1994.

6 The Philippines signed the treaty on 10 December 1982.

7 Article 47, paragraphs 1-3, provide:

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago. (Emphasis supplied)

x x x x

8 UNCLOS III entered into force on 16 November 1994. The deadline for the filing of application is mandated in Article 4, Annex II: “Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. The coastal State shall at the same time give the names of any Commission members who have provided it with scientific and technical advice.” (Underscoring supplied)

In a subsequent meeting, the States parties agreed that for States which became bound by the treaty before 13 May 1999 (such as the Philippines) the ten-year period will be counted from that date. Thus, RA 9522, which took effect on 27 March 2009, barely met the deadline.

9 *Rollo*, p. 34.

10 Which provides: “The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.”

11 Entered into between the United States and Spain on 10 December 1898 following the conclusion of the Spanish-American War. Under the terms of the treaty, Spain ceded to the United States “the archipelago known as the Philippine Islands” lying within its technical description.

12 The Treaty of Washington, between Spain and the United States (7 November 1900), transferring to the US the islands of Cagayan, Sulu, and Sibutu and the US-Great Britain Convention (2 January 1930) demarcating boundary lines between the Philippines and North Borneo.

13 Article II, Section 7, Section 8, and Section 16.

14 Allegedly in violation of Article XII, Section 2, paragraph 2 and Article XIII, Section 7 of the Constitution.

15 *Kilosbayan, Inc. v. Morato*, 320 Phil. 171, 186 (1995).

16 *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960); *Sanidad v. COMELEC*, 165 Phil. 303 (1976).

17 *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 899 (2003) citing *Kilosbayan, Inc. v. Guingona, Jr.*, G.R. No. 113375, 5 May 1994, 232 SCRA 110, 155-156 (1995) (Feliciano, *J.*, concurring). The two other factors are: “the character of funds or assets involved in the controversy and a clear disregard of constitutional or statutory prohibition.” *Id.*

18 *Rollo*, pp. 144-147.

19 See *e.g. Aquino III v. COMELEC*, G.R. No. 189793, 7 April 2010, 617 SCRA 623 (dismissing a petition for certiorari and prohibition assailing the constitutionality of Republic Act No. 9716, not for the impropriety of remedy but for lack of merit); *Aldaba v. COMELEC*, G.R. No. 188078, 25 January 2010, 611 SCRA 137 (issuing the writ of prohibition to declare unconstitutional Republic Act No. 9591); *Macalintal v. COMELEC*, 453 Phil. 586 (2003) (issuing the writs of certiorari and prohibition declaring unconstitutional portions of Republic Act No. 9189).

20 See *e.g. Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, 25 March 2008, 549 SCRA 77 (granting a

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writ of certiorari against the Philippine Senate and nullifying the Senate contempt order issued against petitioner).

[21](#) *Rollo*, p. 31.

[22](#) Respondents state in their Comment that petitioners' theory "has not been accepted or recognized by either the United States or Spain," the parties to the Treaty of Paris. Respondents add that "no State is known to have supported this proposition." *Rollo*, p. 179.

[23](#) UNCLOS III belongs to that larger corpus of international law of the sea, which petitioner Magallona himself defined as "a body of treaty rules and customary norms governing the uses of the sea, the exploitation of its resources, and the exercise of jurisdiction over maritime regimes. x x x" (Merlin M. Magallona, *Primer on the Law of the Sea* 1 [1997]) (Italicization supplied).

[24](#) Following Article 47 (1) of UNCLOS III which provides:

An archipelagic State may draw straight archipelagic baselines joining the outermost points of the **outermost islands and drying reefs of the archipelago** provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. (Emphasis supplied)

[25](#) Under the United Nations Charter, use of force is no longer a valid means of acquiring territory.

[26](#) The last paragraph of the preamble of UNCLOS III states that "matters not regulated by this Convention continue to be governed by the rules and principles of general international law."

[27](#) *Rollo*, p. 51.

[28](#) *Id.* at 51-52, 64-66.

[29](#) Based on figures respondents submitted in their Comment (*id.* at 182).

[30](#) Under Article 74.

[31](#) See note 7.

[32](#) Presidential Decree No. 1596 classifies the KIG as a municipality of Palawan.

[33](#) KIG lies around 80 nautical miles west of Palawan while Scarborough Shoal is around 123 nautical west of Zambales.

[34](#) *Journal*, Senate 14th Congress 44th Session 1416 (27 January 2009).

[35](#) *Rollo*, p. 159.

[36](#) Section 2, RA 9522.

[37](#) Article 121 provides: "Regime of islands. —

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

[38](#) *Rollo*, pp. 56-57, 60-64.

[39](#) Paragraph 2, Section 2, Article XII of the Constitution uses the term "archipelagic waters" separately from "territorial sea." Under UNCLOS III, an archipelagic State may have internal waters – such as those enclosed by closing lines across bays and mouths of rivers. See Article 50, UNCLOS III. Moreover, Article 8 (2) of UNCLOS III provides: "Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as **internal waters** areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters." (Emphasis supplied)

[40](#) Mandated under Articles 52 and 53 of UNCLOS III:

Article 52. Right of innocent passage. —

1. Subject to article 53 and without prejudice to article 50, **ships of all States enjoy the right of innocent passage through archipelagic waters**, in accordance with Part II, section 3.
2. The archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published. (Emphasis supplied)

Article 53. Right of archipelagic sea lanes passage. —

1. An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious

passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.

2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

3. Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

4. Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.

5. Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane.

6. An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes.

7. An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it.

8. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

9. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.

10. The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.

11. Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation. (Emphasis supplied)

⁴¹Namely, House Bill No. 4153 and Senate Bill No. 2738, identically titled "AN ACT TO ESTABLISH THE ARCHIPELAGIC SEA LANES IN THE PHILIPPINE ARCHIPELAGIC WATERS, PRESCRIBING THE RIGHTS AND OBLIGATIONS OF FOREIGN SHIPS AND AIRCRAFTS EXERCISING THE RIGHT OF ARCHIPELAGIC SEA LANES PASSAGE THROUGH THE ESTABLISHED ARCHIPELAGIC SEA LANES AND PROVIDING FOR THE ASSOCIATED PROTECTIVE MEASURES THEREIN."

⁴²The relevant provision of UNCLOS III provides:

Article 17. Right of innocent passage. —

Subject to this Convention, **ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.** (Emphasis supplied)

Article 19. Meaning of innocent passage. —

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

(e) the launching, landing or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military device;

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

(h) any act of willful and serious pollution contrary to this Convention;

(i) any fishing activities;

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- (j) the carrying out of research or survey activities;
- (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
- (l) any other activity not having a direct bearing on passage

Article 21. Laws and regulations of the coastal State relating to innocent passage. —

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

- (a) the safety of navigation and the regulation of maritime traffic;
- (b) the protection of navigational aids and facilities and other facilities or installations;
- (c) the protection of cables and pipelines;
- (d) the conservation of the living resources of the sea;
- (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
- (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
- (g) marine scientific research and hydrographic surveys;
- (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

3. The coastal State shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

⁴³The right of innocent passage through the territorial sea applies only to ships and not to aircrafts (Article 17, UNCLOS III). The right of innocent passage of aircrafts through the sovereign territory of a State arises only under an international agreement. In contrast, the right of innocent passage through archipelagic waters applies to both ships and aircrafts (Article 53 (12), UNCLOS III).

⁴⁴Following Section 2, Article II of the Constitution: “Section 2. The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.” (Emphasis supplied)

⁴⁵“Archipelagic sea lanes passage is essentially the same as transit passage through straits” to which the territorial sea of continental coastal State is subject. R.R. Churabill and A.V. Lowe, *The Law of the Sea* 127 (1999).

⁴⁶Falling under Article 121 of UNCLOS III (see note 37).

⁴⁷Within the exclusive economic zone, other States enjoy the following rights under UNCLOS III:

Article 58. Rights and duties of other States in the exclusive economic zone. —

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

x x x x

Beyond the exclusive economic zone, other States enjoy the freedom of the high seas, defined under UNCLOS III as follows:

Article 87. Freedom of the high seas. —

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

- (a) freedom of navigation;

- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
 - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
 - (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.
 - 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

[48](#) See note 13.

[49](#) *Kilosbayan, Inc. v. Morato*, 316 Phil. 652, 698 (1995); *Tañada v. Angara*, 338 Phil. 546, 580-581 (1997).

[50](#) G.R. No. 101083, 30 July 1993, 224 SCRA 792.

[51](#) “The State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.”

[52](#) “The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.”

[53](#) This can extend up to 350 nautical miles if the coastal State proves its right to claim an extended continental shelf (see UNCLOS III, Article 76, paragraphs 4(a), 5 and 6, in relation to Article 77).

[54](#) *Rollo*, pp. 67-69.

[55](#) Article 47 (1) provides: “An archipelagic State **may** draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.” (Emphasis supplied)

Annex 75

Memorandum from the Embassy of the Republic of the Philippines in Beijing to the Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-121-2011-S (2 Dec. 2011)

CONFIDENTIAL**EXTREMELY URGENT AND CONFIDENTIAL**

To: SFA
 Rt: ASPAC, OUSOC
 Fr: Beijing PE
 Re: **Incident in SCS involving detention of 6 Chinese fishermen, including 1 injured**
 Dt: 2 December 2011
 Cc: *Duty Officer (For immediate transmittal to concerned officers please)*
 Pg: 1 of 1
 Cn: ZPE - 121 - 2011 - 5

ORIGINAL TO	
ASPAC	
ACTION OFFICE	
CC	Received by
OUSOC	Date & Time

At 6:45 p.m. today, Mr. Qiu Xuejun, DDG of MFA Consular Department, made an urgent representation via telephone call, to Minister and Consul General Maria Teresa Almojuela on the following incident in the South China Sea, and requested that the foregoing be conveyed for the immediate attention and action of the Philippine government:

- In the early morning of 2 December, Chinese fishing vessel Qiong Hai 01668 (mother ship) was conducting fishing in China's traditional fishing grounds under China's jurisdiction. The coordinates of the location are North Latitude 8 degrees 29 minutes and East Longitude 116 degrees 30 minutes.
- During this time, one of Qiong Hai's small boats with six (6) fishermen were shot at and detained by the Philippine military. This resulted in the shooting and injury of one (1) of the fishermen. The six (6) fishermen were detained.
- The Chinese citizens' fishing activities in this area are legal and justified as this is China's traditional fishing ground and under China's jurisdiction.
- The actions taken by the Philippine military to detain, shoot and injure the Chinese fishermen and detain the boat obviously harm China's maritime interests and seriously endanger the property, personal safety and production (livelihood) of Chinese fishermen.
- While the 18 October case of the Philippine detention of the 25 small fishing boats belonging to Chinese fishermen has not been resolved, another incident has taken place.
- China lodges a strong protest and makes a solemn representation with the Philippine side on this incident.
- China hopes that the Philippine side fully realizes the seriousness and sensitivity of this incident and asks the Philippine government to:
 - Make a thorough investigation on this matter.
 - Provide medical treatment to the injured fisherman.
 - Release all detained fishermen and ensure their safety.
 - Provide compensation for the financial losses (of the fishermen).
 - Take measures to prevent this kind of incident from happening again.

For the Department's information and appropriate action.

DEPARTMENT OF FOREIGN AFFAIRS
OFFICE OF THE SECRETARY

Alex G. Chua
 for: **ALEX G. CHUA**
 Chargé d'affaires, a.i.

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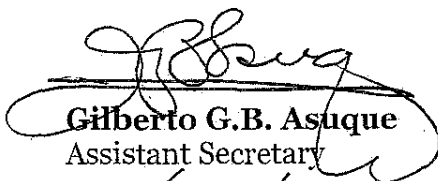
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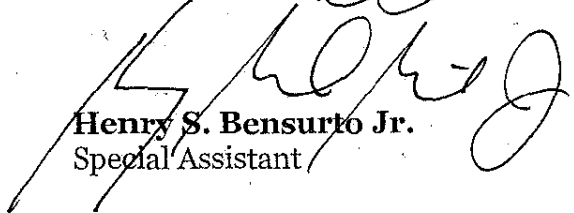
Annex 76

Memorandum from Gilberto G.B. Asuque & Henry B. Bensurto, Jr., Department of Foreign Affairs of the Republic of the Philippines, to the Secretary of Foreign Affairs of the Republic of the Philippines
(23 Mar. 2012)

**SECRET****MEMORANDUM FOR THE SECRETARY**

THRU : **ERLINDA I. BASILIO**
Undersecretary, OUP & Chair, WPS Task Force

FROM : 
Gilberto G.B. Asuque
Assistant Secretary


Henry S. Bensusanto Jr.
Special Assistant

SUBJECT : **Informal Conversation with Chinese Officials**

DATE : 23 March 2012

The abovesigned met unofficially and informally with **Mr. Deng Zhonghua**, Director General of the Department of Boundary and Ocean Affairs of the Chinese Foreign Ministry on 22 March 2012 from 10:00 to 5:00 at the Diamond Hotel, Manila.

Following are the highlights of the meeting:

PH POSITION ON THE REED BANK

- The abovesigned reiterated the Philippine position that Recto Bank (Reed Bank) is integral to Philippines as part of the continental shelf of Palawan under international law, specifically Article 76 and 77 of the UN Convention on the Law of the Sea (UNCLOS).

CHINESE POSITION ON THE REED BANK

- Mr. Deng, reading from an officially prepared statement, indicated that China has indisputable sovereignty” over the “Nansha” (Spratlys) Island and Reed Bank. He clarified that Reed Bank is not just an **adjacent water** of the “Nansha”, but rather an integral part of the **collective whole** of “Nansha.”
- Mr. Yang Li who is the Deputy of Deng explained that the **basis** of China’s indisputable sovereignty over the Reed Bank is **historical**.

DENIGRATION OF CHINESE "HISTORICAL CLAIM"

- The abovesigned **methodically demonstrated** why and how China's alleged "historical" claim could **neither** have **legitimacy nor validity** under international law – be it **customary or conventional international law**, specifically **UNCLOS**.
- **Unable** to provide **material and substantive justification**, *Messrs Deng and Yang* simply made a **general denial** and statement to the effect that China is not convinced of the Philippines' arguments.

PH POSITION ON UNCLOS DISPUTE SETTLEMENT MECHANISM

- The abovesigned indicated that one option for the Philippines and China in case of lack of agreement is to bring the matter before the **formal dispute settlement mechanisms** under international law, for the validation or invalidation of each other's claims.

CHINA'S POSITION FOR NEGOTIATED SETTLEMENT

- Deng responded that China believes that the best approach to the dispute in the West Philippine Sea is through **direct bilateral dialogue** or negotiations. Deng posed the question whether it is possible for the two countries to **set aside** their territorial claims and **engage in joint development**.

PH POSITION ON JOINT DEVELOPMENT

- The abovesigned indicated that joint development would only be proper in an area that is legitimately disputed. Reed Bank is **not a disputed area**. Therefore, the Philippines would **not be amenable** to a **joint development** in the Reed Bank area. The Philippines is, however, **open to Chinese investment** in the area **under Philippine law**.

CHINA'S COUNTER-PROPOSAL ON REED BANK

- Deng indicated that the Philippine proposal would not be acceptable to China because it involves the surrender of China's sovereignty over the Reed Bank. Deng instead proposed the following **modality** for consideration by the Philippines:

To let the two private companies of the two countries to negotiate and come to terms among themselves and make separate reports to their governments. Under this scheme, either of the two governments should not take any unilateral action to the detriment of the other.

PH COUNTER-PROPOSAL TO CHINA'S PROPOSAL

- The abovesigned indicated that the Philippines has **exclusive sovereign jurisdiction** over the Reed Bank and would therefore exercise that right to the extent allowed under its domestic law and international law. The Philippines has the legitimate rights to **exclude** even **Chinese fishermen** from fishing in the area. China **neither** has the right to **explore** the continental shelf of Reed Bank **nor** to **fish** in the waters above it. The abovesigned, in their **personal capacity**, floated the following options for consideration by Deng:

OPTION #1. For China to de-link Reed Bank from the Spratlys as they exactly are under international law. Accordingly, participation by China as investor in the Reed Bank under PH law would not compromise China's political position for claim of sovereignty in the land features of "Nansha."

OPTION#2. Separate the legal personality of the Chinese National Offshore Oil Company (CNOOC) from the political legal personality of the Chinese National Government. In such a case, an investment by CNOOC either as 100% equity owner or as an investor partner with another company under license from the PH government would not compromise the political sovereign position of China's political government because of the distinct personality of the CNOOC from that of the government. As an additional measure, the Chinese government can also issue a Note Verbale to the Philippine Government to the effect that CNOOC's investment in the Reed Bank should not be interpreted as surrender of China's claim.

OPTION #3. China and CNOOC can create a Third Company which will do the investing in Reed Bank under PH law. The distinct and separate personality of such Third Company would not compromise the political position of the political government.

- Deng indicated that the proposals of the abovesigned are very difficult for China to consider. At any rate, Deng invited the abovesigned to come to China in April or May to continue discussions on the matter. **END**

Annex 77

Memorandum from Col. Nathaniel Y. Casem, Philippine Navy, to Chief of Staff, Armed Forces of the Philippines, No. N2E-0412-008 (11 Apr. 2012)

SECRET

PUNONGHIMPILAN HUKBONG DAGAT NG PILIPINAS
 (Headquarters Philippine Navy)
 Naval Station Jose Andrada
 2335 Pres. M. Roxas Boulevard, Manila

N2E-0412-008

11 APR 2012

SUBJECT: **Report on Panatag (Scarborough) Shoal Incident**

TO: **Chief of Staff, AFP**
 General Headquarters
 Camp General Emilio Aguinaldo
 Quezon City
 (Attn: DCS for Intelligence, J2)

1. Submitted herewith is the report pertaining to the Panatag (Scarborough) Shoal incident on 10 April 2012. *(Encl 1)*
2. Also attached are pictures of some of the Chinese fishing vessels and the two China Marine Surveillance (CMS) vessels involved in the said incident which were taken by the PN Visit, Board, Search and Seizure (VBSS) Team *(Encl 2)* and the graphical representation of the positions of the two CMS vessels and BRP GREGORIO DEL PILAR (PF-15) relative to the said shoal *(Encl 3)*.
3. For information and reference.

FOR THE FLAG OFFICER IN COMMAND, PN:

NATHANIEL Y CASEM
 Colonel, PN(M)GSC)
 AC of NS for Intelligence, N2

3 Encls:

- 1- Report on Panatag (Scarborough) Shoal Incident
- 2- Pictures of Chinese fishing vessels and the two CMS vessels
- 3- Graphical representation of relative positions of the two CMS vessels and PF-15

SECRET

REPORT ON SCARBOROUGH SHOAL INCIDENT

I. BACKGROUND:

Scarborough Shoal, which is located at Lat 15 deg 8 min North and Lat 117 deg 45 min East is a traditional fishing ground of fishermen from neighboring Asian countries that have been heading to this area for its rich marine resources. Both foreign and local fishermen are among those who venture to this atoll and they would be fishing there for about a week or more.

During the first quarter of CY 2012, there were twelve (12) incidences of encroachment which cropped up in Scarborough Shoal. These involved at least twenty-nine (29) fishing vessels from China, fourteen (14) from Vietnam and two (2) from Taiwan; or a total of forty-five (45) foreign fishing vessels. These foreign poachers conducted long line fishing, gathering of corals and assorted live sea creatures in the rich fishing grounds of said atoll.

Since February 2012, there were about 15 foreign vessels sighted inside the Scarborough Shoal, most of which are Chinese fishing vessels and in one occasion a Chinese Marine Surveillance Vessel. These fishing vessels are using destructive fishing methods to harvest sea turtles, sea corals, stingrays and other marine resources as observed during maritime air patrol by PN aircraft, which are used for traditional medicine, food, jewelry among others. Apparently, Chinese government vessels are being employed to protect these fishing vessels in their extensive extraction of resources in the shoal without due regard to its destructive consequences.

II. SIGNIFICANT DEVELOPMENTS:

On 080630H April 2012, PNI 312 was dispatched to conduct maritime patrol over the shoal, during which six (6) Chinese fishing vessels were observed in anchorage inside the shoal.

To protect the Scarborough Shoal from further destruction and to assert our rightful stewardship of the area as a responsible coastal state, the Philippine Navy redeployed its most modern, advanced, biggest commissioned vessel, *BRP GREGORIO DEL PILAR* (PF-15) from Palawan to Northern Luzon waters.

During the conduct of boarding procedure, strict adherence to human rights in the treatment of the crew was observed and this is reinforced by the strict Rules Of Engagement (ROE) issued to PF-15 and the boarding team prior deployment.

On or about 100326H April 2012, PF15 arrived at Scarborough Shoal to conduct counteraction operation regarding the frequent presence of foreign fishing boats at said atoll. The operation commenced as follows:

POS REP as of 100722H April 2012, at vicinity 2.5 Nautical Miles South East of Scarborough Shoal at LAT 15 deg 05 min 85 sec North and Long 117 deg 52 min 81 sec East.

On or about 100720H April 2012, a team consisting of three (3) NISG NL and eight (8) NAVSOU-2 personnel aboard two (2) rubber boats were launched with to collect imagery intelligence.

On or about 100900H April 2012, the team noticed that the deck of the Chinese fishing vessels cannot be captured by camera since said fishing boats have high free board that impedes the view of their deck. In view of this, they requested clearance to conduct compliant boarding procedure on said vessels to validate the presence of corals or sea turtles aboard ship.

On or about 100910H April 2012, the team started to conduct VBSS on the first of eight (8) monitored Chinese fishing vessels inside Scarborough Shoal. Initial report from team indicated that large amounts of corals and giant clams were found inside the compartments of the first boarded fishing vessel. The following Chinese vessels were subsequently boarded:

Time boarded	Name of vessel	Lat / long during VBSS	Nr of crew
0906H	09099	Lat 15deg 09min 09sec n Long 117 deg 47min 02sec e	5
0935H	09022	Lat 15deg 09min 09sec n Long 117 deg 47min 02sec e	6
1045H	05668	Lat 15deg 10min 08sec n Long 117 deg 46min 26sec e	1
1107H	03059	Lat 15deg 10min 41sec n Long 117 deg 45min 08sec e	3
1202H	10161	Lat 15deg 12min 10sec n Long 117 deg 42min 38sec e	8
1230H	05176	Lat 15deg 12min 10sec n Long 117 deg 42min 38sec e	4
1327H	02096	Lat 15deg 07min 46sec n Long 117 deg 50min 04sec e	3
1343H	05067	Lat 15deg 09min 46sec n Long 117 deg 47min 04sec e	10

The boarding resulted in the documentation of two (2) Chinese fishing vessels filled with assorted corals and giant clams, six (6) Chinese fishing vessels with some catch of assorted endangered species and the recovery of assorted corals to serve as samples. The boarding procedure was terminated on or about 101420H April 2012 and the team secured aboard PF 15 on or about 101445H April 2012. At the same time, PF 15, conducted barrier-negation patrol at vic 2 NM SE of Scarborough shoal.

On or about 101610H April 2012, PF-15 observed two (2) Chinese survey ships identified as Zhongguo Haijian 75 and Zhongguo Haijian 84 about 6 NM from it's position moving towards the shoal. Through a series of maneuvers it managed to position itself at the mouth of the entrance of the shoal, placing themselves between PF-15 and the eight (8) Chinese fishing vessels.

On or about 101830H April 2012, PF-15 was at Lat 15 deg 6 min 33 sec North and Long 117 deg 56 min 48 sec East. Of the two (2) Chinese survey ships,

Zhongguo Haijian 75 was positioned at Lat 15 deg 7 min 19 sec North and Long 117 deg 54 min 59 sec East, while Zhongguo Haijian 84 was situated at Lat 15 deg 7 min 70 sec North and Long 117 deg 53 min 99 sec.

III. OBSERVATIONS

- A. All vessels are manned by Chinese nationals from Hainan, China.
- B. Some equipment found in the fishing vessels ^{was} ICOM 710, Star GPS navigation system, HR 633 fathometer and HC 0002 (6082) TSD sat phone.
- C. The purpose of said vessels inside the shoal is to collect corals using small boats with outriggers manned by divers using compressors. Their main area for collecting corals is situated within the shallow portion of Scarborough Shoal.
- D. The boarding team observed that the fishing vessels are filled with corals one at a time in a manner that the first to be filled up can already transport her cargo bound for Hainan.
- E. The team also observed M/V Sarangani PCG aux 101-21 inside the shoal.

IV. PROBLEMS ENCOUNTERED

- A. The team is limited by language barrier wherein their main course of communication was through sign language.
- B. Since the boarded vessels cannot understand english language, some boarding documents were not properly accomplished.

V. RESULT OF OPERATION

Eight (8) Chinese FBs were boarded by NISG-NL and NAVSOU2 personnel and documented the presence of illegally harvested corals. Two (2) of which were positively loaded with undetermined number of harvested corals (species unknown).

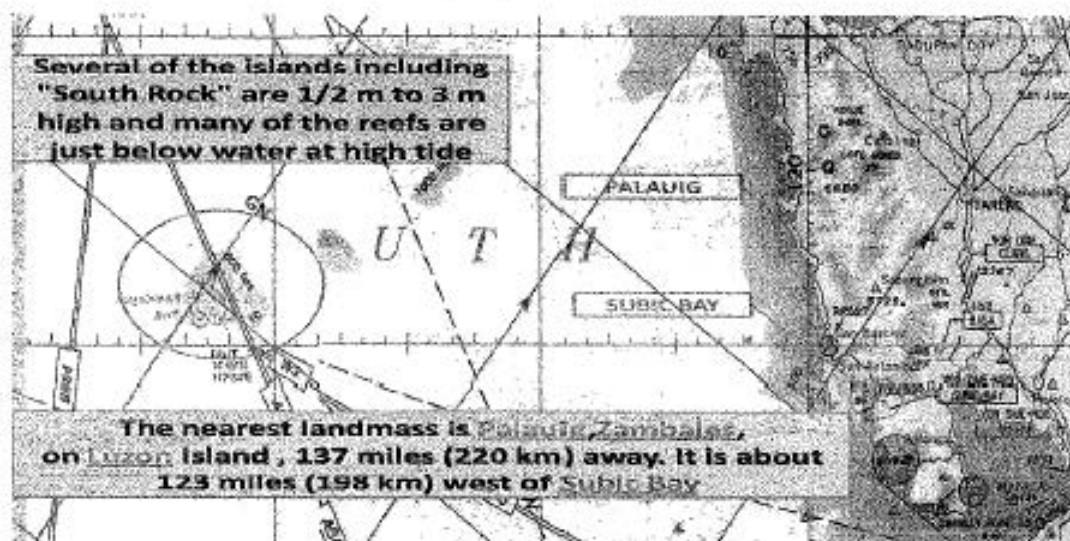
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**PHILIPPINE NAVY
HEADQUARTERS NAVAL FORCES NORTHERN LUZON
INTELLIGENCE DIVISION
Naval Station Ernesto Ogbinar,
City of San Fernando, La Union**

19 April 2012

Special Report on Scarborough Shoal

The West Philippine Sea, formerly the South China Sea is located at the western part of the country where the Scarborough Shoal is located. It is located at 220 km west of Palauig Zambales or at about 198 km west of Subic. The Shoal forms a triangle shaped chain of reefs (but mostly rocks) 55 kilometers around with an area 150 square kilometers. It has a lagoon with area of 130 km² and depth of about 15 meters. The Shoal is within the Exclusive Economic Zone (EEZ) of the Philippines.



The Scarborough Shoal is a disputed area. Aside from the Philippines, it is also being claimed by the People's Republic of China (PROC). China demonstrated a firm and aggressive resolve to claim this atoll in the West Philippine Sea by deploying its naval vessels and fishing boats in the area. Through the years, the number of arriving Chinese vessels unusually increased. From groups of six (6) or eight (8), this has risen to sixteen (16) vessels present in the area at any one time. The Philippine Navy has confirmed that the Chinese are using explosives and toxic materials in their fishing operations at the Scarborough Shoal.

It is also significant to note that Vietnam is stepping up their fishing activity in the rocky outcrop. This was borne by the sharp rise of sighted Vietnamese vessel from a low of five (5) to as many as seventy (70) annually.

Other vessels of foreign nationalities which engage in fishing at the shoal are Malaysian and Hong Kong vessels. The frequency of arrival of foreign vessels at

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the Scarborough Shoal usually peak from the months of February to April. The violation committed by these foreign elements could possibly degenerate into more serious offenses which could prejudice national security interest in the long term. Hence, these infringements deserve utmost concern by the government.

Developments

For the first semester of 2012, there were nine (9) incidences of infringement incidences that cropped up in the rich fishing grounds of Scarborough Shoal. These incidences involved a total of Twenty-six (26) fishing vessels from China, four (4) from Taiwan and Three (3) from Vietnam. The foreign fishermen are reported to be engaged in long-line fishing and gathering of corals and other marine species.

- On 05 Jan 2012, one (1) Vietnamese Fishing Boat was sighted at approximately 14NM south off Scarborough Shoal or at Lat 14°55'N Long 117°42'E on fishing venture.

- On 111100H Jan 2011, eight (8) unidentified FBs believed to be Vietnamese were sighted outside Scarborough Shoal at latitude 14°58'24.7"N longitude 117°57'42.0"E on long line fishing.

- On 121435H Jan 2012, five (5) unidentified FBs believed to be from Vietnam were sighted Scarborough Shoal at latitude 15°02'9.8"N longitude 118°18'52.29"E conducting fishing.

- On 221900H Jan 2012 one (1) Vietnamese fishing vessel sighted at 20 NM South of Scarborough Shoal conducting fishing.

- On 101400H Feb 2012, two (2) Taiwanese fishing Boats engaged in long line fishing at vicinity south of Scarborough Shoal.

- On 241128H Feb 2012, one (1) unidentified Chinese FB was sighted conducting fishing in the area at approximately 3NM south of Scarborough Shoal.

- On 250700H Feb 2012, Nine (9) Chinese Fishing Boat were sighted at vicinity Scarborough Shoal gathering sea turtles, sea corals and conducting fishing thereat.

- On 071200H march 2012 Seven (7) Fishing Boat believed to be a Chinese National (markings/etc) were sighted at the vicinity of Scarborough Shoal.

- On 130930H Mar 2012, ten (10) Chinese Fishing Boats were sighted at the vicinity of Scarborough Shoal on fishing activities in the area. Additionally, two (2) unidentified FBs arrived at the vicinity of said shoal.

- On 140940H Mar 2012, CAPT SAMUEL HERUELA of MB SAN JUAN from CSB Shipping owned by a certain Honorio SAABEDRA states that the alleged eight (8) Chinese FBs (as previous reported 10 CFBs) are confirmed to be from

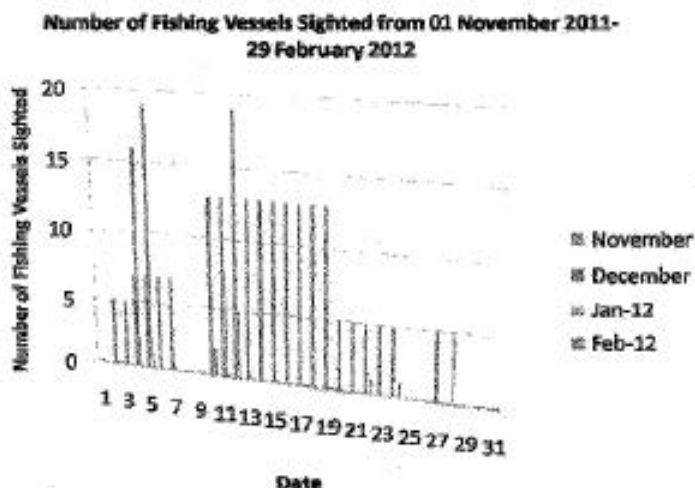
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China because of the red flag with one big star and 4 small star. The two unidentified FBs are said to be Vietnamese FBs.

- On 160800H Mar 2012, unidentified ship colored white, which is like a Chinese Marine surveillance vessel of undetermined class, arrived at vicinity off Scarborough Shoal. Said ship roamed around thereat and believed to have conducted survey in the area. On 171500H Mar 2012, the ship left vicinity of Scarborough Shoal enroute to unknown destination.

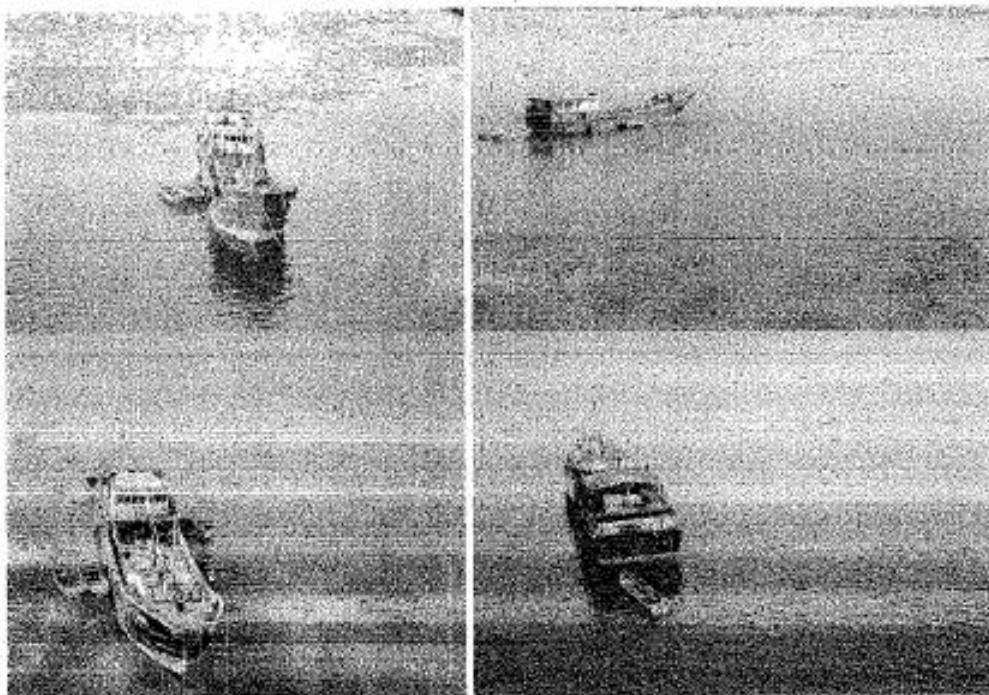
Based also from the data gathered, a total of three (3) foreign fishing vessels were sighted for the month of February 2012 while a total of 264 fishing vessels were sighted from November 2011 up to February of 2012. Majority of which are foreign vessels harboring and collecting corals and turtles. To illustrate, a graph of the number of fishing vessels sighted from November 2011 to February 2012 is shown below.



With the reported sightings of said foreign vessels a NAVAIRPAT was endeavored by NFNL in order to verify their presence.

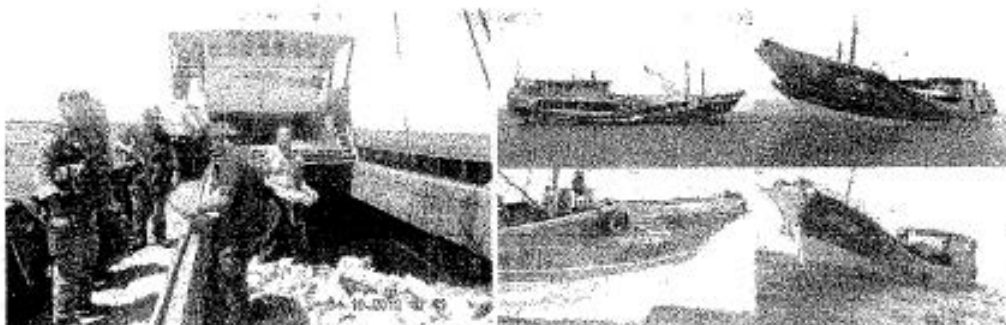
One was conducted on 061525H March 2012 and the other was on 22 0800H March 2012 both of which was conducted by PNI311. Both NAVAIRPAT resulted in the sighting of eight (8) foreign fishing vessels anchored at Scarborough Shoal. Notable from the said NAVAIRPAT was the confirmation from photographs taken, showing several corals on board said fishing vessels.

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Photographs showing several corals on board sad fishing vessels

On 100326H April 2012, PF 15 arrived at Scarborough shoal to conduct sovereignty patrol thereat. On 100720H April 2012 a team consists of three (3) NISG NL and eight (8) NAVSOU-2 personnel aboard two (2) rubber boats were launched with to collect imagery intelligence. At 100910H April 2012 the team started to conduct VBSS on the first of eight (8) monitored Chinese fishing vessels inside Scarborough Shoal on or about 101420H April 2012 The boarding procedure was terminated and the team secured aboard PF 15 . The operation resulted to the following



VBSS Team onboard Chinese Vessel

Chinese vessel boarded by the VBSS

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Clam-shells and sharks seen onboard the Chinese vessels.

On 14 April 2012 an Air Surveillance Mission was conducted at Scarborough Shoal on board PNI-312 of the Naval Air Group resulted in the sightings of the following vessels/watercrafts:



CMS Vessel 84 sighted NE of Scarborough Shoal



CMS Vessel 75 sighted SE of Scarborough Shoal



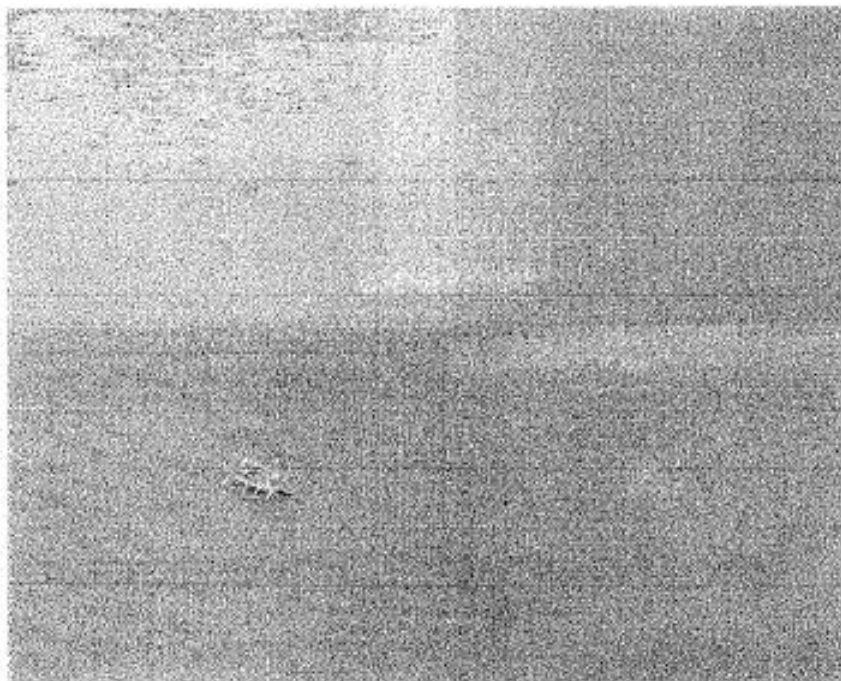
M/Y SARANGANI inside



PCG SARV 003 sighted SW of Scarborough Shoal

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Filipino fishing boats inside Scarborough Shoal. No Chinese Fishing boat in the area

On 16 April 2012, an Air Surveillance Mission was conducted at Scarborough Shoal on board PNI-312 of The prevailing operating environment is the diplomatic stand-off between Philippine and Chinese government following the discovery of Chinese fishing vessels inside the Scarborough Shoal harvesting corals and capturing endangered marine species and the subsequent interference by Chinese maritime law enforcement vessels.

The mission intends to determine compliance by the Chinese authorities over the withdrawal of all their vessels in the area and conduct aerial surveillance over Scarborough Shoal in order to provide updated maritime operating picture of the general area.

The conduct of air surveillance mission at Scarborough Shoal on 16 April 2012 resulted in the sightings of the following vessels/watercrafts:



CMS Vessel 84 sighted SE of Scarborough Shoal



CMS Vessel 75 sighted SW of Scarborough Shoal

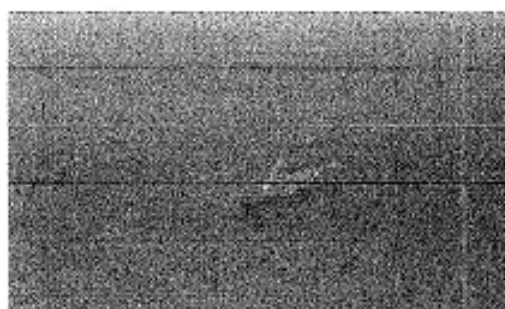
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CMS Vessel 71 sighted S of Scarborough Shoal



PCG SARV 002 sighted S of Scarborough Shoal



M/Y SARANGANI sighted NW Inside of Scarborough Shoal

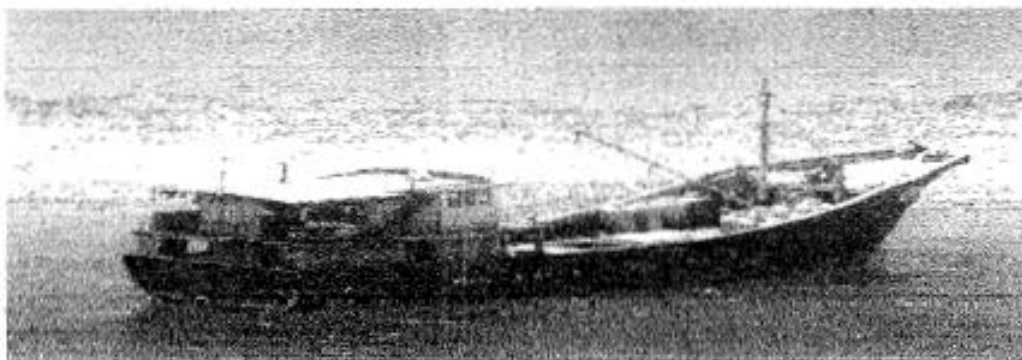


Filipino Fishing boat sighted Inside of Scarborough Shoal

On 19 April 2012, an Air Surveillance Mission was conducted at Scarborough Shoal on board PNI-312 to collect imagery intelligence and conduct aerial surveillance over Scarborough Shoal in order to provide updated maritime operating picture of the general area. This resulted in the sightings of the following vessels/watercrafts:

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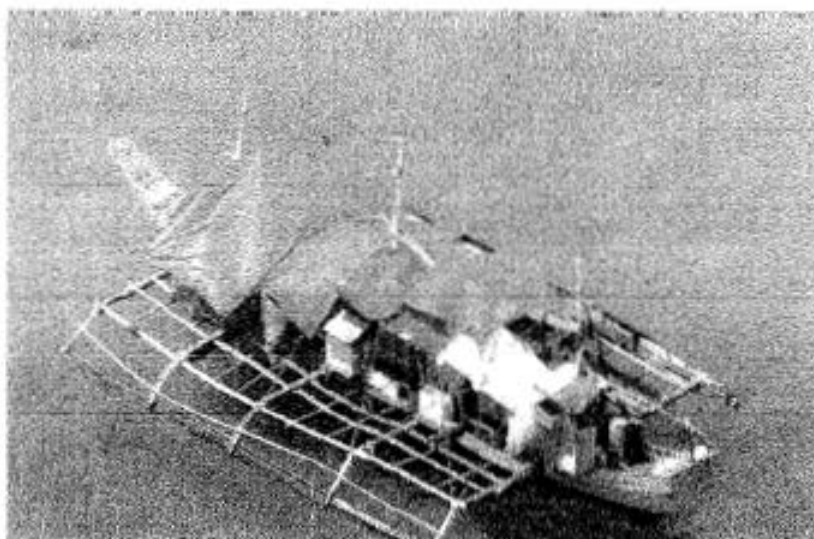
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Three (3) Chinese fishing boats sighted inside Scarborough Shoal.. Upper right photo showing collected giant clam's shells



PCG SARV 002 sighted NW of Scarborough Shoal



Filipino Fishing boat inside Scarborough Shoal

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CONFIDENTIAL**Assessment**

The presence of the foreign vessels at the Scarborough Shoal showed the brazenness of the foreign poachers in impinging within our territorial waters. The rich fishing grounds of the Scarborough Shoal remains a traditional poaching destination as it remains a contested area by countries bordering West Philippine Sea. Apparently, these foreign poachers have the resources to stay long in fishing grounds of their choice. It could also be a statement of their assertion of territorial claim on the shoal. It has also been noted that a growing number of foreign fishermen appeared oblivious to the preservation of marine life at the shoal as shown in their blatant harvest of corals.

Additionally, the favorable weather and sea conditions prevailing in the area during the last few months were taken advantage by these foreign fishing vessels to persistently carry-out their activities. Even so, the presence of naval bottoms in the area should be considered not only to show our sovereignty over the disputed shoal but also to enforce maritime laws and help preserve the marine environment from further destruction.

On the other hand, whether the Scarborough Shoal is just rocks or regime of islands as defined by UN Convention on the Law of the Sea (UNCLOS), the recent stand-off between the country and China in the area should prod the present administration to prop up air and naval capability of the AFP to protect and enforce the country's territorial integrity considering its proximity to Philippine islands.

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Annex 78

*Report from Commanding Officer, SARV-003, Philippine Coast Guard, to Commander, Coast Guard District
Northwestern Luzon, Philippine Coast Guard (28 Apr. 2012)*



Philippine Coast Guard
Coast Guard Fleet
Coast Guard Ready Force
BRP PAMPANGA (SAR-003)
Admiral Cunanan Wharf, HPCG, Port Area, Manila

28 April 2012

From : Commanding Officer, SARV-003

To : Commander, Coast Guard District Northwestern Luzon

Subj: After Operations Report on the Conduct of Maritime Patrol Mission and MARLEN at vicinity Bajo de Masinloc, also known as Scarborough Shoal and other Philippine Maritime Jurisdiction

Refs: Radio Messages Cite: CDO-0412-070 & CGDNWLZN-0412-095

Encls: A. Chronological Events
B. Position Log of Chinese Vessels
C. Daily MaxSea Charts
D. Monitoring Record of Chinese Vessels and Fishing Vessels
E. Photos (Other photos and videos on the enclosed CDs)
F. Roster of Troops
G. List of Ship's Riders
H. Voyage Plan

1. MISSION:

- 1.1 To conduct maritime patrol and law enforcement activities at vicinity Bajo de Masinloc also known as Scarborough Shoal and other nearby areas within Philippine maritime jurisdiction.
- 1.2 To "show flag" and exercise presence in the vicinity of Bajo de Masinloc and to document presence and unusual actions of foreign vessels in the area.
- 1.3 To ensure that no provocative action or measure (including maintaining appropriate distances) in the presence of other countries' naval or government vessel that would be interpreted as an aggressive action by PCG vessel against that naval or government vessel.
- 1.4 To strictly ensure that actions within the different maritime zones are within the guidelines and in accordance with existing PCG policies, domestic laws and UNCLOS.
- 1.5 To monitor current situation in the area of Bajo de Masinloc and carry out DFA specific instruction to watch out for markers that may be put up by the Chinese thereat, and that we should pull them down and confiscate/reserve as evidence

2. RESOURCES:

a) DS Personnel/Ship's Rider

Officer (SOPA)	-	1
Officer (LCDR FIESTA)	-	1
Officers (Medical)	-	2
Officer (SOG)	-	1
EP (PAO)	-	2
EP(CG2)	-	1
EP(SOG)	-	5
EP (Medical)	-	2
BFAR(Civilian)	-	5
CG-2(Civilian)	-	1

b) Organic Personnel: Officers	-	5
EP	-	23

c) Vessel/Watercrafts involved:

BRP PAMPANGA	-	1
Rubberboat borrowed from BRP BATANGAS	-	1
Rubberboat augmented by CGSOG	-	1

3. Accomplishments:

- 3.1 Successful surveillance and establishment of the presence of the Philippine Government and the display of the Philippine Flag over the Bajo de Masinloc, also known as Scarborough Shoal and nearby areas within the jurisdiction of the Philippines preventing provocative actions even in the presence of two (2) Chinese Government Vessels namely: China Marine Surveillance (CMS) ZHONG GUO HAI JIAN 71 & Fishery Law Enforcement Command Vessel (ELECT 310) and China Marine Surveillance (CMS) 81.
- 3.2 Conduct of Maritime Patrol together with Special Operations Group (SOG) and Bureau of Aquatic Resources (BFAR) for monitoring Nine (9) Chinese Fishing Vessels with bow numbers 05008, 03889, 03026, 03031, 09099, 09022, 02087, 01097, 09022 and local fisherfolks present in the area.
- 3.3 Proper turn-over of operations to BRP EDSA (SAR-002) thereat.

4. RESOURCES USED/EXPENDED

a) Surface Ship	-	SARV-003
b) Rubberboat w/ OBM	-	1 borrowed from SARV-004
	-	Provided by SOG Team
c) Total FO consumed	-	25,050 liters
d) Total Gas consumed	-	80 liters (40 liters transferred to MCS 3001)
e) Lube Oil (ME)	-	72 liters
f) Lube Oil (Auxiliary E)	-	47 liters (40 liters transferred to MCS 3001)

h) Ammo Expended

Nil

5. SERIES OF SIGNIFICANT EVENTS (See Encl A for further details):

- 5.1 O/a 211940H April 2012, this vessel departed Rivera Pier, Subic Port, Olongapo City, Zambales enroute to Bajo de Masinloc (Scarborough Shoal) carrying eighteen (18) augmented personnel and twenty-eight (28) organic personnel.

22 April 2012

- 5.2 O/a 0755H, this vessel arrived at the rendezvous area at 15° 04.03' N 117° 55.64' E or at seven (7) nm SE off South Rock, Bajo de Masinloc, for the relief of BRP EDSA (SARV-002), and sighted **One (1) Chinese Marine Surveillance 71.**
- 5.3 O/a 0800H, while preparing to shift power from starboard generator to port generator, **observed oil and water dilution from the port generator.** Shifting power was suspended pending troubleshooting of said generator.
- 5.4 O/a 0824H, while at lying to at rendezvous area, SARV-002 launched rubberboat and fetched CAPT EDUARDO D FABRICANTE PCG (SOPA), LCDR GENITO B BASILIO PCG (CO), DGO and Radioman of this unit, OIC, SOG, One (1) PAO for a briefing at SARV-002. After the briefing, **SARV-002 transferred One (1) SOG and One (1) BFAR personnel and 60 ltrs supply of XCS to this vessel.**
- 5.5 O/a 0950H, briefing and turnover aboard SARV 002 terminated. SOPA and CO returned back to SARV 003. O/a 1017H, **SARV 002 pulled out from vicinity of Bajo de Mansinioc while SARV 003 then commenced patrolling in the area.**
- 5.6 After a series of monitoring thru radar, binoculars and AIS, and launching the rubberboat with three (3) SOG, one (1) PAO, and one (1) BFAR onboard, and SARV 003 getting as close as 0.98 nm off southern part of the shoal, four (4) Chinese Fishing Vessels with bow numbers 05008, 03889, 03026 and 03031 with 17 small boats with no outriggers were monitored inside the shoal apart from the two (2) Chinese Fishing Vessels outside the shoal recently sighted at 15° 10.61' N 117° 49.84' E and 15° 07.57' N 117° 49.93' E. **CMS 71 lying to at 15° 06.84' N 117° 53.58' E.** No indication of any vertical construction activity at southeastern/western part of the shoal. Such has been reported to CGAC via satellite phone SMS.
- 5.7 O/a 1845H, AIS of CG2 acquired position of Yong Ton 1 VRHH4 Tanker Huizhon

23 April 2012

- 5.8 O/a 0105H, SARV 003 established contact with MCS 3006 with position of MCS 3006 at 15° 00.58' N 118° 04.92' E. O/a 0430H, SARV 003 got the latest position of MCS 3006 at 15° 07.98' N 117° 40.29' E. O/a 0550H, MCS 3006 got

15° 08.14' N 117° 49.12' E or at vicinity 1.43 NM N off South Rock, Bajo de Masinloc o/a 0925H. While MCS 3006 is maneuvering for entry to the lagoon, CMS 71 prepositioned near entrance at 15° 05. 778' N 117° 52.393' E. MCS 3006 was able to enter the lagoon unchallenged. O/a 1037H, MCS 3006 launched her rubberboat to conduct further monitoring inside the lagoon but was not able to operate due to the derangement of the mounting of the OBM.

- 5.9 O/a 0830H, pulled out lube oil cooler (Core GP-Oil Cooler) of port generator and conducted air and water leak test with no indication of leak thereby suspecting cause of dilution possibly emanating from the cylinder head or cylinder liner of the said generator.
- 5.10 O/a 1100H, SARV 003 monitored two (2) Chinese Fishing Vessels anchored and in nest with each other at 15° 08.40' N 117° 48.74' E and one (1) Chinese Fishing Vessel pulling net at 15° 08.41' N 117° 50.47' E. SARV 003 positioned at 15° 08.53' N 117° 43.85' E on course 273°T at speed of 3.5 knots. O/a 1318H, SARV 003 launched rubberboat.
- 5.11 O/a 1340H, SARV 003 acquired from radar a contact at 15°11.78' N 117°41.14'E with range of 10.9 NM and bearing of 141°T approaching Bajo de Masinloc. O/a 1440H, acquired contact later recognized thru visual to be FLEC 310 with a distance of 5.6 nm from this vessel on course 296°T with a speed of 14 knots. O/a 1500H, FLEC 310 passed on the port bow of SARV 003 with a distance of 1,200 yards and a bearing of 84°T on course 320°T and circled around Bajo de Masinloc.
- 5.12 O/a 1600H, rubberboat with three (3) SOG, one (1) BFAR, one (1) CG2 and one (1) PAO arrived and reported the following:
- Presence of two (2) new Chinese Fishing Vessels with bow numbers 09099 and 09022. CFV 09022 was observed thru the picture taken with stacked up giant clams inside the exposed cargo hold.
 - Activities of CFV utility boats at vicinity off North Rock destructive to marine habitat, dragging something underwater that caused seawater discoloration.

- 5.13. Positions of the following remain unchanged:

CMS 71	- 15°05.94'N 117°52.84'E
FLEC 310	- 15°03.85'N 117°44.98'E
CFV 1&2	- 15°09.99'N 117°46.94'E
CFV 3,4&5	- 15°13.19'N 117°43.91'E

- 5.14 O/a 2213H, AIS of CG2 reported to CGAC as inoperative due to malfunction.

24 April 2012

- 5.15 O/a 0800H, at 15°11.91'N 117°41.28'E, SARV 003 maintained a course of 101°T enroute to vicinity 4 NM N off South Rock to launch rubberboat for

- 5.16 O/a 1015H, received info from MCS 3006 that her boarding team has boarded F/B Shaira, a Filipino Fishing Banca that catches aquarium fishes.
- 5.17 While enroute to preposition area for launching rubberboat, SARV 003 observed 12 Chinese utility boats conducting trawling/dredging-like activity same as reported the previous day. Same water discoloration was observed at the wake of pulling. O/a 1038H, launched rubberboat.
- 5.18 O/a 1328H, rubberboat arrived, SOG reported information regarding the recently seen and reported conical and rectangular markers inspected. The rectangular marker is found to be horizontal conical mooring buoy at 15°09.114' N 117°49.205' E and the conical marker is found to be a vertical conical mooring buoy is at 15°08.314' N 117°50.298 E.
- 5.19 O/a 2115H, MCS 3005 reported that they have sighted an unidentified flying object hovering at the area.

25 April 2012

- 5.20 O/a 0538H, while at 15°14.40'N 117°41.02'E, SARV 003 sighted on her starboard bow a fishing vessel with estimated distance of 500 yards as reported by the lookout at the flying bridge. O/a 0820H, duty lookout confirmed the sighted contact a new Chinese Fishing Vessel with bow number 2087.
- 5.21 O/a 0820H covert fishing vessel with call sign "Cactus" called SARV 003. Communication was established at 0825H and Cactus informed that she has prepositioned inside the shoal waiting for instruction from SOPA.
- 5.22 O/a 0830H, MCS 3006 called up informing that they have departed the shoal. O/a 0950H, MCS 3006 approached SARV 003 but could not get alongside due to huge swells. O/a 1004H, SARV 003 launched rubberboat and ferried LT RAMOS, OIC of SOG who will join the voyage of MCS 3006 to Subic due to positive signs and symptoms of chicken pox. Documents such as chronology of events, POSREPs, as well as CD containing photos and video footage of activities inside the shoal have been sent to MCS 3006 via rubberboat for submission to HHQS. Afterwhich, MCS 3006 departed for Subic, Zambales.
- 5.23 O/a 1100H, SOPA called and instructed Cactus to gather information about the activities in the area and to monitor Chinese vessels inside the shoal and inform SARV 003 immediately.
- 5.24 O/a 1318H, at 15°15.23'N 117°44.94'E, sighted CMS plane with tail number B-3845 flew past this vessel from starboard-beam to starboard quarter at an estimated elevation of 150-200 feet.
- 5.25 O/a 1355H, established contact with MCS 3001 with her position at 15°06.03'N 117°54.25'E or at vicinity 5.2 NM E off South Rock, Bajo de Masinloc. O/a 1515H, rendezvoused with MCS 3001 at 15°10.21'N 117°52.21'E. MCS 3001 launched her rubberboat ENS GINETE, the replacement of LTJG Ramos was onboard the rubberboat including ENS COLLADO, executive officer of

guidance and directives for PCG units operating at the shoal, especially the ROE being observed, copy of which was furnished to said officer.

- 5.26 O/a 1707H, duty lookout at the flying bridge reported **seven (7) sighted Chinese Fishing Vessels with utility boats still at the waters inside the shoal.**
- 5.27 O/a 1825H, SARV 003 monitored thru radar MCS 3001 entering the lagoon
- 5.28 O/a 2058H, **two unidentified flying objects** (probably reconnaissance planes) were monitored to have flown twice over the vicinity, flying on undetermined elevation in an opposite direction of northwest to southeast and southeast to northwest. A plane flashed a ray of light for around two seconds when it was directly over the vicinity of the lagoon. Both planes were monitored to be flying away (northwest ward) towards the direction of mainland Asia.

26 April 2012

- 5.29 O/a 0000H, duty lookout at the flying bridge reported the **reappearance of two (2) unidentified flying objects** at the starboard bow. O/a 0145H, unidentified flying objects reappeared and were observed with similar flight route over the shoal.
- 5.30 O/a 0455H, acquired thru radar a **new contact** at 15°11.21'N 117°40.39'E from the port bow crossing to starboard with speed of 7.2 knots. O/a 0518H, coordinates of new contact read at 15°15.14'N 117°44.46'E on course 112°T with speed of 7 knots and later confirmed by the duty lookout at the bridge as Chinese Fishing Vessel.
- 5.31 O/a 0655H, duty lookout at the flying bridge reported **utility boats of CFV's conducting trawling operations.**
- 5.32 O/a 0740H while lying to at 15°14.85'N 117°44.55'E, launched rubberboat to conduct further visual monitoring at the lagoon especially the area of operation of the CFV's utility boats, status of the shoal bed in said particular area, to check on the proper location of the CFV's and for other surveillance purposes. While rubberboat is proceeding to the area, o/a 0755H FLEC 310 steaming on seaward direction, changed course heading directly to this vessel at 20 knots with various maneuvers with the closest distance at dead astern of 1.1 nm. O/a 0820H, FLEC 310 sailed away at southeastern direction towards CMS 71 location.
- 5.33 O/a 0945H, MCS 3001 called informing that the RHIB of FLEC 310 has been launched and moving towards the direction of the rubberboat of this unit. RHIB of FLEC 310 passed rubberboat of this vessel and proceeded to the nearest Chinese Fishing Vessel. Rubberboat of SARV 003 just proceeded and went alongside MCS 3001.
- 5.34 O/a 1005H, MCS 3001 reported to this vessel that CFV # 09022 was seen overloaded with Taklobo and heading out of the lagoon.

- 5.36 O/a 1140H, rubberboat arrived and secured at the boat room.
- 5.37 O/a 1227H, acquired new contact at the radar, a white ship with running blue stripes, bow number not yet determined due to distance.
- 5.38 O/a 2026H, duty lookout at the flying bridge reported an **unidentified aircraft** hovering at the vicinity of the shoal. O/a 2036H, duty lookout reported the reappearance of the unidentified flying aircraft hovering at the area. Two aircrafts were again sighted hovering in the area at 2310H, 2335H, and 2400H.

27 April 2012

- 5.39 O/a 0830H, **MCS 3001 pulled out from the lagoon**, and o/a 1015H, moored portside to SARV 003 for rewatering and reprovisioning at 15°12.47'N 117°47.64'E. SARV 003 then transferred two (2) tons of fresh water, forty (40) liters lube oil, forty (40) liters of XCS gasoline, ten (10) containers of drinking water, and two (2) days mess provision for the crew.
- 5.40 O/a 1310H, after rewatering and reprovisioning were completed, MCS 3001 pulled out from SARV 003 and proceeded near the position of the white ship with running blue stripes to identify other markings and bow number which **was later identified as CMS 81**.
- 5.41 While monitoring movement of MCS 3001, and other Chinese vessels in the area, SARV 003 also monitored six (6) **Filipino fishing bancas** at the vicinity of Bajo de Masinloc.
- 5.42 O/a 1733H, MCS 3001 anchored inside the lagoon at 15°12.47'N 117°44.66'E
- 5.43 O/a 2025H, while lying to at 15°11.85'N 117°49.75'E, duty lookout at the bridge sighted two unidentified flying objects at the vicinity of Bajo de Masinloc.

28 April 2012

- 5.44 O/a 0500H, SARV 003 and SARV 002 were able to establish communication via HF radio and got latest coordinates of SARV 002 at 15°00.561'N 118°32.029'E
- 5.45 O/a 0815H, SARV 002 prepositioned at about 500 yards from SARV 003. CAPT RIVERO and CDR BELLEN boarded SARV 003 for briefing and turnover.
- 5.46 O/a 0900H, FLEC 310 approached SARV 003, while lying to, from port to almost dead ahead at a distance of about 500 yards with speed of 20.3 knots. O/a 0915H, FLEC 310 passed from starboard quarter to the port side of SARV 002 at a distance of 200 yards with a speed of 20.6 knots. Two meters big waves were generated at the wake of the speeding FLEC 310. While no damage was on PCG vessels was incurred, the rubberboats of MCS 3001 and SARV 002 launched for transfer of personnel were battered by the waves. Such bullying was properly documented with video footage covered by PAO personnel.

- 5.47 O/a 0825H, SARV 003 properly turned over the area to SARV 002 and steamed enroute to Pier 13, South Harbor, Manila.
- 5.48 O/a 2045H, SARV 003 arrived safely and moored port side to Pier 13, South Harbor, Manila. Upon arrival, SOPA and personnel from CG-2 conducted debriefing to all onboard.

6. PERFORMANCE INDICATORS:

A. TST	-	169 Hours 5 Minutes
B. TMC	-	608 NM
C. TAT	-	NIL
D. Total Passengers Transported	-	23
E. Total Persons Rescued	-	NIL

7. COMMENTS AND OBSERVATIONS:

- 7.1 The bullying made by FLEC 310 speeding up and passing in front of SARV 003 at a distance of about 600 yards and passing at the fantail of SARV 002 at a fast speed generating big waves while rubber boats of MCS 3004 and SARV 002 are launched for transfer of personnel is a violation of the International Code of Conduct and placing at a hazardous/great risk the safety of the vessels and the personnel on board in such close call or near collision situations.
- 7.2 The dredging operations of the utility boats of the fishing vessels prove to be destructive to the marine habitat as seen in the damaged corals (see photo). Such action is a clear manifestation of wanton disregard to the marine environment.
- 7.3 The newly installed MAXSEA became very useful for navigation since there were no available chart for the area of Scarborough Shoal. This system is very vital for the ship's operation which simplified our QM's plotting and determining ship's route. This was also used in identifying positions and movement of CMS vessels and became essential in deciding courses of actions.
- 7.4 Provision for fresh water for this vessel is very limited especially when required to undertake long missions. It was observed this vessel consumed 1 to 2 tons of water each day despite water discipline. Having a 20 tons capacity only enables this ship to operate effectively for 5 to 7 days. When water supply is down to 9 tons, fresh water pumps have difficulty in sucking water from its tanks. In order to address this, it is recommended that ship's desalination plant be repaired or replaced.
- 7.5 Newly installed HF Radio must be further assessed/repared since there is still no communication established with CGAC while in the area. At some instance, this vessel was able to communicate with SARV 002 but with difficulty and most of the time, communication could not be established.
- 7.6 The new augmented satellite phone issued to this vessel still has many blind spots at sea just like the old one. It was observed that POSREPs and SITREPs sent to CGAC via SMS do not reach the point of destination on time as

- 7.7 This vessel be provided with at least 2 rubberboats. The rubberboat being used was only borrowed from SAR 004 while the other was being used by SOG.
- 7.8 The AIS equipment of CG-2, while it became very helpful in identifying CMS vessels in the previous operation of this vessel, failed to identify new CMS vessels approaching the area.
- 7.9 This unit has 4 binoculars, one (1) borrowed from SARV-004 and only one (1) is reliable while the others have poor vision.
- 8. RECOMMENDATIONS:**
- 8.1 Placing on Hazardous Duty Status all Officers and Non-Officers who undertook the mission.
- 8.2 As earlier recommended, a standard official government statement, preferably from the Department of Foreign Affairs (DFA), in response to the bullying made by CMS and FLEC vessels.
- 8.3 A diplomatic protest be made against China for the destructive measures the utility boats of the Chinese Fishing Vessels are doing to collect giant clams, disturbing the marine habitat.
- 8.4 Immediate repair of the port auxiliary engine further recommending the previous request for overhaul be considered.
- 8.5 Recommend for the installation of MAXSEA Navigation Software on all PCG vessels as discussed in para 7.2.
- 8.6 Repair or replacement of the desalination plant of this vessel is imperative as discussed in para 7.3.
- 8.7 This vessel must be provided with at least 2 additional rubberboats.
- 8.8 Availability of additional reliable binoculars as discussed in para 7.8.

GENITO
LCDR

B

BASILIO
PCG

Annex 79

Memorandum from Andres R. Menguito, FRPLEU/QRT Chief, Bureau of Fisheries and Aquatic Resources, Republic of the Philippines, to Director, Bureau of Fisheries and Aquatic Resources, Republic of the Philippines (2 May 2012)



Bureau of Fisheries and Aquaculture
PCA Bldg., F. Ortigas Road, Diliman, Quezon City

02 May 2012

FOR : The Director
This Bureau

THRU : Mr. Andres R. Menguito
Chief, FRPLEU/QRT

SUBJECT : FIELD ACCOMPLISHMENT REPORT ON TRAVEL
ORDER NO. 1143


Travel Order No. 1143 is in connection with the implementation of RA 8550 in Scarborough Shoal in the West Philippine Sea on the reported presence of Chinese Commercial Fishing boats illegally fishing within our country's Exclusive Economic Zone. On 24 April 2012, our team was alerted by the Chief of Fishery Resource Protection and Law Enforcement Unit to proceed immediately to Naval Base Cavite at Sangley Point, Cavite City to board Monitoring Control and Surveillance patrol craft 3001. On the night of 24 April 2012, we left Sangley Point aboard MCS - 3001 and arrived at Scarborough Shoal at 3:45 in the afternoon of 25 April 2012. Upon arrival at Scarborough Shoal, we coordinated our presence in the area with the Philippine Coast Guard ship BRP Pampanga before proceeding inside the shoal. On the horizon, two China Marine Surveillance ship's are sighted on our ships port side and three Chinese Fishing boats are clearly visible on our ships starboard side at a distance of approximately 2 nautical miles. Before nightfall, we set anchor at latitude 15 degrees 08.32 minutes North longitude 117 degrees 49.22 minutes East latitude or at vicinity 1.4 nautical miles off South Rock in Scarborough Shoal. At 6:45 in the morning of 26 April 2012, we spotted a Chinese Fishing Vessel with bow number 01097 with more or less 5 crew members entering the lagoon and proceeded to the location of other Chinese Fishing vessels inside Scarborough Shoal. At 8:12am, we noticed a fishing boat inside the lagoon, a composite team from BFAR and PCG boarded our ship's rubber boat to conduct routine inspection and we found out that the fishing boat has a registered name of FB John the Baptist, owned by CBS Fishing Corporation based in Masinloc, Zambales and skippered by Samuel S. Huruela. The commercial fishing boat has complete documents together with its 4 crew members. At 9:55am of the same day, Chinese Fishing vessel with bow number 09022 departed Scarborough Shoal loaded with giant clams and other marine products en route to China. All we can do is observed, we cannot apprehend the poachers because they are being protected by two China Marine Surveillance ship's that are approximately 2 nautical away from our position. China Marine Surveillance ship's are armed with two 25 millimeter cannon's, a 76 millimeter artillery piece and are also believed to have

CERTIFIED PHOTOCOPY

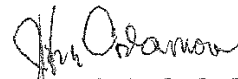
SIGNED BY: 

DATE: Apr. 27, 2014

surface to surface silkworm missiles. At 10:20 in the morning of 27 April 2012, two Rugged Hull Inflatable Boats of China with uniformed personnel on board approached and encircled our Patrol Craft then disappeared at the third quarter of our ship en route to the Chinese Fishing boats. The rest of our stay at the shoal were spent observing the wanton destruction of our marine and aquatic resources by the Chinese Fishing vessels in the area. At 10:15 in the morning of 29 April 2012, MCS-3008 finally arrived and relieve us of our observation duty at Scarborough Shoal. We departed at 2:30 in the afternoon and arrived at Subic Bay Freeport Zone in the morning of 30 April 2012.




Jerry W. Jacalan
Economist 1/QRT Operative



John Marshall Codamon
QRT Operative

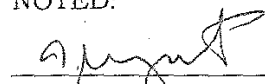


Joel Alvarez
QRT Operative



Timie Nio
QRT Operative

NOTED:



Andres R. Menguito
Chief, FRPLEU/QRT

Annex 80

Report from Relly B. Garcia, et al., FRPLEU/QRT Officers, Bureau of Fisheries and Aquatic Resources, Republic of the Philippines, to Director, Bureau of Fisheries and Aquatic Resources, Republic of the Philippines (2 May 2012)



Republic of the Philippines
 Department of Agriculture
Bureau of Fisheries and Aquatic Resources
 PCA Bldg, Elliptical Road, Diliman, Quezon City

May 2, 2012

FOR : **The DIRECTOR**
 This Bureau

FROM : **RELLY B. GARCIA**
 FRPLEU/QRT Officer

ANTHONY FRANCIS LESACA
 FRPLEU/QRT Officer

AGRIPINO LONTOK
 FRPLEU/QRT Officer

RAMIRO ATIENZA
 FRPLEU/QRT Officer

VICENTE MARAVE Jr.
 FRPLEU/QRT Officer

CERTIFIED PHOTOCOPY

SIGNED BY:

DATE:

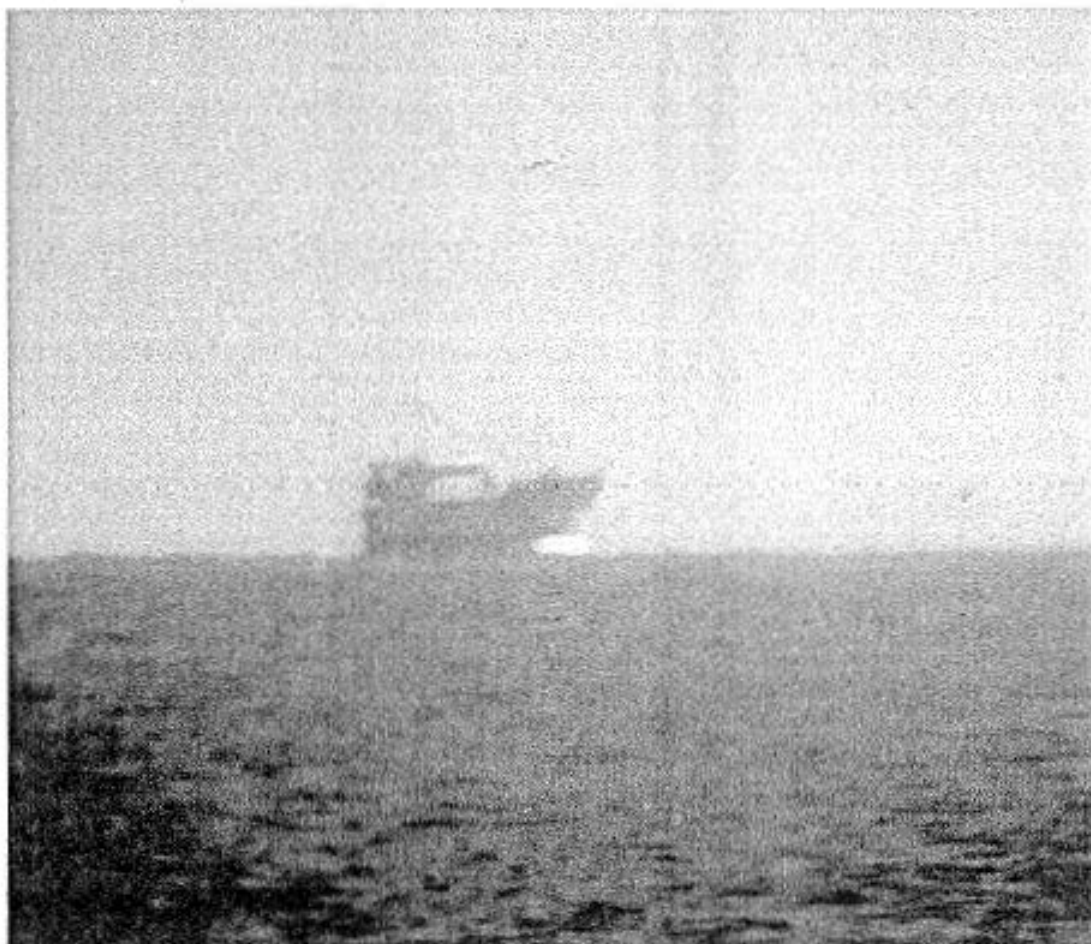
May 27, 2014

**SUBJECT : FIELD ACCOMPLISHMENT REPORT ON TRAVEL ORDER
 NOS. 1096, 1135, 1155 AND 1118**

The travel to BAJO DE MASINLOC or PANATAG SHOAL was made for the purpose of rendering technical assistance to the Philippine Coast Guard (PCG) in the conduct of monitoring and surveillance of the activities of the Chinese Fishermen who are inside the Shoal.

As a backgrounder, the Philippine Navy accosted and tried to apprehend Chinese Fishermen who were then engaged in Poaching activities at the Bajo De Masinloc. However, before the arrest of these fishermen was effected, two China Marine Surveillance vessels appeared and blocked the entrance to the Shoal. This has led to a standoff which remains until this day. To de-escalate the tension, the Philippine Government withdrew the BRP Gregorio Del Pilar and sent instead the PCG's Search and Rescue Vessel 003 or BRP Pampanga.

As earlier stated, the standoff at the shoal has continued up to this day, thus the PCG has so far sent its two SARV's the BRP Pampanga and Edsa Dos to alternately show the flag and conduct monitoring and surveillance activities. The within attached report summarizes the activities undertaken with the PCG personnel for the duration of the approved operation/travel orders of the herein undersigned BFAR FRPLES-QRT Officers.



ON APRIL 16, 2012, THE BRP EDSA DOS ARRIVED AT THE DISPUTED SCARBOROUGH SHOAL TO CONDUCT MONITORING OPERATIONS. ON BOARD THE PCG SEARCH AND RESCUE VESSEL (SARV) WERE THE FOLLOWING BFAF PERSONNEL: ALLAN CASTILLO, RELLY GARCIA AND WILME OLAVAR. AT THAT TIME, THERE WERE TWO CHINA MARINE SURVEILLANCE VESSELS VISIBLE THERE, VESSELS NO. 71 AND 84

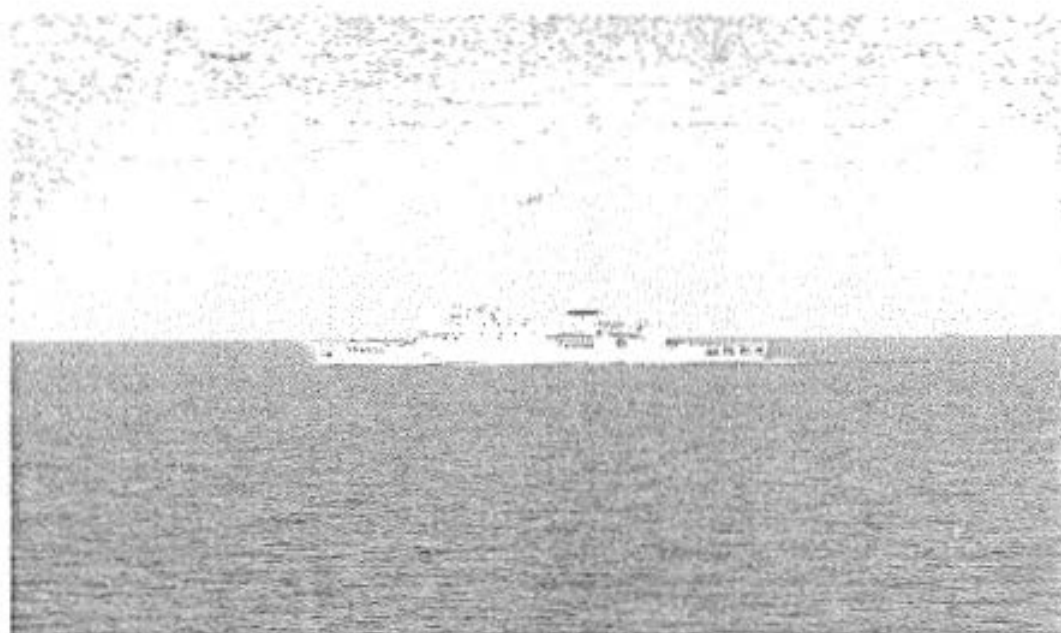
ON APRIL 17TH AT ON OR ABOUT 9:45 AM, THREE VESSELS WERE SPOTTED AT THE VICINITY OF SCARBOROUGH SHOAL (SEE PHOTO AT THE TOP), APPROACHING FROM THE AREA WHERE THE SHOAL'S NORTH ROCK IS LOCATED, THESE VESSELS ENTERED THE SHOAL AFTER LUNCHTIME. BELIEVED TO BE CHINESE FISHING VESSELS, AS THEY WERE SEEN FLYING THE CHINESE FLAG, THEY WERE NOT ACCOSTED BY THE FISHERY LAW ENFORCERS ON BOARD BRP EDSA DOS AS PER CONSULTATION WITH THE PCG OFFICERS. THERE WAS ALSO AN ADVICE BY THE BFAF PERSONNEL WHO WERE PREVIOUSLY IN THE AREA ON BOARD BRP PAMPANGA THAT IN ORDER NOT TO FURTHER ESCALATE THE TENSION, ONLY THE FISHING VESSELS OF OTHER COUNTRIES OTHER THAN THE CHINESE, AND FILIPINO FISHING VESSELS

WERE TO BE BOARDED AND INSPECTED. ALSO, THE PRESENCE OF THE TWO CMS VESSELS DISCOURAGED ANY ACTIONS WHATSOEVER

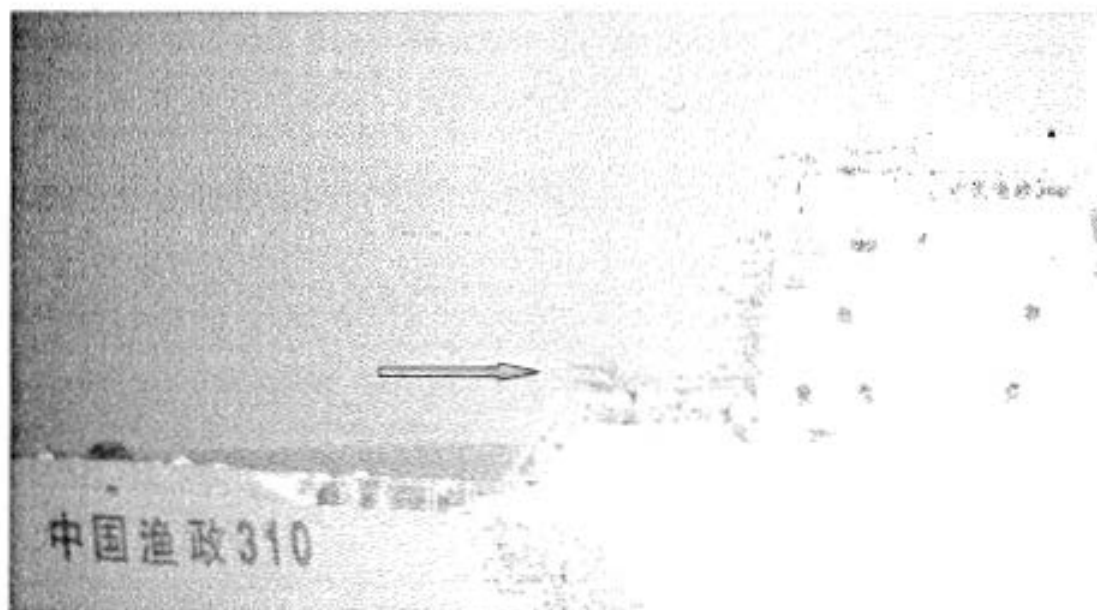


ON THE 19TH, AT ABOUT 2 TO 3 PM, A CHINA MARINE SURVEILLANCE (CMS) PLANE CIRCLED OVER THE BRP EDSA DOS.

ON THE 20TH, THE BRP EDSA DOS LAUNCHED TWO RUBBER BOATS WITHIN THE VICINITY CLOSE TO THE SCARBOROUGH SHOAL'S SOUTH ROCK. ON BOARD WERE EIGHT (8) PERSONNEL FROM THE CGSOG, ONE (1) FROM THE CG PIO, ONE (1) FROM THE BRP EDSA DOS AND, ONE (1) FROM BFAR. WE WERE DISPATCHED WITH THE INSTRUCTION OF TAKING THE PHOTOS AND COORDINATES OF THE ROCK FORMATIONS OF THE SHOAL. WHILE ON THIS MISSION, WE WERE ALSO INSTRUCTED TO TAKE PHOTOS WHICH MAY BE OF ANY INTEREST TO US. WE WERE HOWEVER UNABLE TO TAKE PHOTOS OF THE FISHING VESSELS IN THE SHOAL. WE WERE SUPPOSED TO TAKE NOTE OF ALL ROCK FORMATIONS AROUND THE WHOLE AREA OF THE SHOAL. BUT WE WERE ADVISED TO RETURN TO THE SHIP, BY THE BRIDGE, AT ON OR ABOUT 11:30AM. THIS WITHDRAWAL WAS DUE TO THE IMPENDING ARRIVAL OF SHIP 310 OF THE FISHERY LAW ENFORCEMENT COMMAND OF CHINA. AT THIS TIME THE TWO CMS VESSELS WERE ALSO STILL IN THE AREA, THUS INCREASING THE CHINESE PRESENCE TO THREE VESSELS. ONE CONTACT OF UNKNOWN ORIGIN IS ALSO CONSTANTLY MONITORED BY THE EDSA DOS RADAR, CONSTANTLY APPEARING THEN DISAPPEARING AT DIFFERENT TIMES, HOWEVER, NO SHIP IS ACTUALLY EVER SIGHTED, THUS GIVING SOME THE IDEA THAT THERE ARE IN FACT A SUBMARINE AT THE VICINITY. THIS HOWEVER HAS REMAINED UNVERIFIED

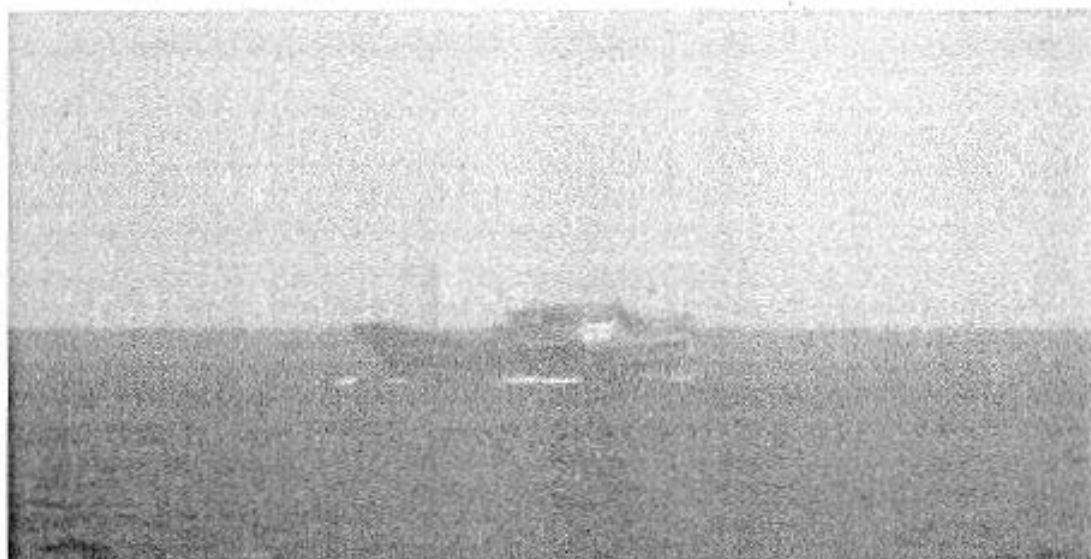


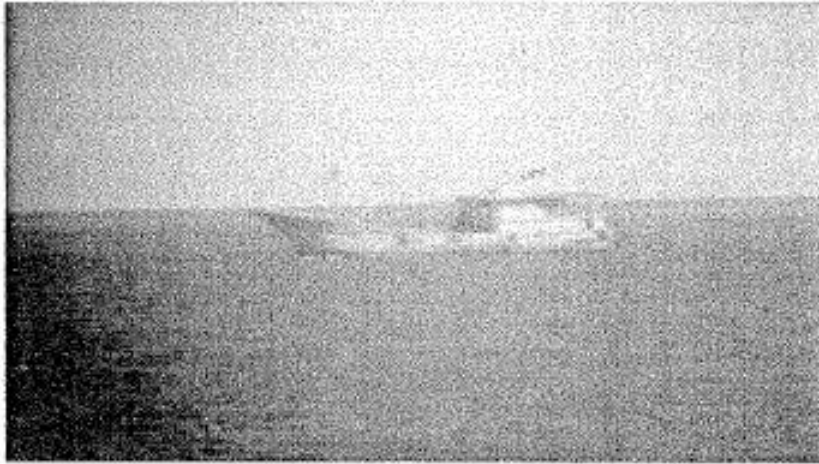
THIS SHIP, FLEC 310, ACCORDING TO OFFICERS OF THE PCG, IS THE NEWEST SHIP OF THE F.L.E.C. AND IS BELIEVED TO BE A PATROL GUNBOAT





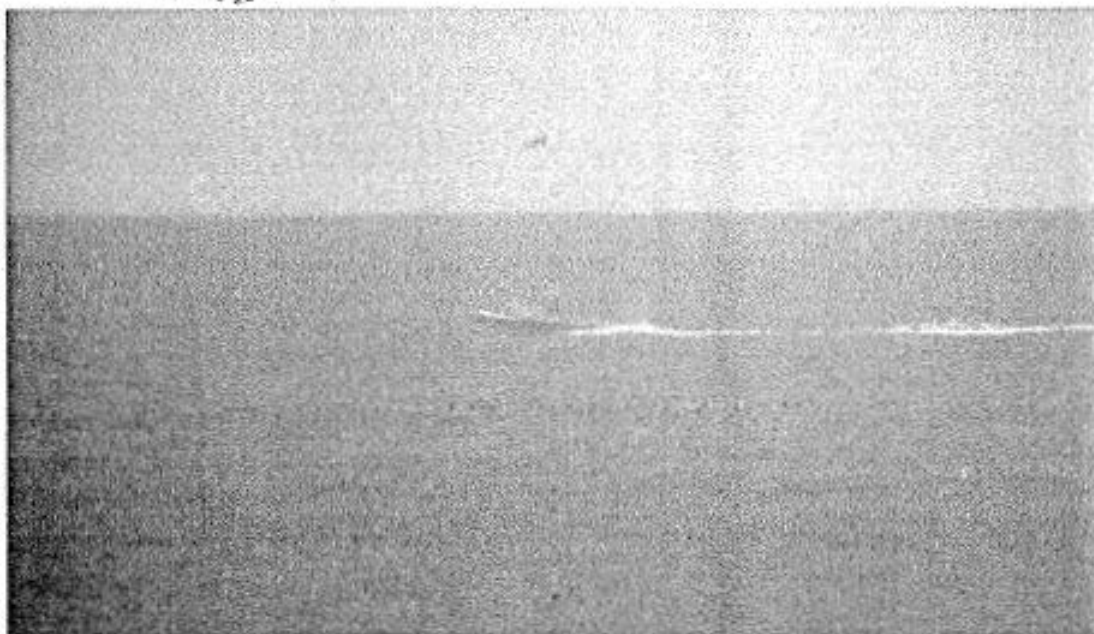
ON THE 21ST, THE 3 FISHING VESSELS WERE MONITORED / SEEN TO BE MOVING TOWARDS THE OUTSIDE OF THE SHOAL. BUT EVEN BEFORE THEY WERE NEAR THE MOUTH OF THE SHOAL, THE ONLY ENTRY AND EXIT FOR VESSELS OF THEIR SIZE, FLEC PATROL GUNBOAT 310 MOVED TOWARDS BRP EDSA DOS. THIS MOVEMENT WAS DEEMED MADE IN ORDER TO PROVIDE THE FISHING VESSELS WITH SECURITY AS IT WOULD PRE-EMPT ANY ATTEMPT TO GO NEAR, BOARD AND INSPECT THE FISHING VESSELS.



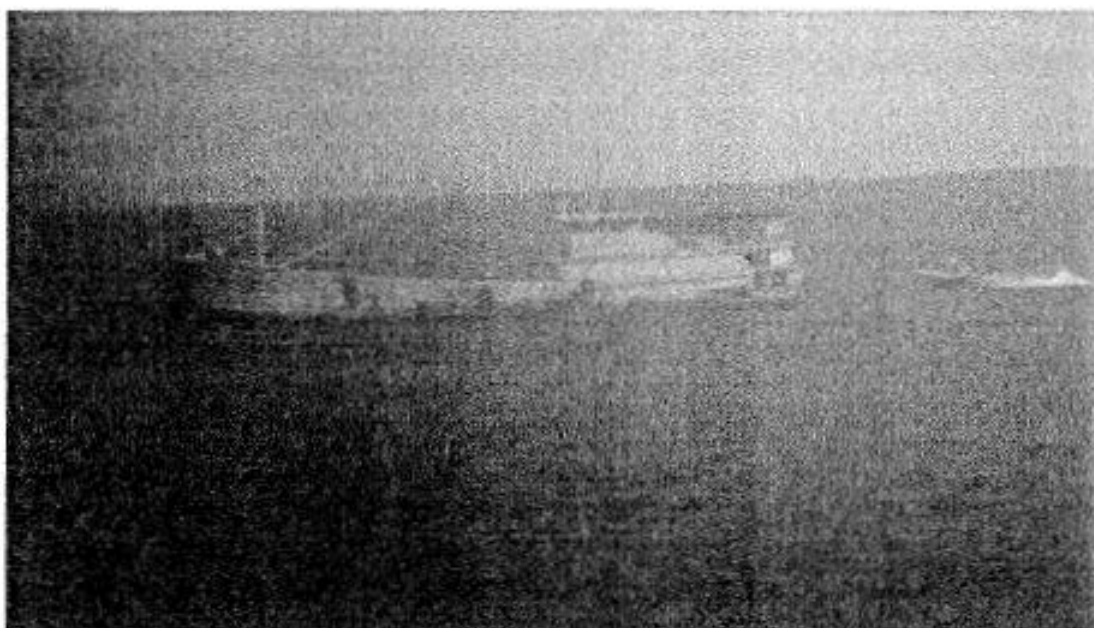


RATHER UNUSUAL WAS THE NEXT MOVEMENT MADE BY PATROL GUNBOAT 310 AND THE FISHING VESSELS. ALL THESE FISHING VESSELS SIGHTED TOOK TURNS DOCKING ALONGSIDE PATROL GUNBOAT 310.





WHILE ONE FISHING VESSEL WAS NEXT TO THE PATROL GUNBOAT, A RUBBER BOAT FROM THE GUN BOAT WAS SEEN NEXT TO THE OTHER TWO FISHING VESSELS, AS IF PROVIDING ADDITIONAL SECURITY. BY THIS TIME, ONLY FLEC 310 AND CMS 71 WERE AT THE SHOAL. AT DAYS END, FLEC 310 ALSO LEFT THE AREA



ON THE 22ND, THE BRP PAMPANGA AGAIN ARRIVED TO TAKE OVER THE DUTIES OF BRP EDSA DOS. THE HEREIN FRPLEU-QRT OFFICER TRANSFERRED TO BRP PAMPANGA UPON CONFERRING WITH THE QRT PERSONNEL ON BOARD BRP PAMPANGA. IN THE AFTERNOON, A RUBBER BOAT WAS LAUNCHED BY BRP PAMPANGA WITH THE HEREIN PERSONNEL AS BFAIR REPRESENTATIVE. THE INSTRUCTIONS GIVEN THIS TIME WERE VERY CLEAR; WE WERE TO GO NEAR AS MUCH AS POSSIBLE TO THE FISHING VESSELS WHO WERE THIS TIME VERY VISIBLE FROM BRP PAMPANGA AND TO TAKE PHOTOS OF THEM. INSIDE THE SHOAL, FOUR (4) CHINESE FISHING VESSELS WERE SIGHTED:

1. FV 05008



2. FV 03889



3 AND 4 FV'S 03026 AND 03031



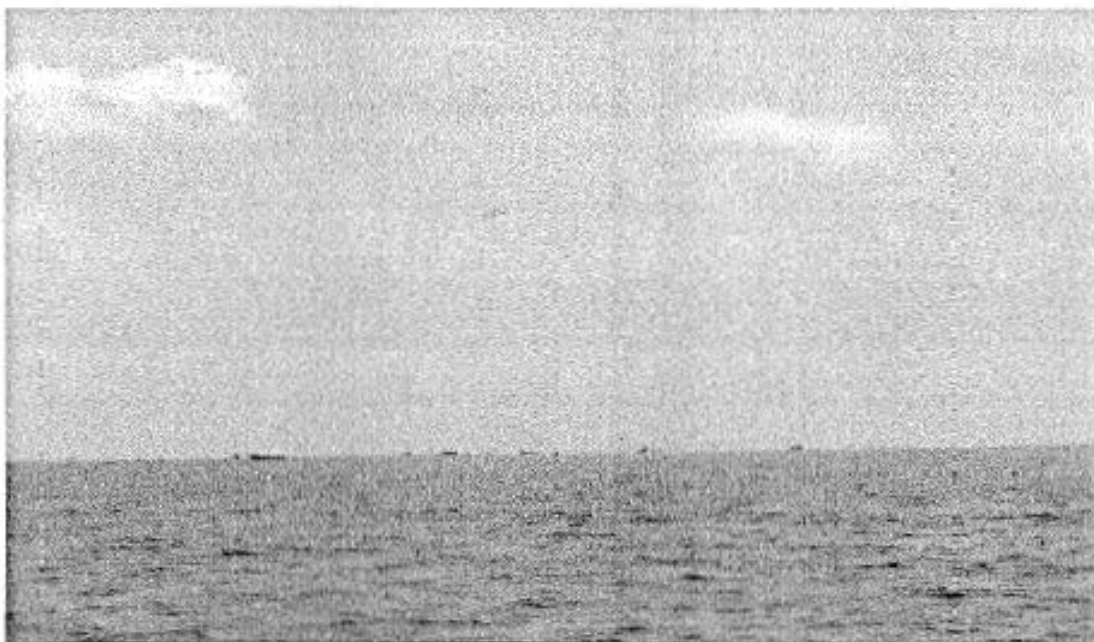
NEAR THESE LAST TWO FV'S SIGHTED WERE SPOTTED AT LEAST FIFTEEN (15) SMALL UTILITY BOATS WHICH WERE DEEMED TO BE UNDERTAKING SOME FORM OF FISHING ACTIVITY. NOTE THE SMOKE VISIBLE EVEN FROM AFAR



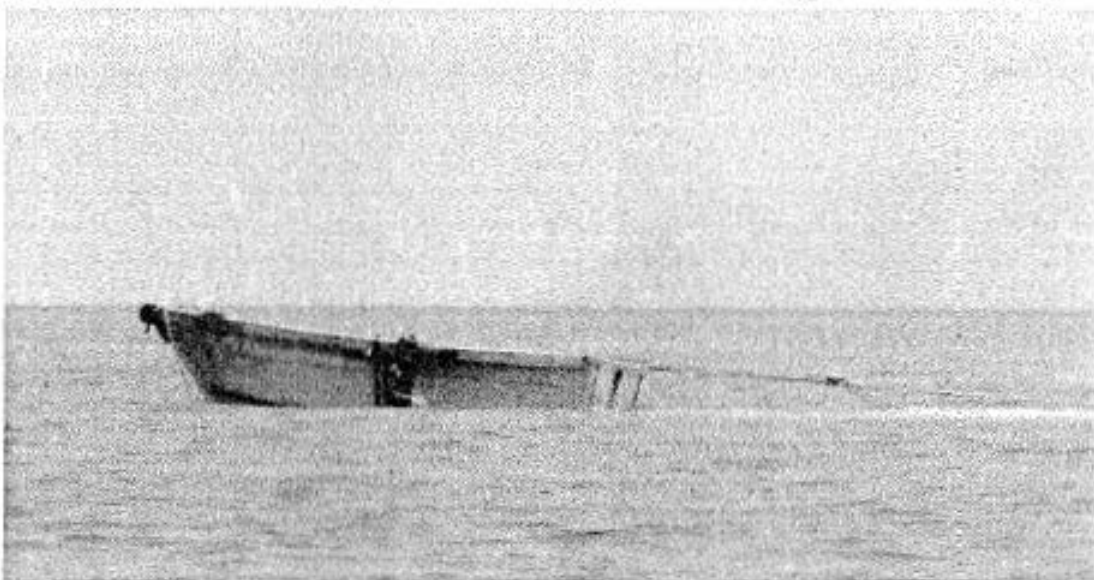


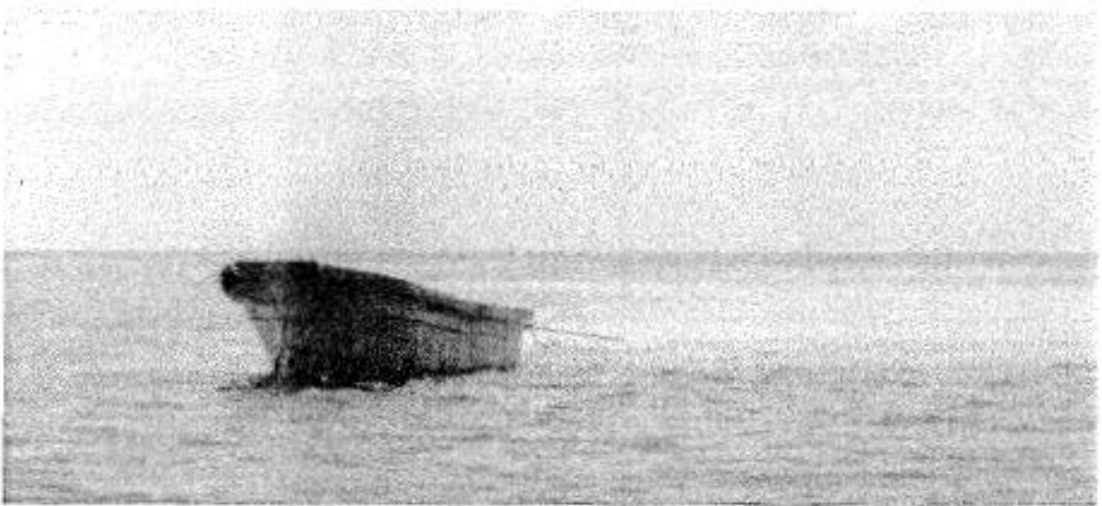
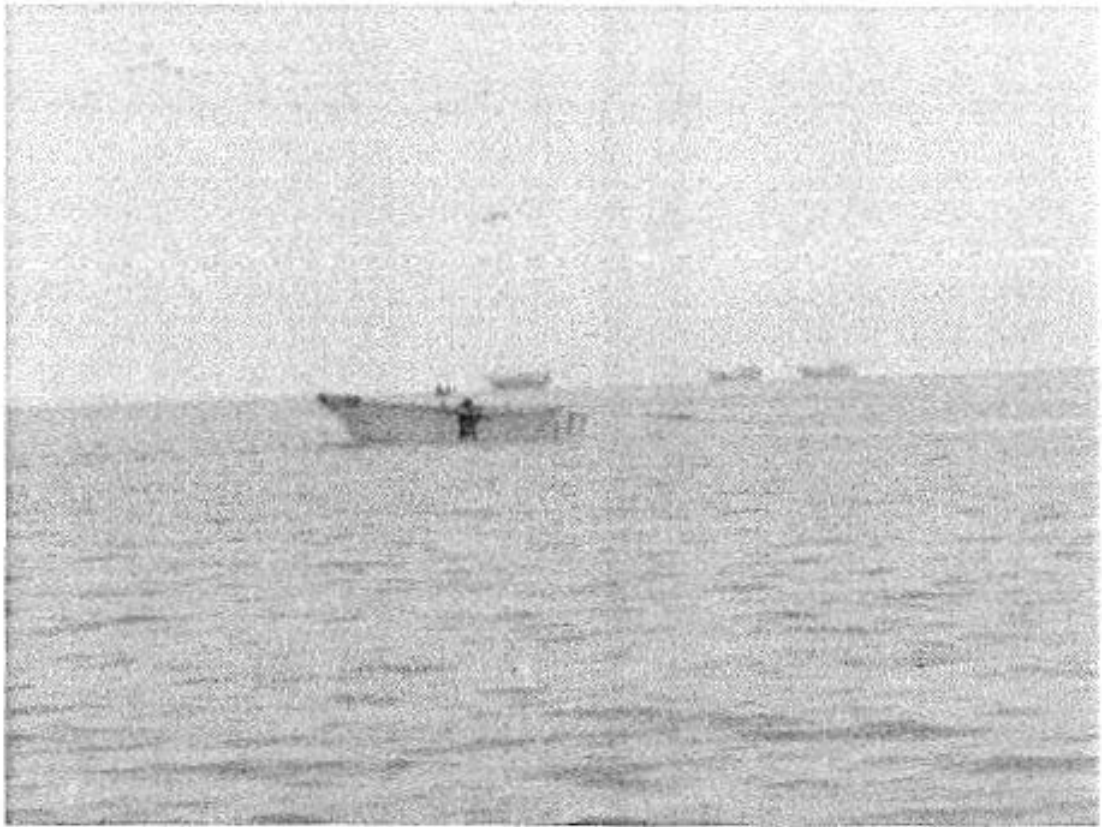
ALSO SIGHTED WERE THREE MEN IN A UTILITY BOAT LAYING DOWN WHAT APPEARS TO BE A NET AND MARKING THE POSITION WITH A BOUY. SEVERAL BOUYS WERE SIGHTED.

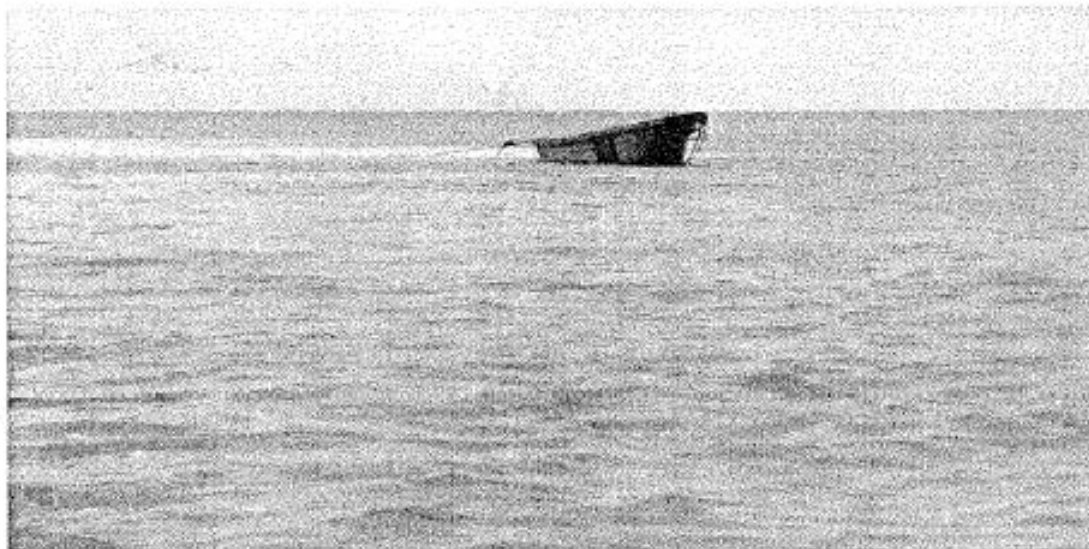
ON THE 23RD DA-BFAR MCS 3006 ARRIVED AND TOOK POSITION INSIDE THE SHOAL. BRP PAMPANGA AGAIN LAUNCHED A RUBBER BOAT WHICH WENT TO THE SHOAL THIS TIME TO GATHER INFORMATION ON THE ACTIVITIES OF THE SMALL BANCAS THAT WERE SEEN THE PREVIOUS DAY. THEY WERE AGAIN SIGHTED BUNDLED IN A GROUP NEAR THE SHOAL'S NORTH ROCK. JUST AS IN THE PREVIOUS DAYS PHOTOGRAPH, IT IS QUITE EVIDENT THAT THESE CHINESE PERSONNEL WERE ENGAGING IN SOME SORT OF ACTIVITY MOST LIKELY IN FISHING. SMOKE IS SEEN BEING EMITTED FROM THE SMALL UTILITY BOATS AND THIS TIME WE CAN CLEARLY HEAR THE PURR OF THE ENGINES. USING THE BINOCULARS WE BROUGHT ON THE RUBBER BOAT, WE SAW SEVERAL MEN WHO WERE ON THESE UTILITY BOATS.



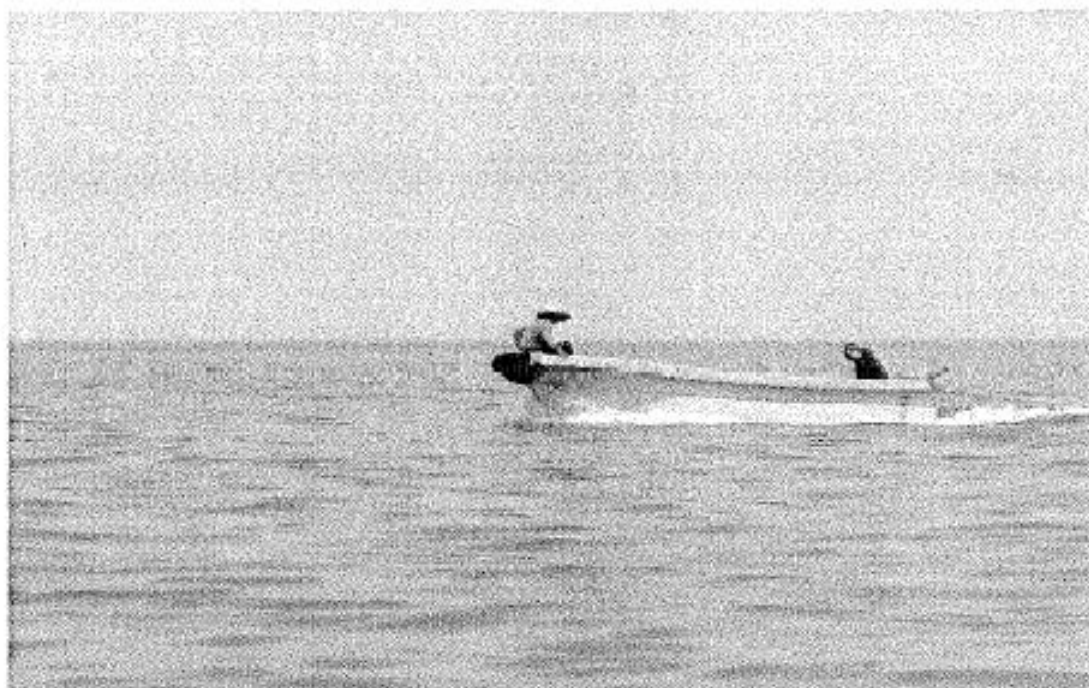
AS WE WENT NEAR THEM, SEVERAL MEN IN WETSUITS WERE SEEN. SOME WERE BESIDE THE BANCAS WHILE SOME WERE SEEN NEARBY. PLEASE NOTE THE PRESENCE OF A ROPE BEHIND THE BANCAS, IT IS AS IF THE BANCAS WERE DRAGGING SOMETHING UNDERNEATH. THIS TOWING/DREDGING IS MADE EVEN MORE EVIDENT BY THE DISCOLORATION OF THE WATER AS THE BOATS GO ON. THE BOATS ARE MOTORIZED AS SOME SMOKE IS CLEARLY VISIBLE BUT NO OUTBOARD MOTOR CAN BE SEEN.

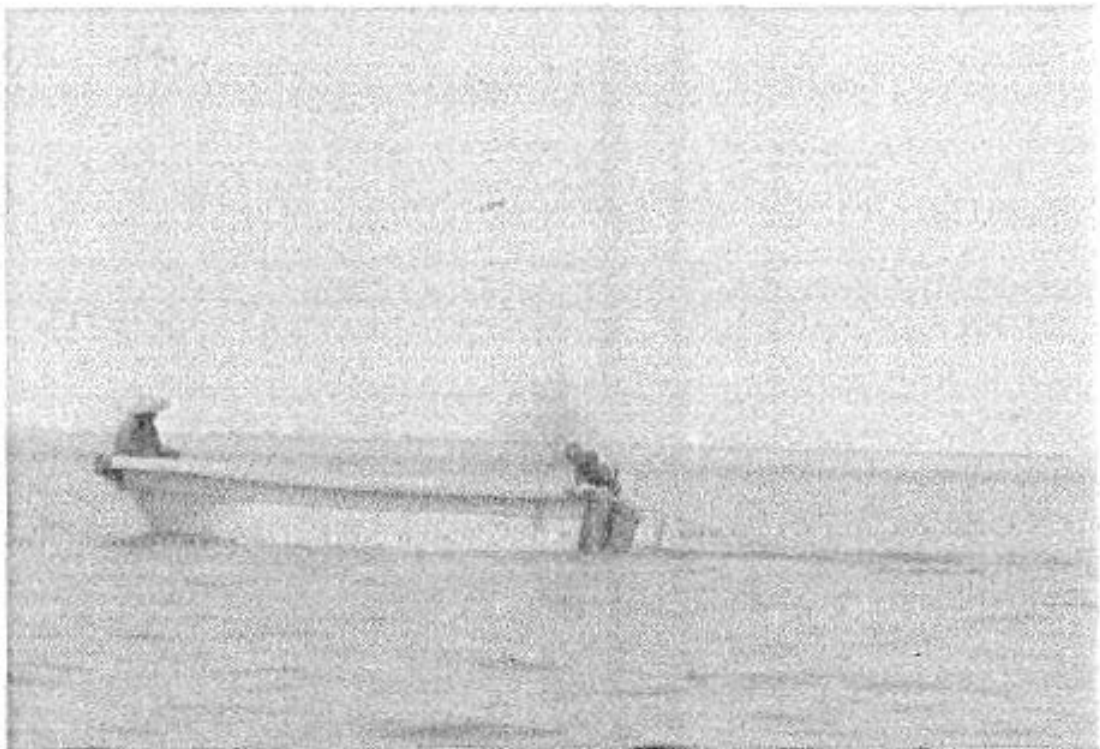




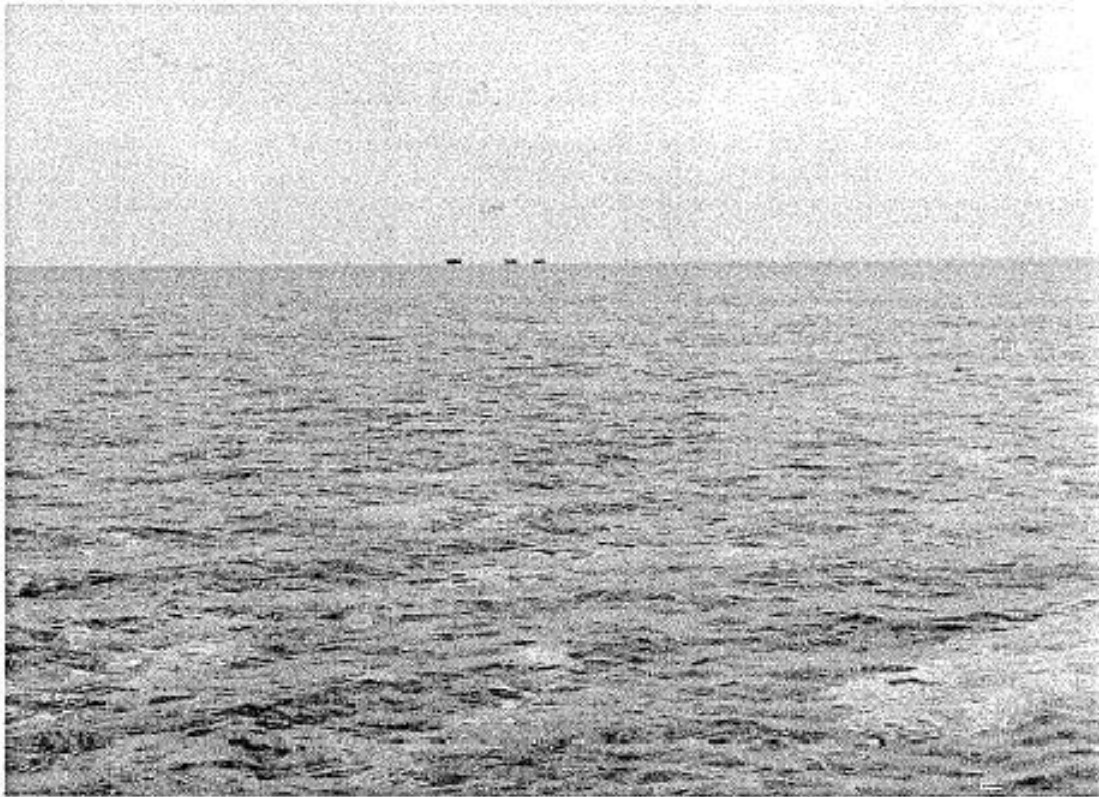


AS WE WENT ALONG GOING TOWARDS THE MCS 3006 ANCHORED AT THE FAR END, NEAR THE SOUTH ROCK, THE ACTIVITIES OF THE CHINESE FISHERMEN WERE BASICALLY THE SAME - SMALL BANCAS WITH ROPES ATTACHED TO THEM DRAGGING/TOWING SOMETHING. IT IS ACTUALLY AKIN TO TRAWLING OPERATIONS ONLY SMALLER IN SCOPE, AND WITH AT LEAST TWO PERSONS WORKING IN TANDEM



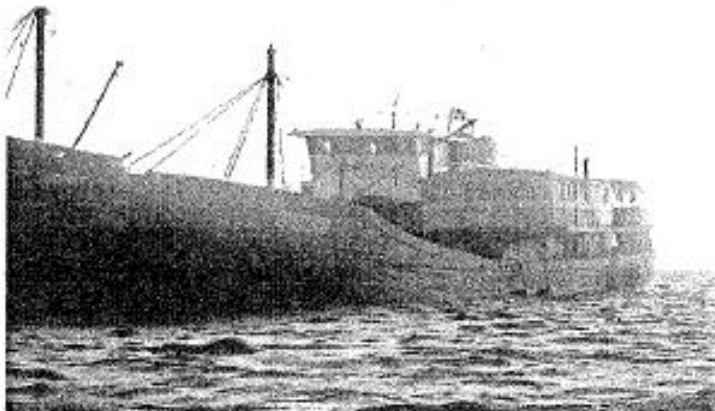


THE AREA WHERE THEY WERE SEEN DREDGING/ TOWING IS AN AREA OF THE SHOAL WHERE CORALS ARE LOCATED. WHAT WE CANNOT DETERMINE IS THEIR TARGET SPECIES OR RESOURCES. IT MAY BE CORALS AS CLEARLY THE AREA IS FULL OF CORALS AND THE CHINESE WHO WERE PREVIOUSLY BOARDED BY THE PHIL. NAVY WERE CAUGHT RED HANDED WITH CORALS, ASIDE FROM CLAMS AND LIVE SHARKS. ONE OTHER POSSIBLE TARGET RESOURCE AS PER THE EVALUATION OF THOSE WHO ARE HERE WITH US IS "BALATAN" OR SEA CUCUMBER. HOWEVER, WE CANNOT BE CERTAIN UNTIL WE CAN ACTUALLY SEE WHAT THESE CHINESE FISHERMEN ARE HAULING IN THEIR BANCAS. ONE THING IS CLEAR, THEIR PRESENCE AND OPERATIONS IN THIS SHOAL WE CALL PANATAG SHOAL OR BAJO DE MASINLOC, WHICH IS WELL WITHIN OUR 200 NAUTICAL MILE EEZ CLEARLY VIOLATES OUR FISHERY LAWS AND MAY BE CATEGORIZED FURTHER AS POSSIBLY CAUSING DESTRUCTION TO THE CORAL REEF AND MARINE HABITAT THEREIN, AMONG OTHER THINGS.

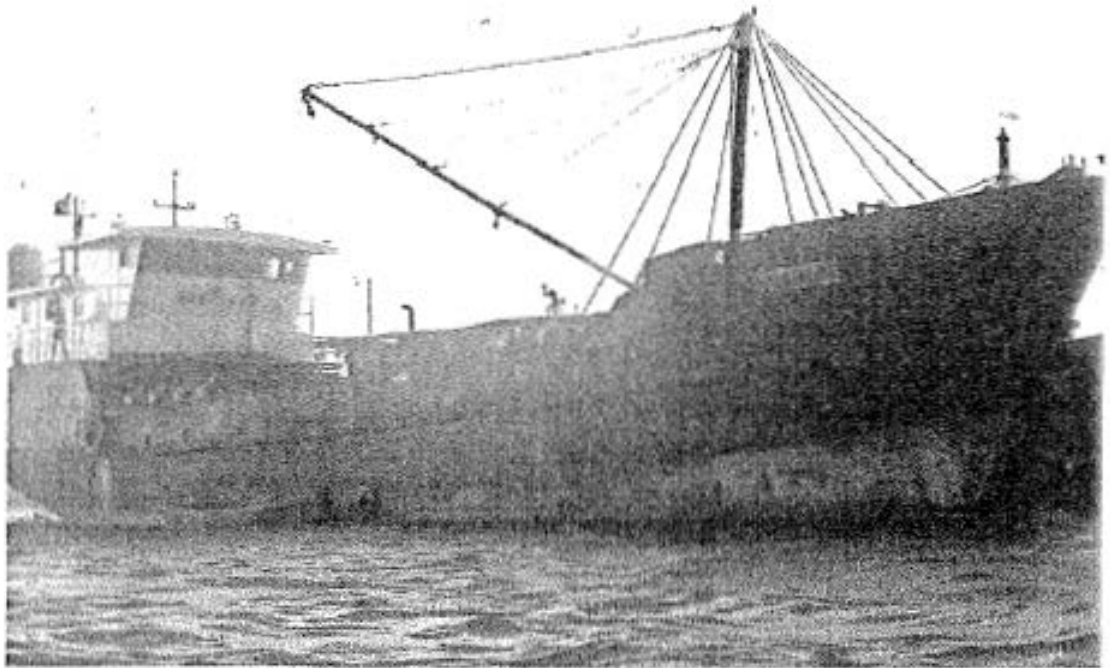
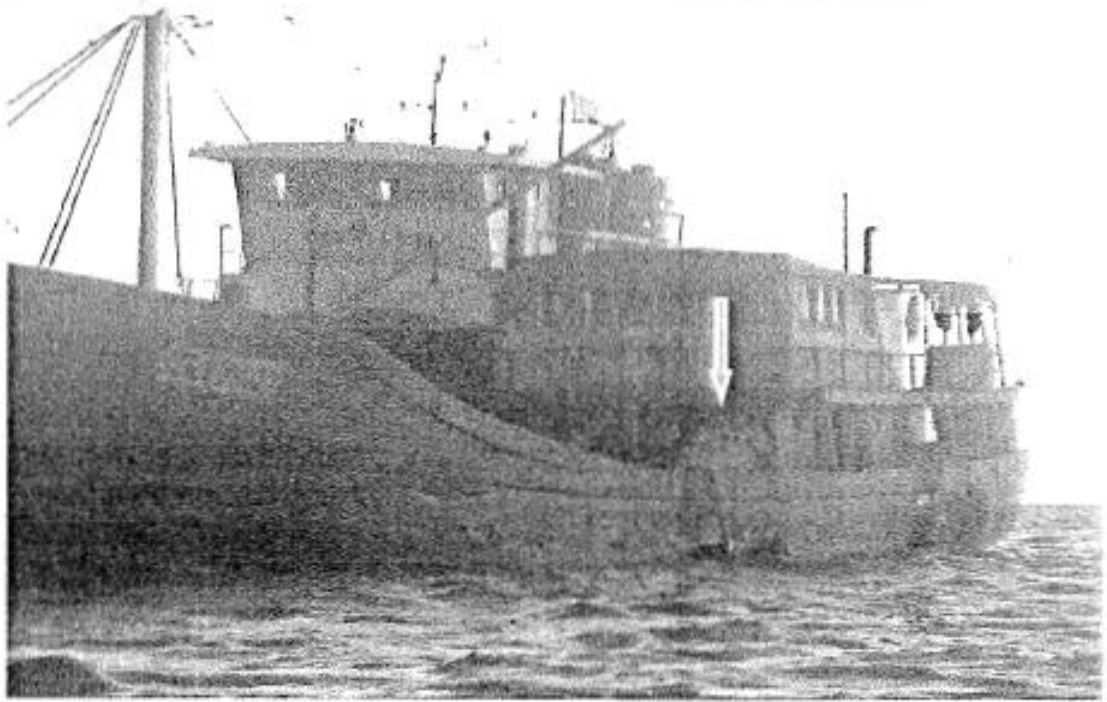


ALSO SIGHTED ABOUT 2 NAUTICAL MILES FROM WHERE MCS 3006 ANCHORED WERE TWO (2) ADDITIONAL FISHING VESSELS

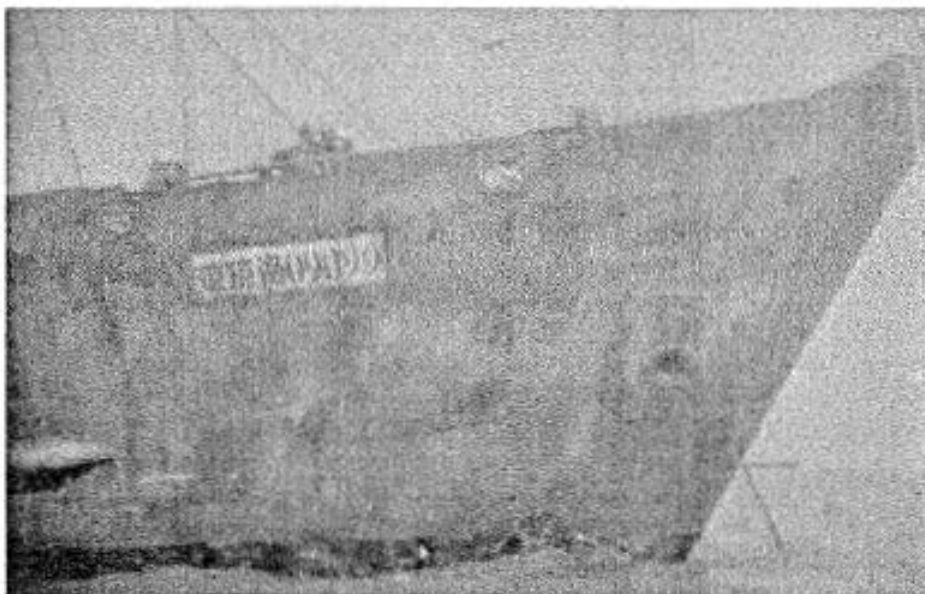
NUMBERED 5 AND 6. FV'S 09099 AND 09022



PLEASE NOTE THE PRESENCE OF WHAT APPEARS TO BE GIANT CLAM SHELLS INSIDE 09022



09099 ON THE OTHER HAND APPEARS TO BE THE VERY SAME FISHING VESSEL THAT WAS PREVIOUSLY BOARDED AND INSPECTED BY PHILIPPINE NAVY PERSONNEL. A PHOTO COPIED FROM THE PHOTO DOCUMENTATION OF THE BRIEFING MADE BY OFFICERS OF BRP GREGORIO DEL PILAR TO OFFICERS OF THE PCG SHOWS THE SAME VESSEL MARKING.



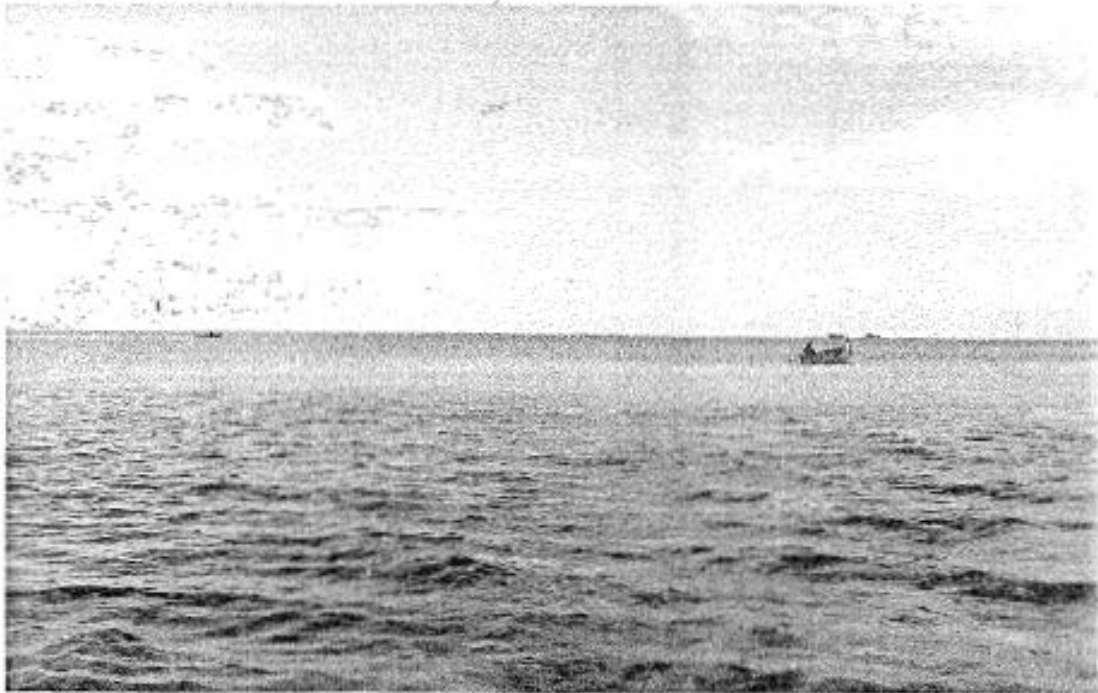
EVEN BEFORE WE COULD RETURN TO BRP PAMPANGA, FLEC 310 AGAIN REAPPEARED ON THE HORIZON AND EVEN PASSED BY THE BRP. THE TWO CHINESE VESSELS, CMS 71 AND FLEC 310 THEN REMAINED WITHIN THE SHOALS VICINITY. THE ACTIVITIES OF THE CHINESE FISHERMEN ALSO HAVE BEEN MONITORED AS CONTINUING.

ON THE 25TH OF APRIL, THE NUMBER OF CHINESE FISHING VESSELS IN THE AREA HAS INCREASED TO SEVEN (7). ANOTHER FISHING VESSEL WITH MARKING **2087** WAS SPOTTED WITHIN THE VICINITY OF THE SHOAL. IT WAS FIRST SEEN AT APPROXIMATELY 6:00AM AND ENTERED THE SHOAL AT APPROXIMATELY 8-9 AM. DA-BFAR MCS 3006 DEPARTED ON OR ABOUT 10:05AM, MEANWHILE DA-BFAR MCS 3001 ARRIVED ON OR ABOUT 1-1:30PM OF THAT DAY AND, AFTER DOCKING ALONGSIDE SARV 003, IMMEDIATELY TOOK POSITION NEAR THE MOUTH OF THE SHOAL, NEAR WHERE THE MILS 3006 ALSO ANCHORED.

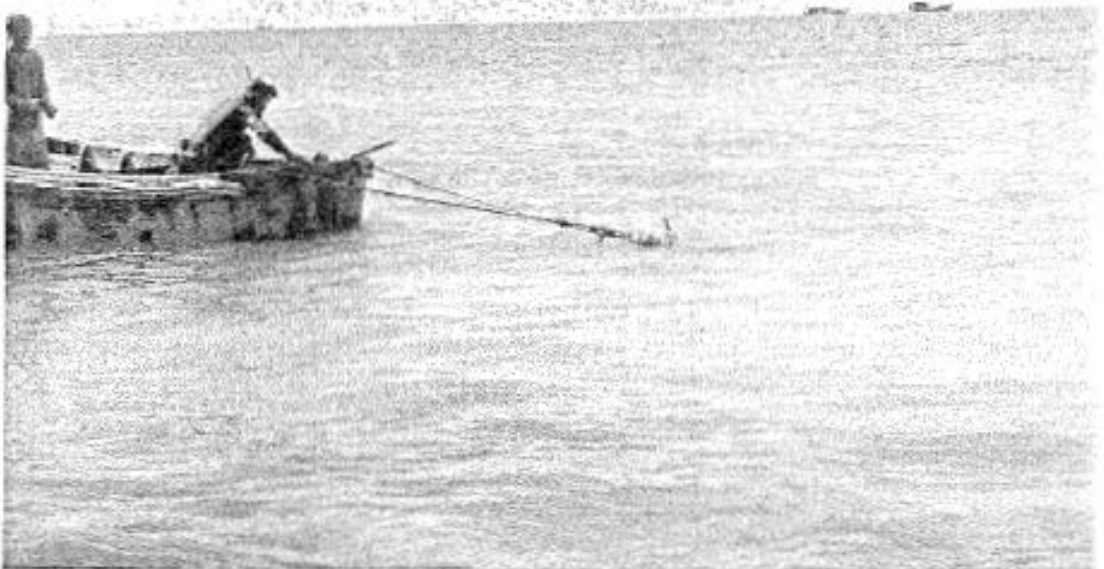
NO OTHER FISHERMEN ARE PRESENT.

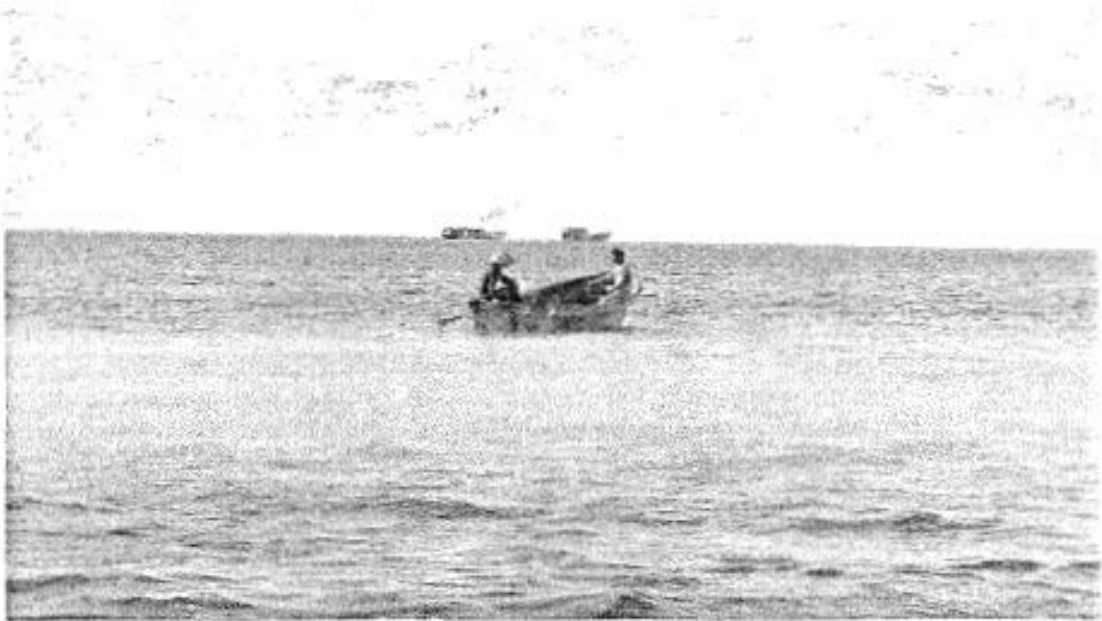
ON THE 26TH OF APRIL, ANOTHER MISSION INSIDE THE SHOAL WAS CONDUCTED BY THE PCG. BFAR WAS AGAIN REPRESENTED BY THE HEREIN UNDERSIGNED. WE WERE TASKED TO TAKE PHOTOS OF THE ACTIVITIES OF THE CHINESE FISHERMEN THIS TIMES AS CLOSEST AS POSSIBLE. WE WERE HOWEVER SPECIFICALLY TOLD NOT TO ENGAGE THE CHINESE AS WE ARE NOT SUPPOSED TO MAKE ANY ACTION THAT WOULD BE CONSIDERED AS PROVOCATIVE AND WHICH CAN FURTHER ESCALATE

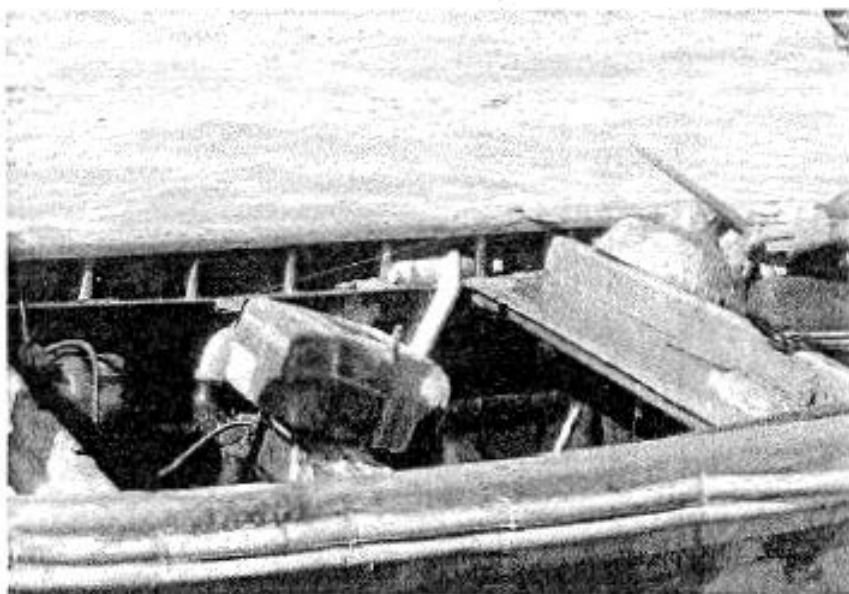
TENSIONS ALREADY EXISTING. THE CHINESE FISHING VESSELS ALSO INCREASED TO EIGHT (8) AS ONE FISHING VESSEL WAS AGAIN SEEN ENTERING THE SHOAL.



UPON OUR APPROACH, ONE CAN ALREADY SEE THE DISCOLORATION OF THE SEA IMMEDIATELY BEHIND THE CHINESE UTILITY BOAT





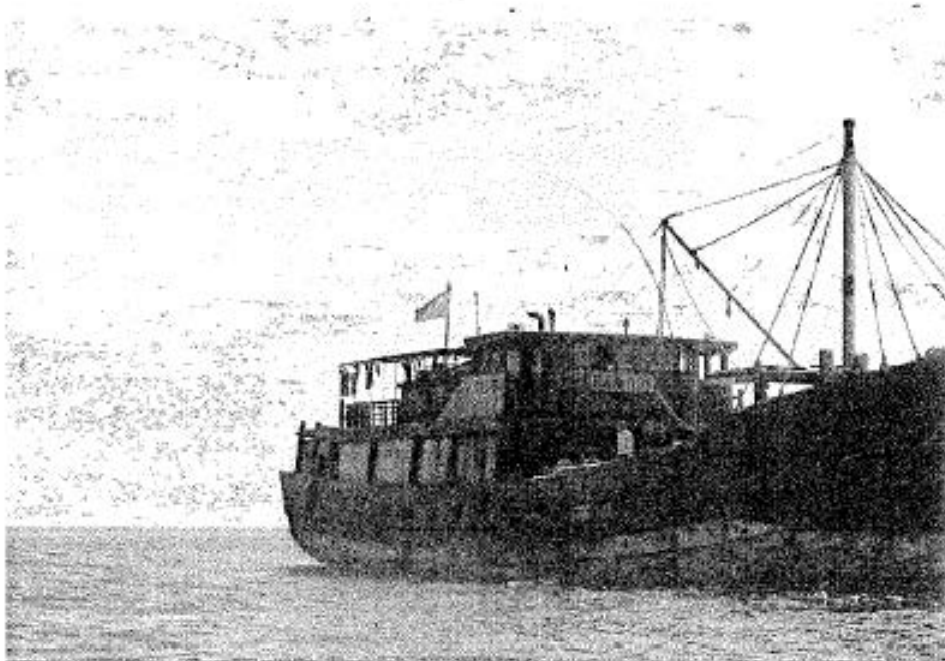
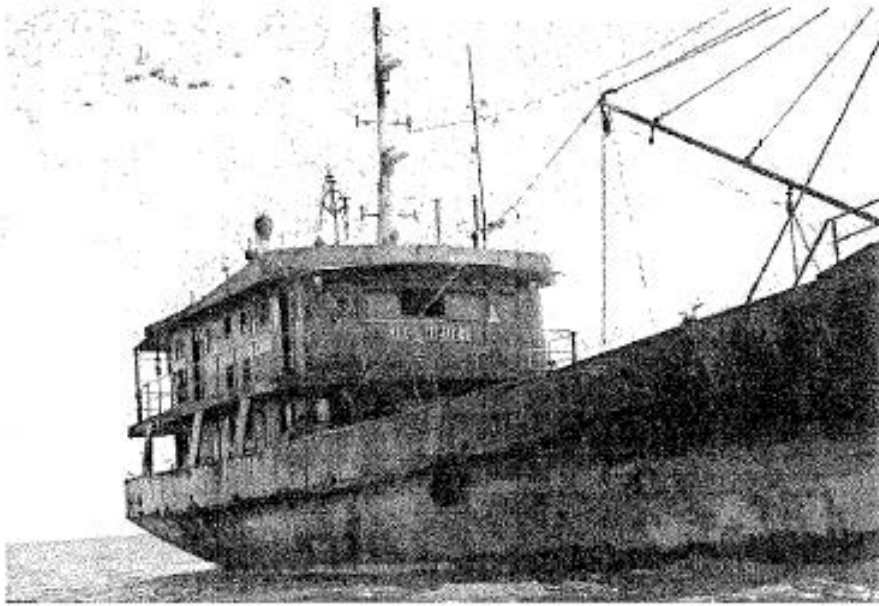


WE GOT AS FAR AS A FEW FEET AWAY FROM THE CHINESE FISHERMEN. THE CHINESE DID NOT SHOW ANY REACTION AND EVEN OFFERED US A PACK OF CIGARETTES. UPON CLOSER SCRUTINY, WE COULD SEE THE MOTOR USED BY THE CHINESE LOCATED INSIDE THEIR BOAT.

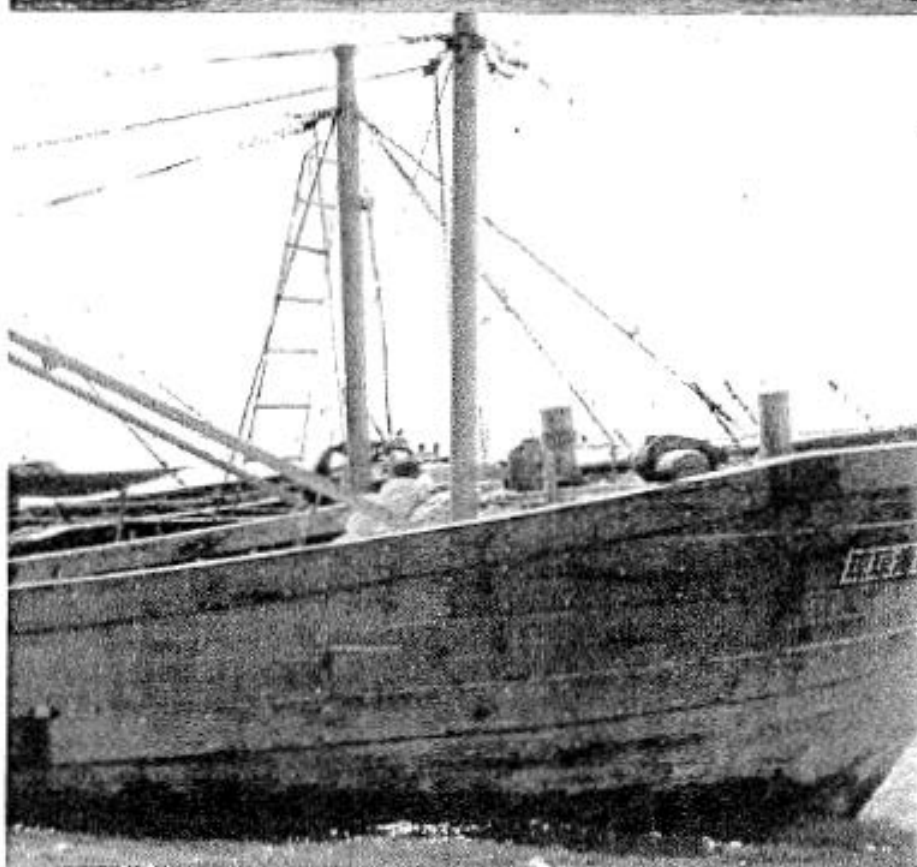
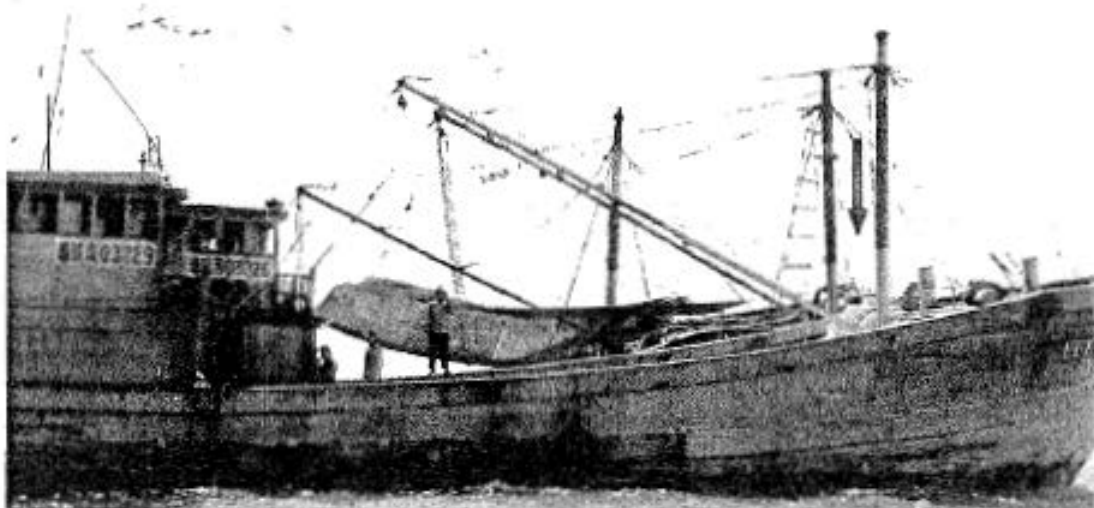
WHILE NEAR THESE FISHERMEN, UNDERWATER VIDEOS WERE ALSO TAKEN USING THE UNDERWATER CAMERA OF CGSOG. WE ARE VERY FORTUNATE TO HAVE SECURED A COPY OF THE VIDEOS TAKEN AND WE WILL ALSO SUBMIT COPIES OF THE SAME AFTER TRANSFERRING THEM FROM THE LAPTOP TO A C.D. THE UNDERWATER FOOTAGES SHOW THE DESTRUCTION BEING BROUGHT UPON THE CORAL BED INSIDE THE SHOAL BY THESE CHINESE FISHERMEN. THE FOOTAGES BASICALLY SHOW THAT AFTER THESE CHINESE FISHERMEN OPERATE IN AN AREA, THE CORALS THEREIN ARE TAKEN AND WHATS LEFT ARE RUBBLES. INSIDE THE SHOAL, THERE ARE IN FACT SEVERAL PATCHES OF WHAT APPEARS TO BE CORAL BEDS THAT ARE NOW BARE, AND WHERE ONLY CORAL RUBBLES ARE LEFT.

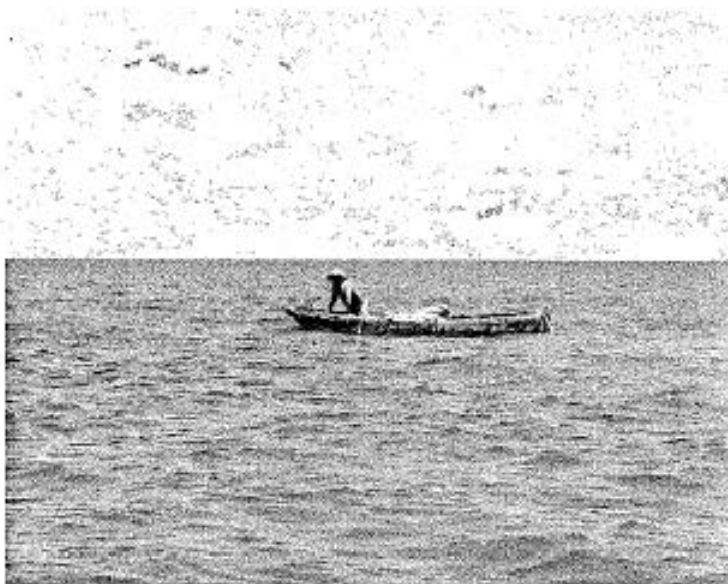
WHILE INSIDE THE SHOAL, WE ALSO TOOK PHOTOGRAPHS OF THE TWO VESSELS WHICH CAME INSIDE ON THE 25TH AND 26TH OF APRIL.

CHINESE FISHING VESSELS NO. 7 AND 8 ARE THE FOLLOWING FISHING VESSELS: 02087 AND 01097

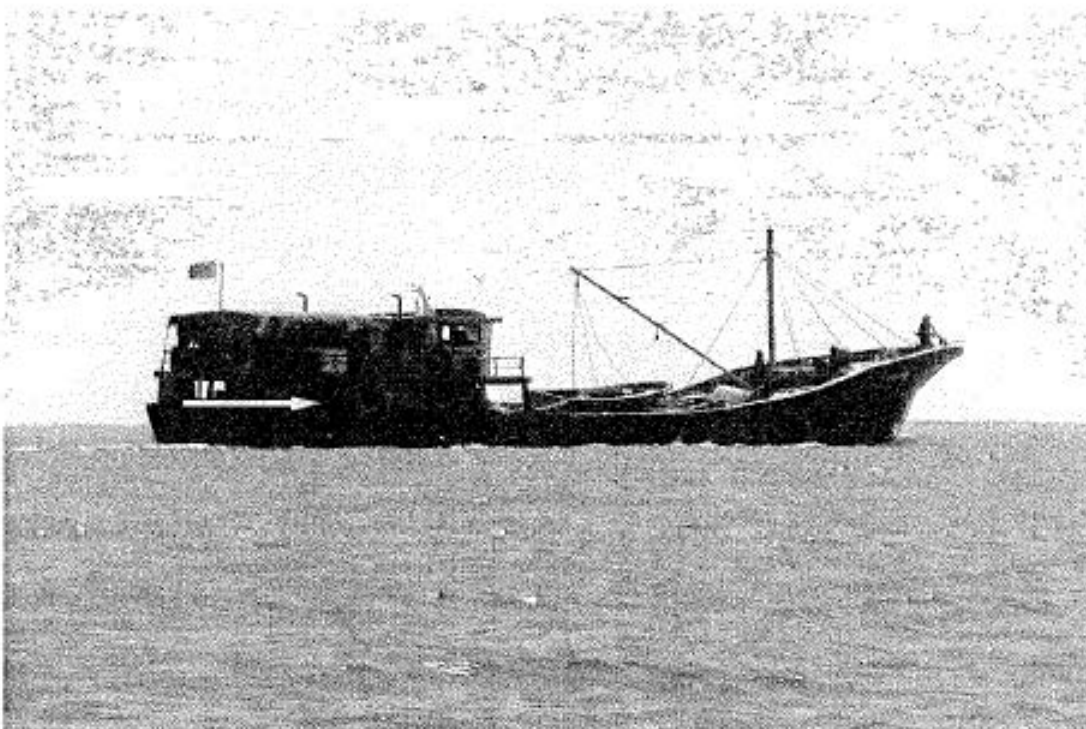


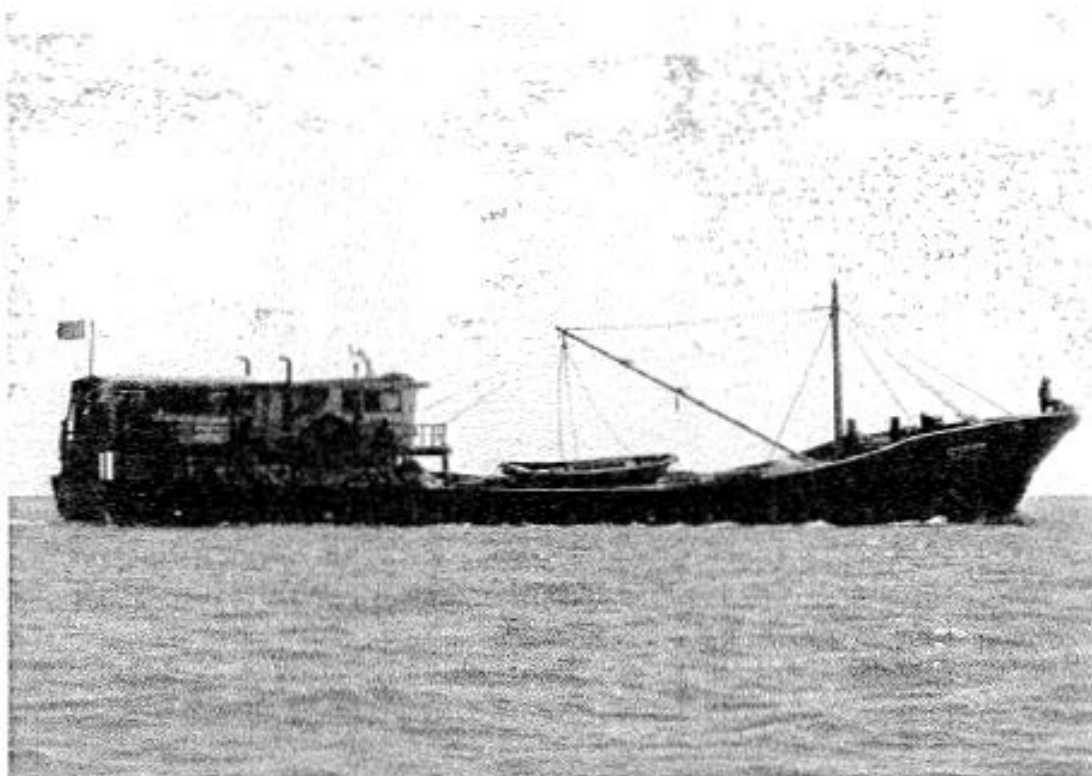
WE AGAIN TOOK PHOTOGRAPHS OF THE OTHER FISHING VESSELS INSIDE THE SHOAL AND WE SAW "TAKLOBOS" INSIDE SOME OF THE SHIPS.





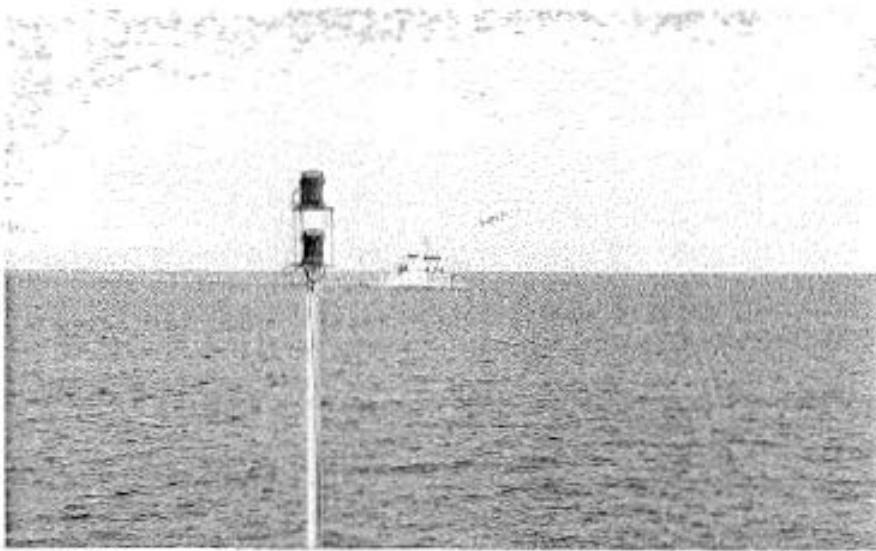
SOME OF THE FISHERMEN NEAR THESE LARGE FISHING VESSELS WERE SEEN TAKING TAKLOBOS AND CORALS. WHILE WE WERE INSIDE THE SHOAL CHINESE FISHING VESSEL WITH BOW NO.09022 DEPARTED TOWARDS THE SHOAL ENTRANCE/EXIT. FULLY LOADED WITH WHAT APPEARS TO BE CORALS AND GIANT CLAMS, IT WENT OUT OF THE SHOAL PRESUMABLY TO RETURN TO CHINA.

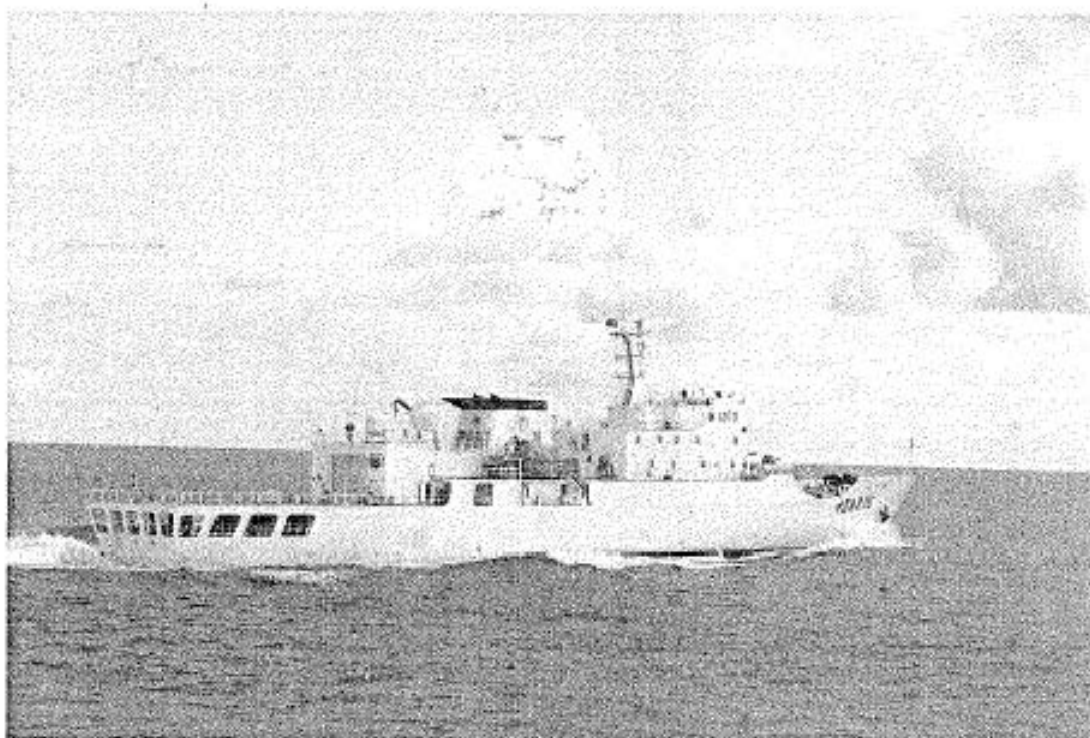




ON THE 28TH, BRP EDSA DOS AGAIN ARRIVED TO RELIEVE AND TAKE OVER FROM US THE DUTY TO SHOW FLAG AND PRESENCE AT THE SHOAL.-THEY AND MCS 3001 SHALL REMAIN UNTIL FURTHER NOTICE.

WHILE UNDERGOING TURNOVER OF DUTIES, THE FLEC 310 ARRIVED AND UNDERTOOK WHAT CAN BE CONSIDERED AS PROVOCATIVE MANUEVERS OR ACTS INTENDED TO HARASS THE FILIPINO SHIPS. GOING AT THE SPEED OF 20 KNOTS, IT FIRST MET UP WITH CMS 71, STOPPED AND TOOK POSITION AT THE SHOAL ENTRANCE. AFTER A FEW MINUTES, IT LAUNCHED TWO (2) RUBBER BOATS. THE RUBBER BOATS DID NOT VENTURE FAR FROM THE FLEC 310 BUT INSTEAD CIRCLED AROUND THE 310. AFTER ANOTHER FEW MINUTES, THE RUBBER BOATS WERE AGAIN RETREIVED AND FLEC 310, AT SPEED OF 20 KNOTS APPROACHED BRP PAMPANGA. STARTING FROM A DISTANCE OF APPROXIMATELY 1 NAUTICAL MILE, IT WENT STRAIGHT TOWARDS US, FROM DEAD AHEAD, IT CROSSED AND WENT BY OUR STARBOARD BOW AS IF SHOWING US ITS MIGHT.





AT APPROXIMATELY 9AM, WE LEFT SCARBOROUGH SHOAL.

ASIDE FROM VIOLATING **SECTION 87 OF RA 8550 (POACHING IN PHILIPPINE WATERS)**, THE OTHER PROVISIONS OF THE FISHERY CODE VIOLATED BY THESE CHINESE FISHERMEN ARE THE FOLLOWING:

SECTION 91. BAN ON CORAL EXPLOITATION AND EXPORTATION. - IT SHALL BE UNLAWFUL FOR ANY PERSON OR CORPORATION TO GATHER, POSSESS, SELL OR EXPORT ORDINARY PRECIOUS AND SEMI-PRECIOUS CORALS, WHETHER RAW OR IN PROCESSED FORM, EXCEPT FOR SCIENTIFIC OR RESEARCH PURPOSES.....

SECTION 92. BAN ON MURO-AMI, OTHER METHODS AND GEAR DESTRUCTIVE TO CORAL REEFS AND OTHER MARINE HABITAT. - IT SHALL BE UNLAWFUL FOR ANY PERSON, NATURAL OR JURIDICAL, TO FISH WITH GEAR METHOD THAT DESTROYS CORAL REEFS, SEAGRASS BEDS, AND OTHER FISHERY MARINE LIFE HABITAT AS MAY BE DETERMINED BY THE DEPARTMENT. "MURO-AMI" AND ANY OF ITS VARIATION, AND SUCH SIMILAR GEAR AND METHODS THAT REQUIRE DIVING, OTHER PHYSICAL OR MECHANICAL ACTS TO POUND THE CORAL REEFS AND OTHER HABITAT TO ENTRAP, GATHER OF CATCH FISH AND OTHER FISHERY SPECIES ARE ALSO PROHIBITED.

XXXXX



PHOTO ABOVE SHOWS ONE OF THE CHINESE FISHERMEN WAVING WHILE THE OTHER SHOWS THE PEACE SIGN. TAKEN ON THE 23RD OF APRIL, INSIDE PANATAG SHOAL, WEST PHILIPPINE SEA.

RECOMMENDATIONS:

1. THE BUREAU SHOULD SEND ITS MARINE BIOLOGISTS OR OTHER EXPERTS TO UNDERTAKE A STUDY INSIDE THE SHOAL IN ORDER TO HAVE A PROPER ASSESSMENT OF THE DAMAGE THAT THE ILLEGAL ACTIVITIES OF THESE CHINESE FISHERMEN HAVE BROUGHT UPON THE SHOAL AND ITS RESOURCES. IF POSSIBLE, IT MAY OPT TO SEND THE MV/DA-BFAR AS IT MAY BE ABLE TO CONDUCT A MORE EXTENSIVE AND THOROUGH STUDY OF THE SAME.
2. THE BUREAU SHOULD MAINTAIN PRESENCE AT THE SHOAL AS MUCH AS POSSIBLE, THE DAILY ACTIVITIES OF THE CHINESE FISHERMEN SHOULD BE PROPERLY DOCUMENTED AS THEY MAY BECOME USEFUL AS EVIDENCE SHOULD THE PHILIPPINE GOVERNMENT ELEVATE THE MATTER TO THE PROPER INTERNATIONAL FORUM.
3. THE BUREAU MAY ALSO CONSIDER RELEASING THE PICTURES THAT WE HAVE GATHERED TO THE MEDIA IN ORDER TO SHOW THE WORLD THAT YES, THERE ARE STILL CHINESE FISHERMEN INSIDE THE SHOAL AND THAT THEY CONTINUE TO ENGAGE IN THEIR ILLEGAL ACTIVITIES UNDER THE PROTECTION OF THE CHINESE GOVERNMENT.

NOTE: SOME OF THE PICTURES IN THIS REPORT HAVE BEEN EDITED (CROPPED/ZOOMED) OR ALTERED ONLY IN TERMS OF BRIGHTNESS ETC USING WINDOWS LIVE PHOTO GALLERY. THEY WERE MADE ONLY TO ENHANCE THE PICTURES FOR EASY VIEWING AND IDENTIFICATION OF SUBJECTS. ALL PICTURES IN THEIR ORIGINAL/UNALTERED STATE AS TAKEN USING THE OFFICE CAMERA ARE KEPT/STORED IN OUR CUSTODY.



Republic of the Philippines
Department of Agriculture
Bureau of Fisheries and Aquatic Resources
PCA Bldg, Elliptical Road, Diliman, Quezon City

REPORT SUBMITTED BY:

RELLY B. GARCIA
FRPLEU/QRT Officer

ANTHONY FRANCIS LESACA
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AGRIPINO LONTOK
FRPLEU/QRT Officer

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VICENTE MARAVE Jr.
FRPLEU/QRT Officer

NOTED:

ANDRES R. MENGUITO
Chief, FRPLES-QRT

Annex 81

Memorandum from the Embassy of the Republic of the Philippines in Beijing to the Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-080-2012-S (24 May 2012)

EXTREMELY URGENT/CONFIDENTIAL

To: SFA
 Fr: Beijing PE
 Re: Meeting with Department of Boundary and Ocean Affairs on Bajo de Masinloc standoff
 Dt: 24 May 2012
 Rt: ASPAC
 Cc: OUP, OUSOC-OCO ZPE - 080 - 2012 - S

Reurfax PE-29-ASPAC-2012-S, I was able to secure a meeting with Director General Deng Zhonghua of the MFA Department of Boundary and Ocean Affairs at 3:00 p.m. this afternoon.

Following the Department's instructions, I personally handed over the Embassy's Note Verbale regarding the Department's Note No. 12-1371 to DG Deng and conveyed the five points raised in PE-ASPAC-2012-S. I also raised the following questions:

1. The Philippine side already responded to the Chinese side's requests, and would like talks to continue. The Philippine side believed this was also the Chinese side's wish. The Chinese side seems to be closing the door to further discussions on withdrawal of vessels. Why is this?
2. There seems to be mixed signals from the Chinese side. By starting discussions on sovereignty, there is not much room to maneuver on the issue of withdrawal of vessels. Sovereignty is not an issue that can realistically be expected to be solved within a short span of time. So is it the intention of the Chinese side to prolong the current standoff?
3. Does the Chinese side have any proposals it would like to make, beyond its statement on discussion of sovereignty?

DG Deng responded as follows:

- In the afternoon of Tuesday, the Philippine side made representations to Ambassador Ma Keqing and handed over a protest Note. The Philippine Embassy also made representations. China cannot by any means accept the Note and representations made by Manila and by the Embassy.
- As China made its position to the Philippines many times, Huangyan Island is an integral part of its territory. **There is no dispute over the territorial sovereignty of Huangyan Island.** Huangyan Island waters are China's traditional fishing grounds. Chinese vessels, including government vessels and fishing vessels, are conducting operations in Huangyan Island waters and this falls within China's own sovereignty. The Philippines has no right to make accusations or demonstrations against this.
- DG Deng said "I have learned from the Note of the Philippines, that on April 10th, the Philippines has used force to harass Chinese fishing boats and fishermen and apart from that the Philippines also intended to arrest and prosecute Chinese fishermen. I am deeply shocked about it and I would like to take this opportunity to raise our protest about this."
- DG Deng also referred to Article 2.4 of the United Nations Charter, saying that on 10 April, the Philippines used a warship to harass unarmed Chinese fishermen.

This is a sign of the use of force. Since April 10, all actions of the Philippines in Huangyan Island are in violation of Chinese territorial sovereignty. The Philippines is now citing Article 2.4 – China believes that it is the Philippines that has violated this Article and China deeply regrets this.

- Recently, China believes that the Huangyan Island incident on the whole has been easing gradually. However, some actions of the Philippines have still worried China.
- Only a couple of days ago, the Philippine Secretary of Foreign Affairs stated in public that countries like the US, Japan, ROK and Australia could provide military support to the Philippines. The Philippines has also been playing up the issue of buying arms from abroad. DG Deng stated “I don’t know what is the intention of the Philippines. Does the Philippines want to threaten China through force?”
- Yesterday, at a high level meeting in the UN about the role of member states in mediation, the Philippine side referred to the issue in Huangyan Island.
- China has told the Philippines many times that the Philippines should refrain from complicating or escalating the matter. Even if the Philippines has done some actions to de-escalate, recent incidents have shown that the Philippines still wants to complicate/escalate the matter.
- As the two countries are working through diplomatic consultations, the Philippines suddenly summoned the Chinese Ambassador and made representations. China also learned that the Philippines distributed a Diplomatic Note to member states of ASEAN countries.
- Does the Philippines want to continue to escalate the incident?
- In Huangyan Island waters, the Philippines has not responded to China’s request to withdraw all vessels. Senior officials are stirring up public emotions of the Filipino people and encouraging them to land on the island and erect Philippine flags on the island. Actions such as landing and erecting flags were stopped. But recently, small vessels and some people have landed on some rocks and erected some “pole-like things”.
- Recently, BFAR also stated that it wants to deploy fishing tools like “payao” in Huangyan Island waters.
- All these actions of the Philippines made China concerned. China fears that the Philippines wants to maintain long-term presence and waits for an opportunity to occupy the island. In this case, China has no other option but to ensure that Chinese government vessels stay in relevant waters and remain on high alert.
- On May 7, VFM Fu Ying made representations to the Philippine side. Since then, the Philippine President and some officials have done something and said some words about easing the tension about the Huangyan Island incident. On various occasions of China’s engagement with the Philippines, China has noted the moves and words of the Philippines to help ease tensions.
- However, China has noticed that the Philippines had some words and actions that have aggravated the situation. Such words and actions of aggravation run counter to words and actions of the Philippine President and senior officials to ease the tension. This has made it very difficult for China to judge the true intention and consideration of the Philippines.
- At the moment, the most important measure to deal with the Huangyan Island incident is that the Philippines should respond to China’s request squarely. The Philippines should withdraw its vessels from Huangyan Island waters, particularly government vessels, and stop provocations in Huangyan Island waters.

- The Philippines should truly go back to the track of bilateral diplomatic consultations. The Philippines should send a clear and consistent message. The Philippines should step up efforts and work with China to appropriately address this issue.

DG Deng also responded to the representations I made, as follows:

- On my comment that the Philippine commitment as observed at the highest level of national leadership and the lack of Chinese commitment to defuse the tension in the Huangyan Island, China does not accept the accusation. In fact, since April 10, when the Philippine warship harassed Chinese fishermen and vessels with force, the Chinese side has acted with maximum restraint to prevent the worsening of the situation.
- There have been no Chinese words or actions to escalate the situation at the multilateral level, on the diplomatic front or in the media. Nor has China taken any action on the ground in Huangyan Island waters.
- Recently some senior officials of the Philippines have been stirring up public emotions, encouraging them to take provocative actions. This has made China worried about the intentions of the Philippines.
- In order to prevent a further worsening of the situation, China has no other option but to ensure that government vessels would be on high alert.
- On my comment that the Philippine responded to Chinese requests but China is closing the door to diplomatic consultations, China can by no means accept this accusation. Since the outbreak of the incident, China has been stressing that the incident should be properly addressed through bilateral diplomatic negotiations.
- Even after the unilateral announcement of the Philippines to suspend diplomatic dialogues with the Chinese Embassy in Manila, the Chinese side still adhered to its position of handling the matter through bilateral diplomatic consultation.
- The Chinese Embassy in Manila and the Chinese Ambassador have made every effort to maintain diplomatic engagement with the Philippine side.
- In Beijing, VFM Fu Ying and DG Deng have maintained regular contact with the Philippine CDA on how to properly address the issue.
- China has also put forward suggestions and requests on how to address the issue. DG Deng said "Frankly speaking, our plan was that we could receive a positive response from the Philippine side this Monday or Tuesday. However, we regret to see that the Philippines has summoned the Chinese Ambassador in Manila and sent a note of protest to her. We are deeply regretful about this."
- On the Philippine side's comment that in diplomatic engagement, the two sides should not talk about sovereignty, that two sides should put aside the issue and focus on specific measures, DG Deng stated **that there is no room for discussion on the sovereignty of Huangyan Island. Huangyan Island is an integral part of Chinese territory. There is no dispute whatsoever on this.**
- China hopes that the Philippines can carefully study China's requests and suggestions.
- DG Deng also took the opportunity to reiterate that China is committed to addressing the Huangyan Island incident through diplomatic channels. This position has not changed.
- China hopes that the Philippines can give a positive response to China's request, withdraw all vessels particularly government vessels, and truly go back to the track of diplomatic consultations and work with China to address the issue.

- DG Deng expressed the hope that the Embassy will report China's positions and counter-representations back to Manila as soon as possible. Meanwhile, the Chinese Embassy will send a counter-Note to the Philippine Note.

I responded that the Chinese side is fully aware of the Philippine position regarding Bajo de Masinloc. I said that the Embassy will definitely convey MFA's concerns to Manila, and expressed the hope that both sides would exert efforts to resolve the issue peacefully and diplomatically.

On the way out of the meeting room, I mentioned that it is very difficult to negotiate on the withdrawal of ships if the Chinese side were to insist on sovereignty issues because this would take a long time to conclude. I also said that as per Ambassador Ma, sovereignty is the cause and it is part of the solution, so it will need to be discussed. DG Deng reiterated that there must be some misunderstanding, because for the Chinese side, there is no dispute on sovereignty. Huangyan Island is indisputably part of China's territory. I replied that China also knows the Philippine position on this. So if both positions are like this, how will the issue be resolved?

According to DG Deng, they were thinking they would get a positive response from the Philippines by Monday or Tuesday, but instead Manila summoned the Chinese Ambassador. I said that we sent the protest note because they increased their vessels in the area. DG Deng replied that they were on high alert due to their fear that there will be ships going there (like Faeldon although his name was not specifically mentioned). I answered that the proposed trip was stopped by the Philippine President. DG Deng asked if the Philippines can assure China that similar incidents (such as more Philippine ships going to the area) will not take place.

DG Deng added that the proposal earlier made by the Philippines on negotiations (possibly referring to the 6-point proposal) was "irrelevant". First Secretary Ducrocq also added that as per the newspapers, the "payao" is to be deployed in the territorial seas of the Philippines, not far from its coastline.

For the Department's information.


ALEX G. CHUA
Chargé d'Affaires, a.i.

hb 1/5/24

Annex 82

Report from Angelito A. Arunco, et al., FRPLEU-QRT Officers, Bureau of Fisheries and Aquatic Resources, Republic of the Philippines, to Director, Bureau of Fisheries and Aquatic Resources, Republic of the Philippines (28 May 2012)

May 28, 2012


MEMORANDUM

FOR : **The Director**
This Bureau

THRU : **The Chief**
FRPLEU/QRT

FROM : **Angelito A. Arnuco**
Rolly T. Carpio
Carlito D. Santos
FRPLEU/QRT Officers

SUBJECT : **FIELDWORK REPORT UPDATE RE:: Travel Order**
No. 1342 & 1444 dated May 10, 2012 & May 18, 2012
Respectively.

CERTIFIED PHOTOCOPY
SIGNED BY: 
DATE: Jan. 27, 2014

This activity is in compliance with the instruction of our Director thru the Chief of FRPLEU-LEQRT to conduct monitoring of fishing activities of Chinese fishing vessels and patrolling of Chinese Monitoring Patrol Vessels in the disputed territory of Scarborough Shoal. These efforts is done together with the Philippine Coast Guard and our office the Bureau of Fisheries and Aquatic Resources not to engage battle in their Navy and Maritime Vessels or pose a threat to Chinese Nationals but to establish our presence in the area.

We proceeded in the on the first day and surveyed the latest position of Search and Rescue Vessel 3003 and MCS vessel 3001 at Latitude 15 degrees 12 mins and 16 seconds North and Longitude 117 degrees 40 mins. and 17 minutes East. There were two (2) Chinese Marine Surveillance and one (1) Chinese Fishery Law Enforcement Vessel in the area plotted at Latitude 15 degrees 6 mins and 27 seconds North and Longitude 117 degrees 51 mins and 32 seconds East. There were also eleven (11) Chinese Fishing Vessel and three (3) Filipino Fishing Vessel inside the Scarborough Shoal. The weather was partly cloudy with moderate seas and the visibility was fairly good. On the third day an Aircraft of the Philippine Coast Guard was sighted also conducting monitoring of activities in the area.

The following are the reports and observations furnished to us by our the Philippine Coast Guard on Board MCS 3008 :

OUTGOING DISPATCH

- MCS-3008 -

MSG NR 141	PRECEDENCE -P-	DATE 271030H MAY 12	TRANSMITTING INSTN H/N
FM:	CO, MCS-3008	DRAFTED BY:	LTJG JS SEROTE PCG
TO:	C, CGDNWLZN	APPROVED BY:	CDR AO CORPUZ PCG
INFO:	CPCG (ATTN:CG2/CG3/CGAC) / AC, CGFLEET (ATTN:F1/F3) / AC, CGRF (ATTN:R1/R3) / SOPA* ABD AE-891/ CO, SARV-003/CO, MCS-3001	RELEASED BY:	LTJG JS SEROTE PCG
SECURITY CLASSIFICATION: UNCLAS		PRECEDENCE:	PRIORITY

BT . . . UNCLAS X CITE MCS3008-0512-141 X

1. THE FOLLOWING WERE THE DETAIL OF EVENTS THAT TRANSPIRED WHILE THIS UNIT WAS ON ITS WAY TO SCARBOROUGH SHOAL ON 26 MAY 12 CLN

- A) O/A 1550H CMM AT LAT 15 DEG 5 MINS 18 SECS N AND LONG 117 DEG 57 MINS 25 SECS E WITH ALFA DISTANCE OF APPROX SEVEN (7) NM FM SCARBOROUGH SHOAL CMM THIS UNIT SIGHTED CHINESE MARINE SURVEILLANCE VESSEL (CMS) 71 ADVANCING TOWARDS THIS VES POSITION X ALFA FEW MINUTES AFTER CMM SAID CMS INCREASED SPEED AND AT LESS THAN 100 YARDS FM OUR POSITION CMM SUCH CMS ATTEMPTED TO CROSS THIS UNIT'S PORT BOW X THIS UNIT RESPONDED BY INCREASING SPEED TO 20 KNOTS AND ALTERING COURSE TO THE STARBOARD AND THEN PASSING THROUGH THE REAR OF THE CMS 71 IN ORDER TO EVADE A POSSIBLE IMPACT X
- B) WHEN THIS UNIT WAS ABLE TO EVADE THE FIRST DANGEROUS MANEUVER OF CMS 71 CMM THE SAME VESSEL IMMEDIATELY SWINGED TO ITS STARBOARD AND AGAIN ATTEMPTED TO CROSS STARBOARD BOW OF THIS VESSEL X AGAIN CMM IN ORDER TO AVOID ALFA POSSIBLE COLLISION ENSUED BY THIS SECOND INTENTIONAL ACTION OF CMS 71 CMM THIS UNIT IMMEDIATELY MANEUVERED HARD PORT RIGHT AWAY AND THEN PASSED THROUGH THE REAR OF THE SAID CMS X
- C) AFTER TWICE STEERING CLEAR FROM POSSIBLE COLLISIONS BROUGHT ABOUT BY THE DELIBERATE MANEUVERS OF CMS 71 CMM ANOTHER CHINESE SERVICE VESSEL CMM THE FISHERY LAW ENFORCEMENT OF CHINA (FLEC) 303 STEERED TOWARDS OUR POSITION AND THE SAME AIMED TO CROSS THIS UNIT'S STARBOARD BOW X INSTANTLY CMM THIS UNIT REACTED BY INCREASING SPEED TO 22 KNOTS AND SWERVING TOWARDS THE REAR OF FLEC 303 X
- D) THIS UNIT MAINTAINED SPEED ON ITS WAY TO BRP CORREGIDOR (AE-891) TO DELIVER PROVISIONS WHILE CMS 71 CMM FLEC 303 AND CMS 84 WHICH WAS APPROX 2 NM AWAY PURSUED THIS VESSEL

- UNTIL THIS UNIT WAS ABOUT ALFA FEW DISTANCE AWAY FM AE-891
X
- E) O/A 1652H CMM WHILE THIS VESSEL WAS ALONGSIDE AE-891 CMM CHINESE SERVICE VESSEL 84 CMM PASSED THROUGH THE STARBOARD SIDE OF OUR POSITION AT ALFA DISTANCE OF LESS THAN 100 YARDS X THIS VESSEL EVENTUALLY STOPPED AND POSITIONED ON THE PORT QUARTER AT ALFA DISTANCE OF APPROX 500 YARDS FM OUR POSITION X FURTHERMORE CMM ANOTHER CHINESE VESSEL CMM FLEC 301 CMM WAS STATIONED AT THE PORT BEAM WITH ALFA DISTANCE OF ABOUT ONE THOUSAND (1,000) YDS X
- F) O/A 1715H CMM UPON CHECKING THAT THE HIGHEST TIDE HAD ONLY DROPPED BY ONLY FEW METERS CMM THIS UNIT DECIDED TO PROCEED AT THE SCARBOROUGH SHOAL'S BASIN X
- G) WHILE THIS UNIT HAD ALREADY ESTABLISHED ALFA FEW DISTANCE AWAY FM AE-891 CMM CMS 84 BEGAN TO CHASE OUR VESSEL X SENSING THAT CMS 84 WAS AIMING TO CROSS THROUGH THE BOW OF THIS VESSEL CMM THIS UNIT INCREASED SPEED WHICH EVENTUALLY CAUSED THE CHINESE VESSEL TO BE LEFT BEHIND BY A FEW YARDS X
- H) WHILE THIS UNIT CONTINUED TO STEER TOWARDS THE SHOAL'S BASIN CMM SPOTTED AT ALFA DISTANCE WERE THREE (3) CHINESE SERVICE SHIPS MOVING TOWARDS THIS VESSEL'S POSITION CLN FLEC 303 CMM CMS 71 AND FLEC 306 X WHEN FLEC 303 WAS ALREADY ABOUT 50 YARDS FM THIS VESSEL CMM SAID CHINESE VESSEL IMMEDIATELY ALTERED COURSE AS IF CROSSING TO OUR STARBOARD BOW X HOWEVER CMM WHEN FLEC 303 WAS ALREADY DEAD AHEAD OF THIS UNIT CMM THE CHINESE VESSEL DECREASED SPEED AND ESTABLISHED ALFA BLOCKING POSITION X THIS UNIT RIGHT AWAY SWERVED TOWARDS THE REAR OF THE CHINESE VESSEL TO EVADE A POSSIBLE IMPACT X
- I) AFTER FLEC 303 CMM THIS UNIT SIGHTED CMS 71 MOVING FAST TOWARDS OUR POSITION X AGAIN CMM BECAUSE OF OUR SPEED CMM CMS 71 WAS ONLY ABLE TO GET NEAR OUR POSITION FROM ALFA DISTANCE OF APPROXIMATELY 70 YARDS ON OUR PORTSIDE X AT THIS POINT CMM BEHIND WERE TWO (2) CHINESE SERVICE SHIPS CHASING OUR VESSEL CLN CMS 84 AND FLEC 303 X
- J) ON OUR ROUTE TOWARDS THE BASIN CMM THIS VESSEL SIGHTED THREE (3) CHINESE FISHING VESSELS AND FLEC 306 ON ALFA BLOCKING POSITION NEAR THE LONE ENTRANCE INSIDE THE SHOAL X FURTHERMORE CMM THREE (3) CHINESE SERVICE SHIPS WERE NOW CHASING THIS UNIT WITH CMS 71 JOINING CMS 84 AND FLEC 303 X
- K) AFTER BEING ABLE TO POSITION FEW YARDS FM THE ENTRANCE OF THE SHOAL AND REVIEWING OUR PREPARED SAFE WAY POINTS CMM THIS UNIT DECIDED TO ENTER THE SHOAL'S BASIN BY PASSING IN BETWEEN THE THREE (3) CHINESE FISHING VESSELS (CFV'S) AND FLEC 306 WHICH WAS FAST MOVING TOWARDS OUR LOCATION X THIS UNIT CONSIDERED SUCH PATH AS THE ONLY POSSIBLE WAY TOWARDS

THE BASIN BECAUSE OF OUR SAFE DISTANCE FROM THE CFV'S AND FLEC 306 IN WHICH CMM ALL THE WHILE SEEMED TO HAVE GIVEN WAY FOR THE ENTRY OF THIS VESSEL INSIDE X HOWEVER CMM AS THIS UNIT WAS ON ITS WAY TOWARDS THE BASIN CMM SHIP'S PERSONNEL SIGHTED TWO (2) MOORING LINES WHICH WAS PLANTED BY CFV'S OBVIOUSLY INTENDED TO IMPEDE OUR MOVEMENT TOWARDS THE SHOAL'S BASIN X WHILE THIS UNIT STOPPED ENGINES AND THEN MANEUVERED BACKWARDS TO AVOID THE LINES CMM CREW OF THE CFV'S FM WHICH THE LINE CAME FROM AND FLEC 306 SUDDENLY ECHOED CHEERS AND CLAPPED HANDS X AT THIS POINT CMM FLEC 306 WAS ALREADY ON A BLOCKING POSITION FEW YARDS DEAD AHEAD OF THIS UNIT X

L) WITH THE LINES PLANTED BY THE CFV'S CMM FLEC 306 POSING A BLOCKADE AND THREE (3) CHINESE SERVICE SHIPS POSITIONED AT THE REAR CMM IT WAS EVIDENT THAT ALL EFFORTS BY THE CHINESE VESSELS WERE ALREADY EMPLOYED IN ORDER TO OBSTRUCT OUR ENTRY TO THE SHOAL'S BASIN X NEVERTHELESS CMM WITH THE SHEER DETERMINATION TO COMPLY WITH THE DIRECTIVE FROM HIGHER UPS' FOR THIS VESSEL TO GO INSIDE THE SHOAL'S BASIN COUPLED WITH THE COURAGE THAT THE OFFICERS AND CREW EXUDED ON SUCH SITUATION CMM THIS UNIT SPED UP CMM MANUEVERED HARD TO THE STARBOARD AND SWERVED TOWARDS THE ASTERN OF FLEC 306 X

M) THE SCENARIO WENT WORSE THIS TIME WITH FLEC 306 GOING ALL ENGINES BACK AND DETERMINED TO RAM OUR VESSEL X NEVERTHELESS CMM THIS UNIT CONTINUED TO EMPLOY SPEED AND IMMEDIATELY MANEUVER HARD LEFT WHICH WAS JUST ENOUGH TO DODGE FROM THE DELIBERATE INTENTION OF SAID FLEC WHICH WAS JUST ABOUT 10 METERS AWAY ON OUR PORTSIDE AND AT THE SAME TIME CMM TO KEEP THIS VESSEL SAFE FROM A SHALLOW AREA APPROXIMATELY 25 YARDS AWAY ON THE STARBOARDSIDE X

N) O/A 1805H CMM AFTER AVOIDING THE CHASE CMM HARASSMENT AND INTENDED SABOTAGE CMM FINALLY CMM THIS UNIT WAS ABLE TO ENTER THE SHOAL BASIN SAFELY AND ANCHORED AT LAT 15 DEGS 08.675 MINS N AND LONG 117 DEGS 49.439 MINS E X

2. THE FOREGOING SERIES OF EVENTS WHICH TRANSPIRED WHILE THIS UNIT WAS ENTERING THE SHOAL'S BASIN WERE ALL SUPPORTED BY PHOTOS AND VIDEO COVERAGES THAT THIS UNIT INTENDS TO SUBMIT UPON RETURN TO PORT X

3. FOR INFO AND REF X

. . . BT

abv/TOD

For your information and perusal.

ROLLY T. CARPIO
QRT Officer


ANGELITO A. ARNUCO
FRPLEU Officer


CARLITO D. SANTOS
QRT Officer

NOTED:


ANDRES R. MENGUITO
Chief, FRPLEU/QRT

Annex 83

Memorandum from Commander, Naval Forces Northern Luzon, Philippine Navy, to the Flag Officer in Command, Philippine Navy, No. CNFNL Rad Msg Cite NFCC-0612-001 (2 June 2012)

SECRET

PHILIPPINE NAVY
HEADQUARTERS NAVAL FORCES NORTHERN LUZON
 Naval Station Ernesto Ogbinar, Poro Point
 San Fernando City, La Union

O/NF2

02 June 2012

From: Commander, Naval Forces Northern Luzon
 To: Flag Officer in Command, Philippine Navy
 Attn: AC of NS for Intelligence, N2

Subj: After Air Reconnaissance Mission Report

Encls: Pictures

Ref: CNFNL Rad Msg Cite NFCC-0612-001

1. Reference: Radio Message Cite NFCC-0612-001
2. Anent above reference, PNI 312 under the command of LT BRANDON C BELANDRES PN, conducted naval air patrol and aerial surveillance over West Philippine Sea and the Scarborough Shoal on 020705H to 1035H June 2012 in order to provide an update of the maritime operating picture in the area.
3. The detailed chronology of events are as follows:

Date / Time	Activity / Events
020705H June 12	PNI-312 Departed Sangley Pt, Cavite City enroute to Scarborough Shoal to Fernando City Airport to conduct Naval Air Patrol over South West Coast of Northern Luzon while enroute to San Fernando City La Union.
0717H	Over Corregidor at 3,000 Ft and Climbed to 7,500
0725H	Established contact with NFNLOC IVO 18 NM Southwest off Subic.
0804H	Established contact with PCG SARV 002 reported IVO off Channel 9.
0835H	Started descent to 2,500 Ft.
0843H	IVO K12* sighted three (3) contacts Southeast off Scarborough Shoal heading North.
0846H	IVO J12* and sighted multiple contacts and commenced aerial photography/surveillance.
0852H	IVO G10* sighted twenty eight (28) Chinese fishing vessels trawling alongside each other. There are floatation devices sighted believed intended to obstruct the passage to the shoal.
0857H	IVO D 6*, sighted BFAR vessel as reported by SARV002.
0900H	Made another pass heading south IVO C2* to H2 and heading east IVO 13 to I12*.
0900H	Established contact with PCG SARV002 which confirmed the presence of four (4) Chinese Fisheries Law Enforcement Command vessels lined

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	up IVO G11* to H10, five (5) Maritime Surveillance ships and twenty seven (27) fishing vessels IVO F8, F9, G8 and G9.
0903H	Naval Air Surveillance over Scarborough Shoal terminated.
0930H	Sighted one (1) tanker vessel 35NM NE off Scarborough Shoal heading North.
1020H	Sighted two (2) Oil tankers transiting north IVO 55 NM Southwest off San Fernando City
1030H	Landed San Fernando City Airport.

*Based on Naval Air Group Grid Chart of Scarborough Shoal

4. The findings of the mission are to wit:

- a. That the Chinese deployed about 28 utility boats across the southeast entrance of the shoal and rigged them together by rope to establish a makeshift boom or barrier;
- b. That one (1) Chinese Marine Surveillance vessels was observed at about 4 NM SE from the shoal and steaming at a northerly direction;
- c. That one (1) CMS Vessel with Helicopter onboard was seen lying to 2 NM ESE from the shoal;
- d. That four (4) Chinese Fisheries Law Enforcement Command (FLEC) Vessels along with utility boats and seventeen (17) Chinese fishing vessels were sighted 1.5 NM East of the Shoal
- e. Inside the shoal, the only Philippine-flagged vessel observed was the BFAR vessel, while about twenty three (23) others vessels are Chinese-flagged.

5. The makeshift barrier deployed at the southeast entrance of the shoal made up of twenty eight (28) utility boats is likely designed to discourage if not prevent the ingress/egress of Philippine vessels to the shoal. The Chinese may be awaiting the departure of the lone BFAR vessel still on station inside the shoal before deploying a more robust barrier at the shoal's entrance. This recent action poses a danger to safety of life at sea among Philippine fishermen, who use the shoal as a shelter during the typhoon season to mitigate the effects of the southwest monsoon.

6. Also noteworthy was the presence of Chinese vessels with higher freeboards, deployed just outside the entrance of the shoal. The configuration of the vessel suggests these are tugboats or support vessels capable of operating at higher sea states, which are used in reprovisioning the Chinese vessels inside the shoal. Rubber boat were also noted patrolling outside the shoal.

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7. There are no indications yet of construction of permanent structures inside the shoal. However, given the preponderance of Chinese vessels inside and outside the shoal, they have established clear dominance in the stand off. The only missing component are the transport ships carrying construction materials and personnel, which will most likely be coming from Hainan Island as well.

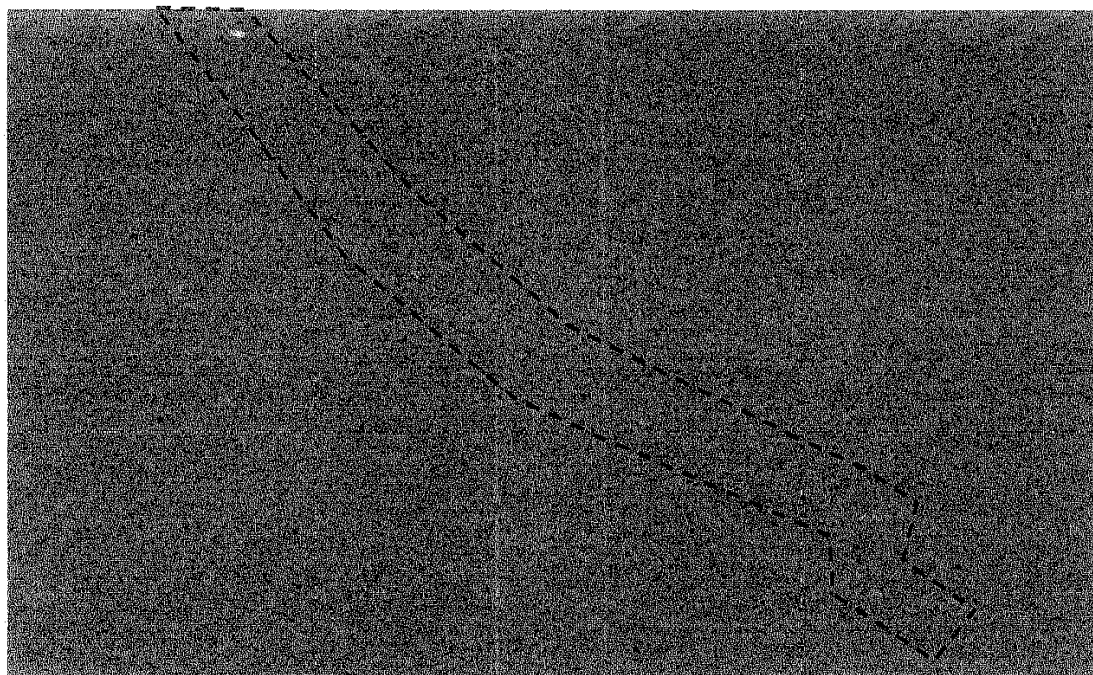
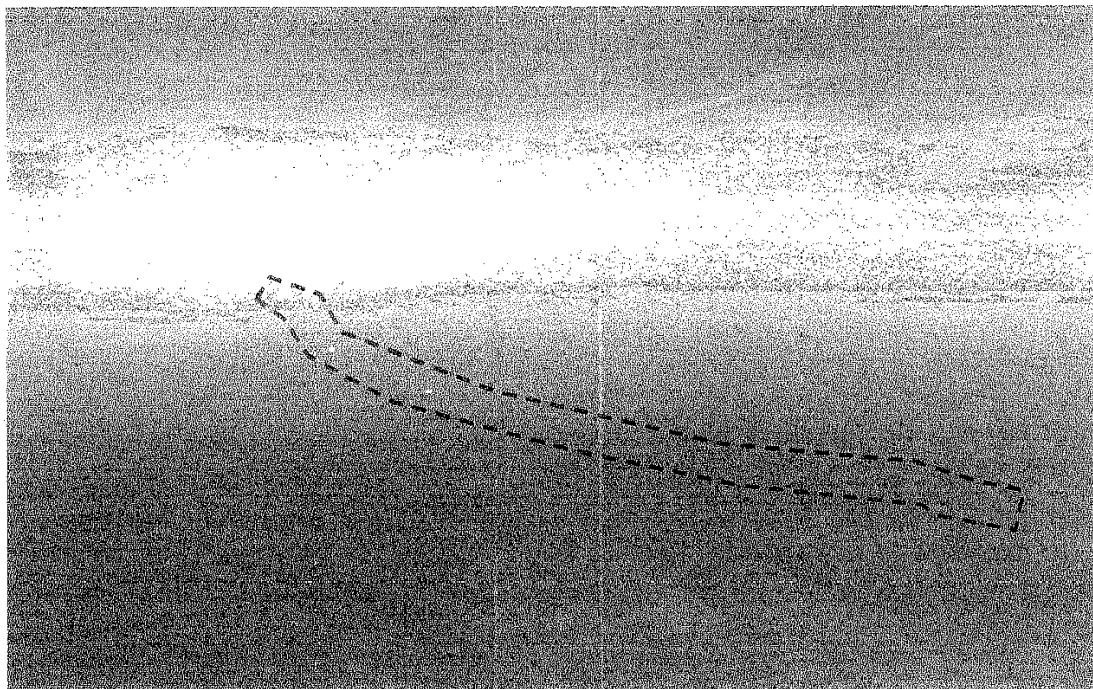
8. For information and reference.

CAESAR C TACCAD
COMMO AFP

Encls: a) Disposition of Vessels IVO Scarborough Shoal
b) Pictures

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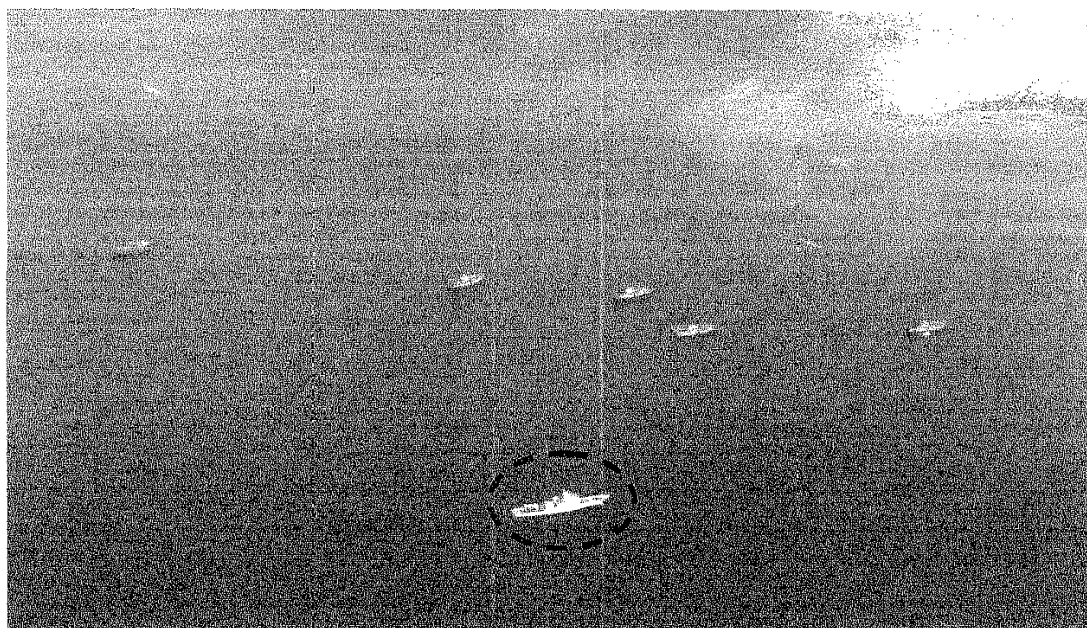
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Picture of utility boats across the south east entrance of the shoal rigged together by a rope to establish a makeshift boom or barrier.

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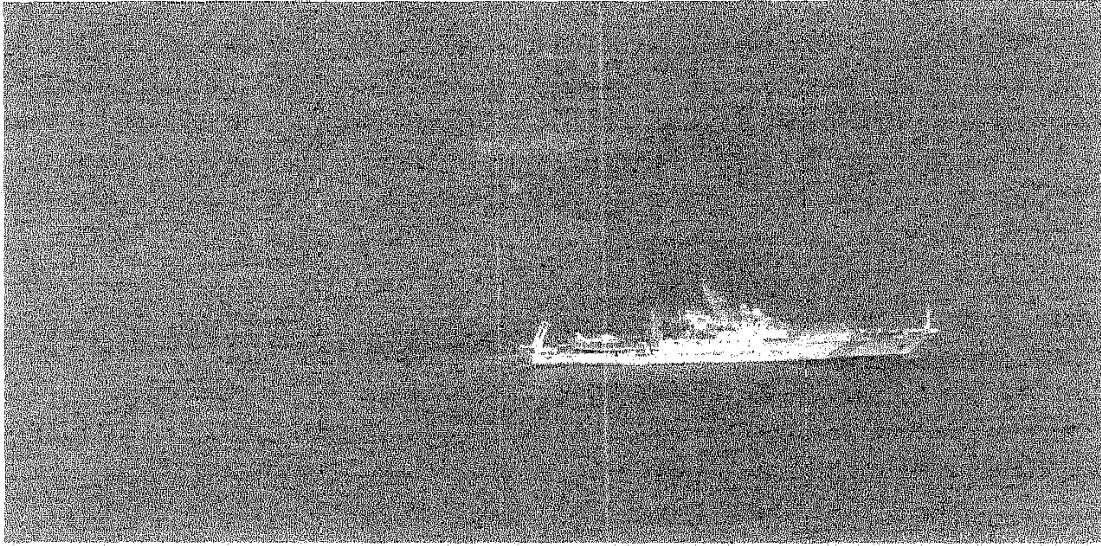
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One of the Chinese Marine Surveillance Vessel along with other Chinese Fishing vessels sighted at vicinity four NM south east from the shoal steaming northerly direction.

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One of the CMS vessels with bow number 38 which has a helicopter on board lying to at vicinity two NM east southeast from the shoal.

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Annex 84

Memorandum from the Embassy of the Republic of the Philippines in Beijing to the Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-110-2012-S (26 July 2012)

CONFIDENTIAL

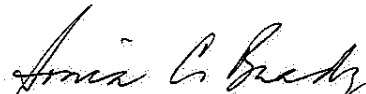
To: SFA
 Fr: Beijing PE
 Re: Informal talks with MFA on Scarborough Shoal
 Dt: 26 July 2012
 Rt: ASPAC
 Cc: OUP, OUSOC-OCO
 Cn: ZPE - 110 - 2012 - S

1. Embassy officials invited officials from MFA's Department of Boundaries and Ocean Affairs for luncheon on 24 July 2012. Attached are the summary of points and the Aide Memoire on the talks.
2. The objectives of the talks for the Embassy were to elicit a more recent reading of China's post-AMM/ARF/PMC views and reactions to the proposal which I conveyed to Vice Minister Fu Ying at our first meeting on 3 July, as reported in ZPE-093-2012-S of 4 July 2012 on a set of rules of engagement or modus vivendi around the Bajo de Masinloc and a bilateral consultation mechanism to discuss issues besides sovereignty.
3. The Embassy was prepared to adjust the talking points and its strategy later depending on China's response and if China appeared unwilling to budge on any of our proposals. The most important thing at this point is to probe what carrots to dangle to the Chinese side to entice them to leave the area to start the process of consultation.
4. Early in the luncheon, the Embassy decided not to broach the subject of the Bilateral Consultation Mechanism and the modus vivendi to ensure that there was full focus on the issue of China's withdrawal, and in order not to give China an opening to trap the Philippines into discussions of a modus vivendi while their vessels remained in the area.
5. The Embassy's initial impressions are as follows:
 - a. The Philippine side should not expect the Chinese to easily agree to withdraw their vessels from the Bajo de Masinloc. The presence of Chinese vessels apparently has approval from the highest level (party Central Committee, PLAN and State Council) and MFA is a mere conveyor of Chinese position and apparently has no authority to negotiate on matters related to the vessels.
 - b. However, the door on this issue, although not open, appears not to be completely shut either. The opening, however, is just a mere crack/sliver and could slam shut at a sign of what the Chinese consider "provocation." Hence, it would seem we are in for the long haul (in Chinese terminology, "when the time is ripe").
 - c. At best, China may take incremental steps to decide "not to send" government vessels (as opposed to "withdraw"), and then again, only very tentatively will withdraw depending on "progress of developments" or responses to their conditions (e.g. not raising the issue in international forums, no involvement of

- other parties such as the US, Japan, etc.) which are unspecified. As the Philippine side has seen over the past three months, they may use every little action/response or lack thereof from the Philippines to justify their continued stay and not to start talks.
- d. The Chinese seem amenable and may not vigorously object to the presence of civilian fisheries vessels (BFAR) but may do so only very hesitantly and watchfully at first.
- e. There is an **absolute lack of trust in the Philippines**. The Chinese side does want to talk, and sometimes, despite itself, acknowledges the good relations with the Philippines. However, at this point, when the Chinese public has been conditioned to consider the Philippines as the "interloper" and "aggressor" to unite the country behind the current political leadership and policy, while the leadership is undergoing transition, it will not be easy to convince the government to change its policy. Suspicion remains very high and, if they talk, more than anything else, it is with the end of wanting to show the public the hard line being pursued to teach the Philippines a lesson and to know what the Philippines is up to. For example, when the Embassy extended its invitation for lunch, MFA insisted on hosting the lunch, and only after several attempts by this Embassy did MFA acquiesce to accept that the Embassy host the luncheon. This shows how much "on alert" the MFA is with regard to the Philippines, and how important it is for them to dominate the talks. In light of this, I have not yet asked for another meeting with Vice Foreign Minister Fu Ying, but am actively seeking meetings with other possible interlocutors.
- f. It is not absurd to suppose that, after having done the math and studied various independent analyses/commentaries of experts, academicians and think-tanks, China fears the uncertain outcome of international arbitration on the matter of sovereignty, and this drives China's strong negative response to any suggestion of international adjudication and its determination to read our intentions before agreeing to any of our proposals. As the MFA said, in its eyes, losing territory would be equivalent to 21st century humiliation by a small country that China as the world's 2nd economic power will not be able to abide by. China may also be hesitant to start bilateral talks on issues besides sovereignty as it does not trust us not to slip in the sovereignty issues at the talks.
6. Although it has not been explicitly stated, China appears to be setting conditions for its agreement to hold the bilateral talks, viz:
- that the Philippines accept the nine-dash line;
 - that the Philippines not invite outside (US, Japan, Australia, etc.) support/involvement in the WPS issue; and
 - that just to start talks on the ASEAN-China Code of Conduct, the Philippines agree to China's conditions.
7. It is the Embassy's view that while it is important that Ph-China bilateral talks start at the earliest opportunity, China should not be allowed to set conditions especially with

regard to accepting the nine-dash line since according to historians, political commentators (the latest being Singaporean Kishore Mahbubani – a copy of his article is attached) and academic experts, it has no basis in international law or UNCLOS. However, the Embassy recommends that the Philippines no longer involve other countries especially the US. As Secretary of State Hillary Clinton and senior US officials have repeatedly stated, the US takes no sides in the territorial disputes in the South China Sea and would prefer that the disputes be settled among contending parties, in a manner consistent with international law and without coercion or the use of force. Political/security cooperation with non-regional countries besides the US and Japan could be sought to build up maritime civilian (BFAR, UP) capability. The Embassy gathered that at the recent visit to Beijing of the US National Security Adviser Thomas Donilon, the WPS/SCS issue was not discussed so both the US and China are working to make it recede from their bilateral agenda.

8. The Embassy strongly recommends that in preparation for the ASEAN Summit in November, the Philippines intensify its efforts to seek the support of its ASEAN partners, particularly the original ASEAN members and other claimant countries, invoking various ASEAN statements, declarations and agreements, including the Treaty of Amity and Cooperation (TAC), the Manila Declaration on the South China Sea, the Declaration of ASEAN Concord II (Bali Concord), the Declaration on the Conduct of Parties in the South China Sea and its guidelines, etc.
9. For instance, the Philippines should start early on seeking Brunei's support for its initiatives in preparation for that country's chairmanship of ASEAN next year, emphasizing the need for a strong and united ASEAN position on the South China Sea issue. We should also elicit Thailand's support as the incoming coordinator of the ASEAN-China dialogue. We should also strongly and openly support the Indonesian FM's initiative that Indonesia could update other countries on the issue when it attends meetings of countries (e.g. NAM, G20, etc.) where it participates as representative countries in Southeast Asia, also in appreciation of the FM's efforts to salvage ASEAN's collective image after the disaster in Phnom Penh.
10. The Department may also wish to consult UP Professor Jay Batongbacal whose research stating that a 1916 Ph Supreme Court decision over a shipwreck in Scarborough Shoal bolsters Manila's territorial claim has been quoted in the South China Morning Post (please see Hong Kong PCG's fax ZHK-101-12-S).
11. For the Department's consideration.


SONIA CATAUMBER BRADY
 Ambassador

INFORMAL TALKS – SUMMARY
24 July 2012

The Philippine side conveyed the following points:

- Talks during this informal luncheon are candid, so it would be good for both sides not to release any part of it to the media.
- The Philippines' pure intentions were manifested by the immediate withdrawal of the navy vessel which responded first to the sighting of illegal catch by the Chinese fishermen. This point has been made many times and both sides should move on.
- The Chinese side, being fine and subtle diplomats, should read the statement of the President in the SONA carefully, and note that it makes special mention of the consultations that continue to be held with China.
- The Filipinos are a reasonable and peaceful people. The Philippine side would like the Chinese to hear out the Filipinos' sentiments.
- Filipinos are natural seafarers and sea people. Except for the Mountain Province and certain areas in Mindanao, any point in the Philippines is never more than 2 hours away from the sea.
- Could both sides bring back the scenario where both Filipino and Chinese fishermen were able to fish freely in the area without government vessels? There used to be thriving activities in the area.
- Why is it difficult for the Chinese vessels to leave the area, now that the Philippine vessels are no longer there?
- What does the Chinese side mean by danger?
- The Philippines feels threatened with the continued presence of Chinese vessels in the area.
- Filipino fishermen need to go to deeper waters to catch bigger fish. The continued situation in the Shoal is adversely affecting the livelihood of Filipino fisherfolk, who are poor people.
- The Chinese side has hurt the feelings of the Filipino people. For instance, Chinese media continue to insult Filipino officials whereas the Filipino media don't even attack Chinese officials.
- Another instance is the ODA being given to the Philippines. The Chinese side should remember that Chinese ODA is not charity as the Philippines is paying for this aid.
- We should stop acting like children.
- China benefited from the peace and security in the ASEAN region to concentrate on the development of its economy to project its peaceful rise to the world. China should look at this again. This security neighborhood is very important for the Philippines, which was one of the founding members of ASEAN.
- Does China see the same future in the area as the Philippines?
- China may wish to make a gesture of goodwill. The period of the London Olympics would be a good time, as everyone will be focused on the games.

- The Philippine Ambassador arrives in China bringing a lot of goodwill. The Chinese side should take advantage of this period.
- China's reaction to counter its imagined fear might actually make its fear come true.

The Chinese side said the following:

- China is unsure of the intentions of the Philippines. It suspects that the Philippines will pursue its sovereignty claims over the Scarborough Shoal.
- Because of this, Chinese vessels will not leave the area.
- The Chinese side may make adjustments in its deployment of vessels based on its judgment.
- The area used to be tranquil with not much disturbance.
- The Chinese government will continue to pursue a diplomatic resolution of the issue. China has noted that the Philippines has withdrawn its vessels and that Philippine fishing vessels were advised by Philippine authorities not to return yet due to bad weather.
- Philippine vessels, including fishing vessels, should not return to the area. (Later on in the conversation:) The two sides can talk about the possibility of Philippine fishing vessels in the area, under the condition that Chinese sovereignty is guaranteed.
- As long as the Philippine side does not do anything, the current momentum can be maintained.
- Are the Philippines' concerns only about fishing rights?
- What are the Philippines' intentions about sovereignty?
- Because of what has happened to China in the past, it will now not allow that a single piece of territory is lost.
- China's vessels are unarmed, and are thus not a threat.
- Many Philippine officials are talking in the media, many of whom take a hardline position. Naturally, the Chinese media will pay attention.
- Vice Minister Fu Ying already mentioned to Ambassador Brady: (1) not to allow more disturbances in the area; (2) not to release provocative rhetoric about the issue; and (3) concentrate on developing the bilateral relationship between the two countries.

AIDE MEMOIRE

1. A working lunch was hosted by the Embassy for the Department of Boundary and Ocean Affairs of the Chinese MFA on Tuesday, 24 July 2012. The Embassy was represented by First Secretary and Consul Evangeline Ong-Jimenez Ducrocq and First Secretary and Consul Donna Rodriguez. MFA was represented by Director Yang Li and Ms. Ni Yao.
2. The Embassy stated that the Philippines considers its relationship with China as one of its most important relationships and it is in this context that the Embassy would like to initiate constructive talks on an informal, non-binding basis, on how to find peaceful co-existence in the Bajo de Masinloc (BDM).
3. MFA said that China also considers the Philippines to be a very good neighbor and friend, and that the two countries have a close relationship throughout history. The Department of Boundary and Ocean Affairs will do its best to promote the relations between the two countries. MFA asked the Embassy to convey the desire of DG Deng Zhonghua to meet with Ambassador Brady.
4. On the BDM (MFA referred to it as Huangyan Island) issue, MFA said that what happened was out of China's expectations. The area used to be peaceful and there was not much disturbance but suddenly the Philippines sent a military vessel there.
5. Embassy explained that the navy vessel was in the area moving towards the north to monitor the fall out from the North Korean satellite launch, and was the first to respond. Embassy reiterated that upon seeing fishing vessels illegally harvesting endangered species, any responsible government would have done its duty to apprehend those engaged in such illegal activities. A Philippine navy vessel was first to respond in the area but the Philippines manifested its pure intention by immediately replacing the navy vessel with civilian vessels. Embassy said that this point has been repeated and explained many times, so both sides should move on.
6. MFA said that as the responsible government, it should have been the one to apprehend its own fishermen.
7. The Chinese government is sticking to the diplomatic resolution of the issue. China notes that the Philippines has withdrawn its vessels, and that Philippine fishing vessels were advised by authorities not to go back to the area because of the bad weather. MFA said that this is an effort in the right direction and will help ease tension and maintain tranquility in the area.
8. Embassy asked what is making it difficult for China to withdraw its government vessels now that Philippine vessels have left. MFA responded that the incident raised alarm in the Chinese public that the island might be lost to the Philippines and so the Chinese side has to keep alert because of the incident. Even during the Philippine president's address (SONA), he referred to Huangyan Island as the "backyard" of the Philippines, which means that the Philippine government will continue to exercise its "so-called" sovereignty.

9. MFA said that China is unsure of the intentions of the Philippines, and suspects that the Philippines will pursue its sovereignty claims over the Scarborough Shoal. Chinese vessels will not leave the area and will stay until there is no danger. To this, the Embassy asked what the Chinese view as danger. MFA replied by saying that this means a threat to their sovereignty. What are the intentions of the Philippines on sovereignty?
10. Embassy said that China's long and great civilization has made its people and diplomats fine and subtle, so they should be able to read into what the President said, by specifically mentioning that the Philippines continues to talk to China. The media seems to have lost this, but the MFA should note that part. Furthermore, the Filipino people are reasonable and peaceful people.
11. Embassy added that even Vice Foreign Minister Fu Ying stated that no one can give in when we talk about sovereignty, but would it be possible to set aside the issue for now so that the process can move forward? Years ago, fishermen from both sides were able to fish freely and there was even a barter system going on where fish are bought and sold by the two sides. What would it take for Chinese vessels to leave the area?
12. MFA stated that as recently as 2011, the area was in tranquility because sovereignty was not under threat. However, **China will adjust deployment there, based on its own judgment of the situation**. Philippine vessels, even fishing vessels, should not return to the area. (Later on): If China feels that its sovereignty over Huangyan Island is not threatened, then perhaps the two sides can talk about the possibility of Philippine fishing vessels in the area, **under the condition that Chinese sovereignty is guaranteed**. We can find a way to accommodate fishing interests. The most important is to guarantee sovereignty, safety and security.
13. MFA said that the issue of sovereignty is very sensitive to China because of its history, especially its recent history of humiliation by foreign powers when Chinese territories were lost, even to foreign powers smaller than China. This is deeply-rooted in national sentiments and this is why in the 21st century, China cannot afford to have even a small part of its territory lost to other nations. MFA reiterated, however, that they will make adjustments according to their judgment of the situation.
14. Embassy conveyed to MFA the need for China to look at the issue from the Philippine viewpoint, particularly the threat we feel over the presence of Chinese vessels so close to us. Embassy noted that when people are threatened, they will react, and so there is a need to address the source of the threat. Filipinos are natural sea people and seafarers. Except for the Mountain Province and certain areas in Mindanao, any point in the Philippines is never more than 2 hours away from the sea.
15. MFA emphasized that Chinese government vessels are unarmed and so do not pose a threat. Vessels are there only to regulate their own activities under their territory. As long as the Philippine side does not do anything (referring to lack of Ph vessels in the area), then the current momentum (of easing tension) can be maintained. As to the threat perception, many Chinese fishermen are being captured

by foreign countries (including the Philippines) while there has not been any report of China holding even one Philippine fisherman. So who is threatening whom?

16. The Chinese side said that there are only about 2 or 3 Chinese government vessels there at the moment, that there are no Chinese fishing vessels because of the unstable weather. The Embassy repeated its explanation on the perception of threat because of the proximity to the Philippines of Chinese government vessels. Perhaps they can stay further away.
17. Embassy said that the current situation is imposing financial burdens on Filipino fishermen who only want to make a living. Is there any way for the situation to revert back to the period before the incident took place on April 8? MFA asked if fishing is the primary interest of the Philippines on this issue. Embassy replied that Philippine concerns about the issue are most likely similar to Chinese concerns.
18. MFA reiterated the three points raised by VFM Fu Ying during her first meeting with Ambassador Brady: (1) not to allow more disturbances in the area; (2) not to release "stimulating" rhetoric about the issue; and (3) concentrate on developing the bilateral relationship between the two countries.
19. Embassy brought the idea of receiving a gesture of goodwill from the Chinese side, given that the Philippine has consistently demonstrated its own clean intentions, particularly through the withdrawal of its own vessels. Embassy noted that the London Olympics could provide an opportunity for such "goodwill" from the Chinese side (to quietly leave the area) while everyone's attention is focused on the games. MFA replied that what is important at this point is for the Philippine side not to force the Chinese side to make new reactions.
20. Embassy requested the Chinese side not to divulge the results of the meeting to the media, and noted that the Chinese have hurt the feelings of the Filipino people. For instance, the Chinese media say things about the Philippines and the Filipinos, and insult our leaders such as the President Aquino and SFA. Embassy noted further that Chinese senior officials are not attacked personally in Philippine media.
21. Another instance is the article about aid to the Philippines. The Chinese side should remember that the Philippines is paying for this aid.
22. MFA said that there are so many people talking in the media, many of whom take a hardline position. The Embassy urged the MFA not to believe everything reported in the media, that if they have a question, they should ask the Embassy.
23. MFA responded that while some Chinese people are angry about the situation, the Chinese government has been prudent and cautious. It has not issued any economic sanctions, nor has the MFA issued any travel advisory against the Philippines. Chinese tourists are the ones who do not want to go to the Philippines because of their own concerns about safety.
24. China has benefited from the peace and security in the ASEAN region to show its peaceful rise. China should look at this again. Does China see the same future in the region as the Philippines? ASEAN as the security neighbourhood of the

Philippines is very important, and China should recall that the Philippines was one of the founding members of ASEAN.

25. Embassy reiterated its call for a gesture of goodwill from China. The Ambassador arrives in China with a lot of goodwill, so the Chinese side should take advantage of this period, and so that she and her counterparts can proceed to have their talks. MFA responded by saying that China hopes that the current momentum will be kept.

Annex 85

Department of Foreign Affairs of the Republic of the Philippines, *Notes on the 18th Philippines-China Foreign Ministry Consultations* (19 Oct. 2012)

SECRET

**NOTES ON THE
18TH PHILIPPINES-CHINA FOREIGN MINISTRY CONSULTATIONS
Manila, 19 October 2012**

1. Usec. Basilio presented the agenda and read the opening statement. She added that VFM's meeting with SFA gave some guideposts and showed how both sides can move the relationship to a higher plane.
2. The Philippines is proposing a new element: that the FMC meet twice, and use the 2nd meeting as a midterm review session. The bilateral relations have reached a crossroads. She acknowledged that the Chinese side has put forward some positive suggestions on how to move the process forward. The Philippines proposes that both sides should segregate the issue of WPS from the rest of the relations, and this was also discussed by SFA.
3. The Philippines saw in Vice Foreign Minister Fu Ying (VFM) the sincere desire to work with the Philippines closely and tread a new path. Both sides need to define which path to tread at the crossroads. The Philippines would like to believe China also wants to enhance our friendship. Both sides also work within the regional and multilateral for a. So there are many areas where both countries work together.
4. Usec Basilio said that since both sides have a comprehensive agenda with little time, she would like VFM to spend time with Philippine cabinet ministers. She repeated that SFA already expressed to VFM his desire to put relationship on an even keel.
5. VFM said that she enjoyed the session with the Minister. She said she used to watch him from a distance, and finds that he is very gracious. She also said that she was really touched by his going to see Amb Brady.
6. VFM said that she hoped the Usec. will continue to support Amb Ma. She referred to Mr. Hong Liang as her boss. Dai worked with VFM Fu in London. Yang Li is a very young director of maritime affairs. He could work on everything on maritime issues. Yin is working on bilateral relations.
7. VFM said she believes both are still on track, although perhaps there is a slowing down in 2012. After arrival in Manila, VFM said she has met lots of people, who feel their relations are not affected at all (e.g. mining, etc.) Their activities are on-going. The relationship is very strong because of strong historical ties. SFA also mentioned this. VFM said both sides can go back to 10th century when we first started relations. She said she read Chinese

history books with details on who is the king, who moved, which cousin and which brother. In modern times, both countries are connected. She added that both sides have blood ties, and cultural ties. So Philippines is always high on China's priority of relations in the region.

8. VFM observed that when she was Ambassador in 1999, bilateral trade was US\$9 bn dollars. Last year it was US\$32 bn. Projects started in the sectors of culture and trade have grown by leaps and bounds. There were high expectations of President Aquino's visit to China. President Aquino's mother enjoyed a high reputation in China. And when the President came to China he attended many of the important functions for further ties. She referred to an important agreement between the two presidents.
9. She acknowledged that there have been some difficulties, like HK and a number of difficult moments. But both sides always managed to work things out, and both sides managed to work with care. When there is difficulty both sides always tried to help each other. Today the Philippines offered assistance to China, which is heartwarming as it shows mutual caring. On issues of China's concern, for instance on the Nobel peace prize, it was an obvious move to hurt China. China appreciates that the Philippine Government decided not to support.
10. VFM then referred to the problem of IT fraud. The Philippines helped to send the people back to China. One of my relatives got a phone call, threatened her, so she gave all her savings. China appreciates that the Philippines is able to help China.
11. She added that a good relationship is to not only work together in good moments, but also in difficult moments. Both sides have always been able to help and understand each other. So both sides are in full agreement that we should concentrate on moving our relationship forward.
12. There are now international problems. China is slowing down this year. Next year China needs to make sure that the economy stays on the right track, that problems do not affect it too much. At a time when all economies are moving down, China needs to defend the economy against any further impact from economic global difficulties. China agrees to separate issues and both sides can have a candid discussion and at the same time move forward with bilateral relationships. Chinese authorities have done a few things, the effect of which the Philippines will see in a short while.
13. VFM said that in the meantime both sides can move forward:
 - a. Increase exchanges. SFA invited FM several times, FM visited China formally last year and came to China with Ambassador Brady. The

Foreign Minister is considering seriously when to come back to return the visit. China looks forward to that. VFM said that she hopes that FM's visit would further lay the ground to solidify the relationship.

- b. China has also received feedback on interest about Chinese visiting the Philippines. MFA will keep DFA informed on visits after the congress.
- c. She also mentioned that she heard there is interest from some of her Philippine friends to visit China.
- d. Second both should implement the 5 year devt program. Both sides need to broaden cooperation and pay more attention to things that will improve the livelihood of people on both sides, and they should be effective.
- e. China would like to have early convening of JCETC – and projects agreed by leaders be given priority for implementation.
- f. VFM said that she received notes from State Grid which is having difficulty with their working visa in the Philippines. She expressed the hope that this problem will be properly handled. This is a very serious company. She mentioned to Sec Roxas – that the project is implemented according to contract. All training and security are according to contract. The board is all Filipinos and there is only 1 Chinese member. She observed that if a successful project gets into the trouble, the message to the market will be wrong and there will be a lot of speculations. State Grid has set forth the damage control process. She added that China is at the disposal of the Philippines if there are other offers of projects.
- g. China investing abroad is speeding up. According to China's 5 year program, at the end of that plan, this amount for outward investment will jump to 100bn. For Chinese investors, the Philippines is the nearer place to go to. She expressed the hope that Philippine businesses will also tap this opportunity because it serves the interest of both sides.
- h. China is also interested to have cooperation with judicial agency. She said that she would witness the exchange of MLAT ratification. Since China encounters cases in the field from time to time, hence China is agreeable to a legal framework.
- i. She said that she hopes the One China policy will continue to be respected, and the Philippines will handle the issue with Taiwan. There is now better dialogue with Taiwan, but there is in Taiwan

always a drive for independence. China urges the Philippines not to sign any agreement with Taiwan which has sovereignty implications.

- j. China hopes to expand people to people exchanges. The activities for YFE here needs to be carried out. China will work on the list of projects and if needed MFA will work on the companies and agencies concerned.
- k. China will encourage Chinese tourists to return to the Philippines. She said that she hopes the PH side will also warn Philippine companies and private sector to be prepared for arrival of Chinese tourists, since the growth of tourists in China is so strong.
- l. Tourism is an important area for cultural ties. VFM said she hoped Philippine Tourism Secretary will be in the Tourism Fair to promote tourism. China welcomes the minister to visit China; MFA can help in his visit to different cities.
- m. She expressed the hope that media will continue to have dialogue and pave stronger ground for people to people understanding. Past lessons show that any event can easily turn the relationship upside down. So it is important to have a strong relationship to withstand these events.
- n. Consular relationship can be strengthened. It is hoped that the agreement can be implemented soon.
- o. She said that both sides can have more exchanges in multilateral issues – China will suggest to have bilateral exchanges beforehand to prepare leaders. If there are differences and they are put on the table and in the media, then differences can be magnified and affect other members, so China prefers having candid discussions privately to deal with common issues and focus on unity and cooperation. China does not mind that the Philippines puts its views in the international arena but not in a confrontational manner.
- p. ASEM- China hopes to use this instance to send a signal to the market. VFM shared that she has had more discussions with EU member states who told her that SCS is more threatening than EU sovereign debt. So she corrected them.
- q. She agreed that it is a good idea to have two sessions. The decision can be taken based on the issues; on some issues the DG can head the talks, or the FMC can be held on the sidelines of a meeting.

14. Usec said she was glad both are on the same page. She then renewed the invitation to the leadership of the Chinese Government. She said the following:

- a. Early visit of the FM, to prepare for a visit of your leader here.
- b. Chinese leader to reciprocate the visit of President Aquino. So if the calendar of President Xi Jinping can accommodate it, he can come next year. FM can come to discuss, and he can visit at a suitable date convenient to FM.
- c. Exchanges of visits between China's parliament and two houses of congress. There is a very strong and very supportive friendship society in legislature of PH who wants to promote closer ties between the two countries, and the DFA works closely with them to ensure parliamentary friendship groups will have exchanges of visits. Some of them were in Beijing to launch YFE, they would like to continue dialogue with their counterparts.
- d. JCETC should convene as early as possible because it important for promoting trade and economic relations.
- e. Some programs of the YFE which the Philippines has set for itself for 2012 did not materialize, but the Philippines looks forward to the visit of the Shanghai Ballet. The Embassy and consulates have organized a number of activities but a lot are put on hold. Some have been organized.
- f. CAEXPO will feature the Philippines as country of honor, so the Philippines will participate in a big way. Usec expressed gratitude for this, as it will cement good relations, and send a positive signal and say that it is business as usual. The Philippine government strongly appreciates this.
- g. The Philippines is ready to host the Chinese delegation for JCETC. The Philippines is ready to meet with China in early December, or at a suitable date early next year.
- h. Both sides have signed a 5 year development program, and the Philippines looks forward to have the working group to go in tandem with other meetings in the economic field.
- i. The Philippines remains committed to meeting the trade targets of 2011, and hopes China shares the same commitment.

- j. The Philippines is ready to host the 5th JCA, and proposes collaboration in specific areas. The Philippines would like to see some movement here. DA is keen to meet with counterparts to promote agricultural cooperation.
 - k. P to p –
15. VFM said that she would forward the invite to new President. The new government will be formed in March, and will be interested to come in this direction of Asia. She will also forward the invite to NPC.
 16. VFM said that China agrees to allow the YFE agreements. However, the country stops next month. There are 20 days before Christmas, so China will check what can be implemented this year if not early next year.
 17. For now MFA is not yet sure who on the Chinese side will go to Guangxi for CAEXPO. Usually, Chinese leaders go by turn. China will work to improve Philippine image. There is a long queue for ASEAN to join the expo in Nanning because of the sales they generate. For instance, Malaysia has a long queue to get in.
 18. State grid – VFM said that this is a very interesting difficulty. Both sides need to discuss this candidly – China would like to be clear if this just a technical problem, or a political problem. China needs to know who to talk to about this. Mr. Roxas raised some issues in Nanning, VFM checked and saw that those issues he raised were not true information. This project is successfully implemented – for instance, after a typhoon, power is immediately restored. State Grid does not do a lot abroad, so State Grid is giving a lot of attention to this project in the Philippines. State Grid is on the verge of deciding if they should continue because if they do not have enough – if they do not have people on the post because these people are waiting for their visa, then this is dangerous for the post. On the subject of training, State Grid has offered training places, so there is no such thing as China controlling the Philippine grid.
 19. There is no problem at all, 526 people have been trained in China. They received 120 delegations already. They have also sent 6 groups of CH experts to provide technical advice. Per NGCP management system, the main control room is operated by the Filipinos. And the Chinese are also extending technical support to the Philippines. She recalled that Secretary Roxas said we could put CCTV in the control room. VFM said that this is a security decision to be taken by the Philippines if it wants to have CCTV in the room. She observed that there are too many rumours surrounding the project, but China will abide by the Philippines' security interests and decisions.

20. Now SVEG visas have been removed. VFM said that State Grid employees always have difficulties applying for visas, and they are worried. Can they continue to have management of the grid? If there are political problems, both sides should discuss; but if the problem is technical, then the NGCP can deal with it. There are a lot of rumors, even Secretary Roxas thought that China is controlling the Philippine grid. State Grid is one of the top 500 companies in the world.
21. Usec Basilio suggested that this issue could be mentioned in the meeting with ES and Mar Roxas. She said she would also mention the discussion now. She informed the Chinese side that it is the ES and the Office of the President that approves the issuance of 47(a)2 visas, upon approval of DOJ. Usec Basilio said that the DFA can try to work out a system to make it easy to grant these visas. She also informed the Chinese that all those who apply will be granted visas for as long as the authority is given.
22. Usec Basilio pointed out the need to establish a tourism working group so that we can go towards the target of two presidents.
23. VFM said that she would forward the proposal. She said that she thinks it is a good idea to have a working group on tourism. She also observed that both sides need to work fast to catch the upcoming holidays.
24. VFM also said both sides need to have the JCETC.
25. VFM said that China has a maritime fund in China, and urged the Philippines to submit good projects if the Philippines has some to propose.
26. Usec Basilio pointed out that DOST would like to have a revitalized relationship in S&T, and that in this regard, the Philippines would like the immediate convening of the 14th Joint committee on S&T. An initial exchange of views can be made to give some direction to S&T cooperation.
27. Usec also pointed out that in judicial and law enforcement cooperation, she recalled that she mentioned the need for enhanced cooperation in law enforcement. She then reiterated the proposal for the authorities to hold exploratory talks to gain information on relevant practices and laws of both countries. She said that this should be a preliminary step towards negotiating a TSP. She reiterated the invitation for the Chinese Justice Minister to visit the Philippines, and the need for both sides to study how to sustain judicial and legal cooperation between the two countries.
28. Usec expressed how pleased the Philippines is in the ratification procedures of MLAT and that the Philippines looked forward to exchange of instruments. This is important to aid both countries in the fight against transnational crime.

The Philippines has also translated these actions into regional initiatives, including within ASEAN also.

29. Usec Basilio said that two defence ministers have met on the sidelines of Cambodia, and said she hoped this exchange would be sustained.
30. VFM said she fully supported the idea on S&T cooperation. There are 44 projects which have been very successful. She said the Chinese side would study how soon we can open the 14th meeting.
31. VFM said that the defense dialogue was held in Manila last year. China has an invite for defence minister, and they hope to have a meeting again next year in China. She observed that the meeting in Cambodia was good, but the media took more things than what was really there. She said that if the media misinterpret things, then it will take time for us to clarify things again to each other.

MARITIME

32. Usec reiterate what SFA said: because of the Philippines' keen desire to move the process forward, it is important to have mutual trust and common understanding of the situation in WPS. Perhaps as the Philippines has proposed earlier, the Philippines would like respect for its EEZ, the Philippines would like to see removal of CH vessels, because this will be an indication to the Filipino people that there is a return to normalcy in our relationship so that we can sleep well without fear that something bad can happen.
33. The Philippines has expressed with candor its views on the need for normalcy, for which the removal of the ships would be a visible symbol. Both sides should spend time working on the effective implementation of projects. These would be reassurance of our friendship and our trust in each other. We have been traditionally close. Many Filipinos of the ilustrado class were of Chinese ancestry. The women who wrote a letter asking for women's rights in the Philippines were of Chinese ancestry. Because of all these familial ties, we have a keen desire to have normalcy. The Philippine side asks that this message be brought to the Chinese government. If the vessels are not there anymore, both sides can look to projects which can be mutually agreed upon in the context of the declaration (DOC), and the early conclusion of the COC. Perhaps there are ways of setting aside that matter so that bilateral relations can flourish. It is important that the vessels must leave and the rope barrier should be taken out, and return to the status quo ante. Let us go back to the situation before the vessels were there, because this will send a good signal to those who are watching and those using the sealanes. The spirit of cooperation is there and we are willing to work together – to bring peace and

stability in the region. This is our aspiration – because the Philippines did not take drastic action there. We are diplomats so we know that peace is important.

34. In the ASEAN maritime forum and the expanded forum, the Philippines thanks the Chinese Government for sending Ambassador Chen – these two meetings were platforms for cooperation, and we took a look at the WPS/SCS as an area where we can promote and protect biodiversity. The Philippines and China can work together, in areas like scientific activities for the health of the coral reef – since the Philippines is a staunch advocate of the protection of the coral reef.
35. Usec Basilio mentioned an example of a collaborative activity, like the establishment of a marine peace park to preserve the features for future generations. This was the key message which came out from the forum.
36. Usec Basilio observed that this would be a signal contribution of China and ASEAN, and we will be the darling of the environmental world.
37. She reiterated that both sides can think about peaceful ways of protecting the seas.
38. She said that the SFA has given China the main principles that should guide both sides when talking of the WPS. By the four items mentioned, we can go to the meetings of ASEAN to engender the spirit of cooperation in ASEAN so we can work on a credible and effective COC. And with all the positive developments, Usec Basilio said that she was personally very happy that both sides can move the process forward, which will be our legacy to our two peoples.
39. VFM said that both sides have discussed this through many rounds, and that she listened to the SFA. For us as diplomats, she said that she found it unfortunate that our relationship is so affected by this incident. If the Philippines were to check its relationship with neighbours, China is never one to provoke. But it is very hard for China not to react. For the HYI, it is not the first time, this is not 1st time both sides discussed the issue. In 1999 she also explained to the Philippine side why HYI belonged to China.
40. Now the Philippines is claiming that according to UNCLOS it belongs to the Philippines. This is a misreading. If the Philippines insists in owning it, it will be very hard to have a good arrangement in the area.
41. The reason we are where we are is because we deviate from earlier understanding. The problem for China is that the military was there for three days. For China the trust level is very low. China is very concerned that there will be a repetition of the same things happening. She asked since

when is the Philippines controlling that island, China needs to know when the Philippines started to treat the islands as its own.

42. She said China does not feel comfortable going back to status quo. The Philippines' status quo is Philippines owning it, this is China's impression. VFM said she finds it difficult to have a clearer understanding at this stage. She suggests that both sides move on with bilateral relations, and both sides should let the trust level grow. She said that if there is a strong foundation, then both sides can handle the differences. VFM said that she agrees on the need to protect species in the area. China never allowed big boats in to the lagoon. After the typhoon China has dissuaded its fishermen from going into that lagoon, and China asks that the Philippines not let its fishermen go there. For marine protection this would also be a good idea.

43. So these are the positions of the Chinese Government:

- ▶ We need a good trust level.
- ▶ China cannot let their vessels leave because of their concerns. VFM said she has discussed this with the fisheries administration – they accept that fishermen can be asked to go into other areas. For marine bureau, they don't have any trust in the situation so they will stay for a longer period of time.
- ▶ She said "I don't know, we have to discuss and we have to see how the situation evolves".
- ▶ The Philippines mentioned the obstacles at the mouth of the lagoon – the fishermen tied the ropes at the mouth when we had a problem – when we had a problem with CG and BFAR vessels inside. They were armed and they threatened the fishermen, there were problems. This (the rope barrier) does not exist anymore. On China side, we feel there is this constant sense of feeling that as soon as we leave we will lose that island. We have huge pressure from public about losing territory in the 21st century. In the 19th and 20th centuries, we have lost but not in 21st century.
- ▶ We are at least glad that things are coming down there is tranquility, we prefer to see calmness stay on. According to maritime bureau report, they report that there are Filipino ships trying to approach them, the danger is still there so there is a possibility of friction. This is part of the worry and reasons so maritime bureau cannot reduce presence in the area. A few weeks or days ago they were on the verge of sending more ships there, because of reports. MFA prefers to have calming down.

44. She said that she agrees that we should work on COC. She said that she worked with Mr. Hassad in Beijing. 29th is SOM for general discussions, and China thinks there can be an informal meeting. During this time, there can be an informal discussion on COC again. She said China's concern is China was committed to COC in Vietnam, but in Cambodia the MFA lost support for authorization to pursue it because of the strong rhetoric on SCS and the specific issues. So the Chinese side at inter-ministerial meetings, VFM got a lot of questions from other agencies – whether other ASEAN members abide by DOC and COC, and is China the target or is China party to the Declaration. VFM said that she would like to hear from ASEAN countries that they are equal members and are party to agreements.
45. For COC it is dangerous for ASEAN to make guidelines and put it on the table and to put this in front of China. VFM said she has to come up with guidelines which all ministries have to approve. She said she would rather come with a clean paper, then there can have candid discussions. She said she hoped there can be a common draft. She needs to negotiate with ASEAN and then negotiate back home. So let all work for a healthy negotiation on COC, build confidence and understanding process for negotiations.
46. VFM said she is glad both sides can focus more on bilateral relations – it is ok if both sides disagree, but both sides can continue discussions on the differences. In the meantime both sides can continue bilateral relations, and there is no reason both sides cannot work out a solution.
47. Usec Basilio said that on COC, it has always been the aspiration of China and ASEAN to work towards a COC. When we were talking about it at the time, we also had some problems about Mischief Reef. We wanted a COC but it was watered down to a declaration. The Philippines shares the Chinese view, the Philippines has in fact given them (ASEAN) a draft COC, it is always a give and take. The Philippines gave up 18 proposals and got one or two in. That is how it is done. But we agreed upon some ideas what can be tossed around and put in the discussions. ASEAN is also awaiting from China its views and what China wants to see in the COC.
48. As in all negotiations, Chinese proposals may garner some support, others may not be accepted. In the spirit of cooperation and trying to garner support, if you are state party to DOC and you will be state party to the COC. So we will look at what China wants to see. We (ASEAN) have yet to see or hear China's proposals – it is in this spirit that the Philippines... China can count on the support of the Philippines on going to negotiations with an open mind. We will work together to craft a COC that will guide our actions.

49. On the WPS – When we came back we had a transcript of the conversation. We reported to the SFA what China's message is. The allegations (on the rights violations on the fishermen) are not true. The Philippines has photos.
50. The Philippines enforces the rights of Filipino fishermen who are there, and of fishermen from other countries. If BFAR is there the Philippines enforces our laws. There are certain laws which let the countries enforce their rights in the EEZ, and of course there is the UNCLOS.
51. The Philippines asked former Secretary Domingo Siazon about an agreement in 1997, and for MFA Scarborough Shoal is a red line. There is no agreement between Chinese MFA and Philippines. We do not want to debate the issue in public or in this forum. There are other venues for this like international arbitration.
52. There are two distinct regimes:
- sovereign jurisdiction
 - territorial sovereignty over the rocks.
53. These are the basis of our claims: the continental shelf of Masinloc, Zambales. That is the basis of why we always we say that BDM belongs to the Philippines – the continental shelf from the Luzon area in Zambales. My forbears are from that place so I am very familiar with the place.
54. On treaty obligations – like ZTE, JMSU, Northrail. What the SFA earlier said is that the Philippine Government does not inherit corrupt practices and agreements. The Philippines is amenable to joint ventures and welcomes investors from China; those given Service Contracts are encouraged to do so. The engagement of Chinese corporations will provide another platform to engage each other to the mutual benefit of all companies with whom they cooperate. CNOOC is encouraged to participate in the Reed Bank. I hope the discussions between the corporations will mean that we can work closely with CNOOC so they can all participate in the development of the Reed Bank. There is natural gas there, given the need for sources of energy, it's good to encourage your company to be part of the business venture.
55. Usec Basilio said that VFM has mentioned that the BDM under the Treaty of Paris is outside the Philippines. Even in prehistoric (sic – prehispanic) times, it (our ownership) was there. We had lighthouse, the Spanish have used that. Different nationalities always go there to seek shelter even historically. So when we were ceded by Spain to US, and, in 1946, the Philippines inherited rights and possessions from the US.

56. This matter of sovereignty and sovereign rights can be properly addressed by going to the appropriate courts. Independent judges can sit, both our sides can do briefs. We reiterate the invitation to go to court.
57. The Philippines has BFAR which implements fisheries code. As a law enforcement agency, they have the right to carry firearms. They did not threaten Chinese fishermen. The rope is a serious provocative act. Why don't both sides return to the time before these things happened. As the Chinese know, the Philippines is visited by typhoons. We want to avoid fishermen dying. We need to give them a haven. For the sake of safety, Usec said it is important for the barrier to be removed.
58. The Chinese said the barriers are no longer there. Usec said we had a fly by recently which confirmed that the barriers are still there.
59. VFM said can we have a good agreement on the Spratlys. She also said, regarding the explanation the Chinese side keeps hearing the Philippine position, which confirms her fears (on our intention to keep asserting our ownership).

SECRET

**NOTES ON THE
18TH PHILIPPINES-CHINA FOREIGN MINISTRY CONSULTATIONS
Manila, 19 October 2012**

SUMMARY

1. **Common desire to tread a new path.** Vice Foreign Minister Fu Ying (VFM) reiterated the historical, cultural, and blood ties between PH and China which has kept bilateral relations on track. VFM acknowledged the difficult moments in the bilateral relations but also the willingness of both sides to assist each other.

PH saw in VFM the sincere desire to work with PH closely and tread a new path. China agrees to separate issues so both sides can have a candid discussion and move forward with the bilateral relationship.

2. **Increasing bilateral exchanges.** VFM took note of President Aquino's visit to China where the President attended many important functions to further bilateral ties. The following were discussed to increase bilateral exchanges:

- Foreign Ministry Consultations (FMC). PH proposed that the FMC meet twice a year using the 2nd meeting as a midterm review session. VFM agreed to the idea.
- Visit of Chinese FM and President. VFM said the Chinese Foreign Minister is seriously considering when to visit PH. Usec. Basilio expressed her hope for an early visit of the FM to prepare for a visit by the Chinese President. VFM said that she would forward the invitation to the new President.
- Years Friendly Exchanges (YFE). VFM said the activities for the Years Friendly Exchanges (YFE) need to be carried out. China will work on the list of projects and if needed MFA will work on the companies and agencies concerned.
- Visit of PH Tourism Secretary. China welcomes the Tourism Secretary to visit China and MFA can help in his visit to different cities.
- Parliamentary Exchanges. Usec. Basilio said there is an interest from PH legislature to promote closer parliamentary ties between the two countries. DFA is working closely with them for exchanges of visits.
- Defense Exchanges. Usec. Basilio said the two defense ministers met at the sidelines in Cambodia, and said she hoped this exchange would be sustained. China has an invite for the PH defense minister and hope to have a defense dialogue again next year in China.
- Judicial and Law Enforcement Exchanges. Usec. Basilio mentioned the need for enhanced cooperation in law enforcement. She then reiterated the proposal for exploratory talks to be held as a preliminary step towards negotiating a TSP. She also reiterated the invitation for the Chinese Justice Minister to visit the Philippines, and the need for both sides to study how to sustain judicial and legal cooperation. Usec. Basilio also expressed how pleased PH is in the ratification procedures of MLAT.

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3. **Strengthening economic relations.** VFM said both sides should implement the 5-year development program and broaden cooperation. The following were discussed to strengthen economic relations:

- Joint Commission on Economic and Trade Cooperation (JCETC). China would like to have early convening of JCETC and projects agreed by the leaders be given priority for implementation. Usec. Basilio said PH is ready to host the Chinese delegation for JCETC in early December, or at a suitable date early next year.
- China-ASEAN Expo. CAEXPO 2013 will feature PH as country of honor. Usec. Basilio expressed gratitude for this, as it will cement good relations, and send a positive signal and say that it is business as usual. VFM said China will work to improve PH image. There is a long queue for ASEAN to join the expo in Nanning because of the sales they generate.
- Tourism. China will encourage Chinese tourists to return to PH. VFM said she hopes PH will be prepared for arrival of Chinese tourists, since the growth of tourists in China is so strong. Usec. Basilio proposed establishing a tourism working group to meet the 2016 target. VFM replied she would relay the proposal.
- Science and technology. Usec. Basilio said the Department of Science and Technology (DOST) would like to revitalize S&T cooperation and convene the 14th Joint committee on S&T. VFM said she fully supported the idea and the Chinese side would study how soon we can convene the 14th meeting.
- Joint Committee on Agriculture (JCA). PH is ready to host the 5th JCA, and proposes collaboration in specific areas.
- State Grid Issue. VFM said that she received notes from State Grid which is having difficulty with their working visas in the PH. She expressed hope the problem will be properly handled. China would like to be clear if this just a technical problem, or a political problem. Usec. Basilio suggested that this issue could be mentioned in the meeting with the Executive Secretary and Secretary Mar Roxas. She informed the Chinese side that it is the Office of the President that approves the issuance of 47(a)2 visas, upon approval of Department of Justice (DOJ). Usec. Basilio said the DFA can try to work out a system to make it easy to grant these visas. She also said all those who apply will be granted visas for as long as the authority is given.

4. **Maritime Issues**

- ASEAN Maritime Forum (AMF) and Expanded AMF. PH thanks China for sending Ambassador Chen. PH and China can work together in areas like scientific activities for the health of the coral reef – since PH is a staunch advocate of the protection of the coral reef.
- West Philippine Sea. Usec. Basilio mentioned the following:
 - Because of PH's keen desire move the process forward, it is important to have mutual trust and common understanding of the situation in WPS. PH expressed with candor its views on the need for normalcy. It is important that the vessels

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must leave and the rope barrier should be taken out, and return to the status quo ante. BFAR, as a law enforcement agency, has the right to carry firearms. They did not threaten Chinese fishermen.

- The matter of sovereignty and sovereign rights can be properly addressed by going to the appropriate courts. Independent judges can sit, both our sides can do briefs. PH reiterated the invitation to go to court.
- PH is amenable to joint ventures and welcomes investors from China. CNOOC is encouraged to participate in the Reed Bank.

VFM responded with the following:

- If the PH were to check its relationship with neighbors, China is never one to provoke but it is very hard for China not to react. She said China does not feel comfortable going back to status quo. China's impression is the PH status quo means PH owning Huangyan Island (Bajo de Masinloc). For China, we need a good trust level. According to a Chinese maritime bureau report, there are Filipino ships trying to approach them. There is a possibility of friction. This is one of the reasons the Chinese maritime bureau cannot reduce presence in the area.
 - The Chinese said the barriers are no longer there. (Usec. Basilio however said PH had a fly by recently which confirmed that the barriers are still there)
 - VFM also said the Chinese side keeps hearing the PH position which confirms her fears of PH intention to keep asserting ownership.
 - VFM said that she agrees on the need to protect species in the area. China never allowed big boats in to the lagoon. After the typhoon, China has dissuaded its fishermen from going into that lagoon, and China asks PH not to let its fishermen go there.
- Code of Conduct (COC). VFM said that she agrees that we should work on COC. She said China's concern is China was committed to COC in Vietnam, but in Cambodia the MFA lost support for authorization to pursue it because of the strong rhetoric on the South China Sea (SCS) and the specific issues. VFM said it is dangerous for ASEAN to make guidelines and put it on the table and to put this in front of China. She needs to negotiate with ASEAN and then negotiate back home.

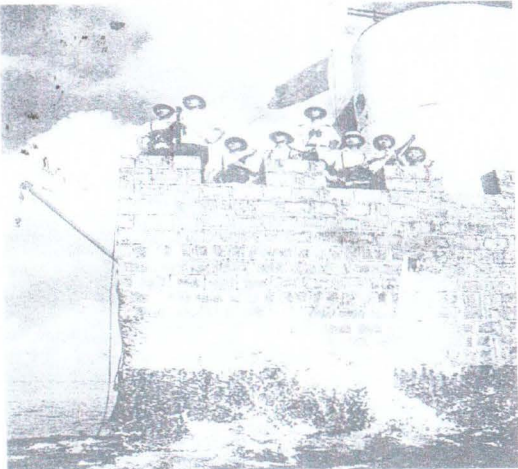
Usec Basilio said it has always been the aspiration of China and ASEAN to work towards a COC. PH shares the Chinese view, PH has in fact given ASEAN a draft COC. PH gave up 18 proposals and got one or two in. ASEAN is also awaiting from China its views and what China wants to see in the COC. China can count on the support of PH on going to negotiations with an open mind.

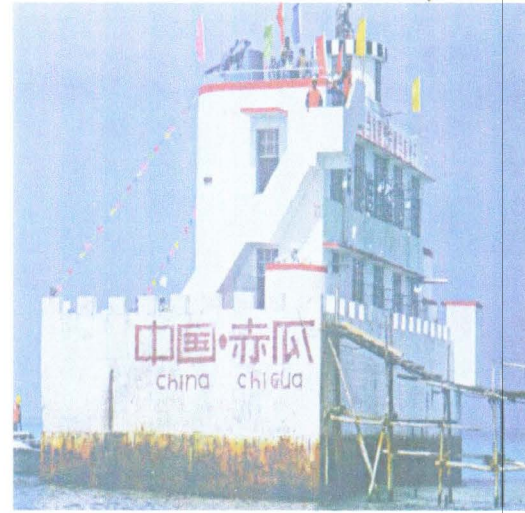
5. **On the One-China Policy.** VFM said that she hopes the One China policy will continue to be respected, and PH will handle the issue with Taiwan. There is now better dialogue with Taiwan, but there is in Taiwan always a drive for independence. China urges the PH not to sign any agreement with Taiwan which has sovereignty implications.

Annex 86

Armed Forces of the Philippines, *Matrix of Events: Chigua (Kennan) Reef* (2013)

CHIGUA (KENNAN) REEF

TIMELINE	DEVELOPMENTS	PHOTOS	SOURCE
<p>1988</p> <p>Mar 1988</p>	<p>Believed year of occupation of Chigua Reef.</p> <p>The Chinese built another outpost and was reported to be conducting survey operations at Chigua Reef.</p>		<p>N2 Report: Analyzing China's Intention in the South China Sea, 1997</p>
<p>1991</p> <p>1991</p>	<p>Flag fluttering under construction in the Red Reef (1991); Nansha Islands, Chigua Jiao, under construction.</p>	 <p style="font-size: small;">南沙群島の中国が建設した人工的領土施設。1991年の「解放軍面報」で報じられたもの。赤瓜礁が領土争いとなっている。</p> <p style="font-size: x-small;">国旗飘扬下，建设中的赤瓜礁（1991） http://www.nansha.org.cn/2005-01-10</p>	<p>Kyodo News, http://www.nansha.org.cn, Retrieved on 20 Oct 2013</p>



Chigua Reef,
<http://www.interacksyon.com>, Retrieved on 20
Oct 2013

2004

2004



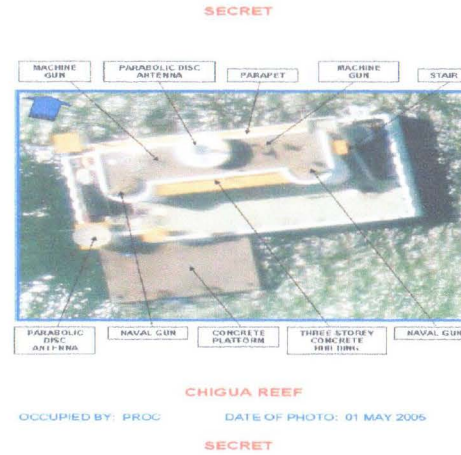
Chigua Reef,
<http://www.interacksyon.com>, Retrieved on 20
Oct 2013

2005

01 May 2005

Sighted by PAF aerial survey were three-storey concrete building, 2 parabolic disc antennae, naval guns, machine gun, parapet and concrete platforms, among others.

PAF Aerial
Surveillance dtd 01
May 2005

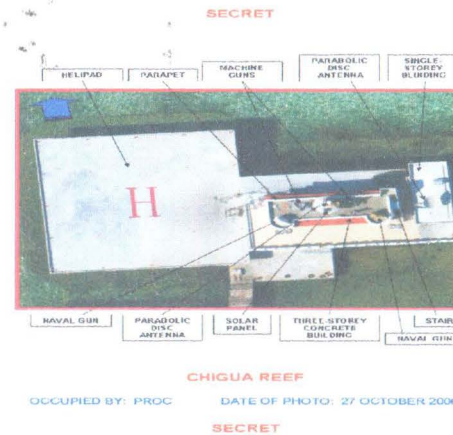


2006

27 Oct 2006

PAF aerial surveillance conducted showed a helipad, parapet, three-storey building, a single-storey building, 2 parabolic disc antenna, naval guns and a solar panel.

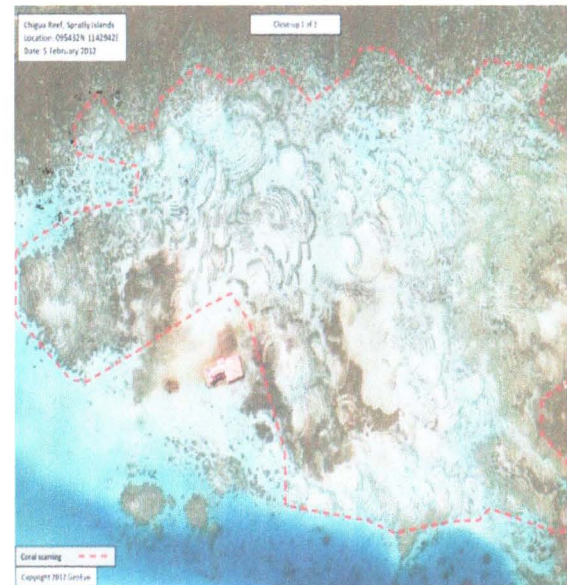
PAF Aerial
Surveillance dtd 27 Oct
2006



2011**29 Mar 2011**

Mobile communication station was also installed at Chigua Reef along with other Chinese-occupied features in the Spratlys.

N2 Special Report on China's "Blue Army" and Installation of Base Transceivers Station (BTC) in the Spratly Islands dtd 06 Oct 2011

2012**Feb 2012**

Chigua Reef,
<http://www.interaksyon.com>, Retrieved on 20 Oct 2013

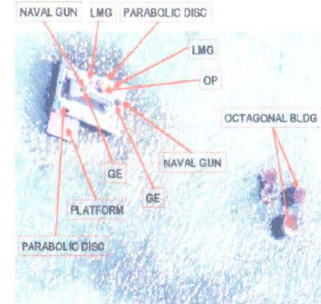
REEF SUPPLY AND FORTRESS PLATFORM

CHIGUA REEF / DONG MEN JIAO REEF

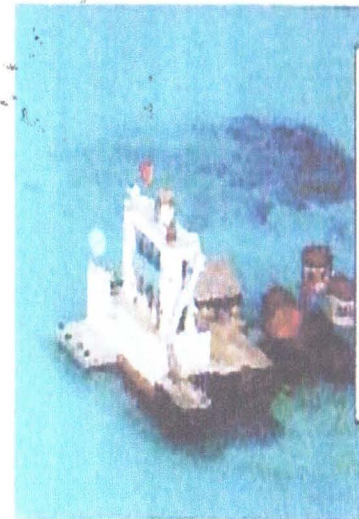
LMG:
Light
Machine
Gun

GE:
Gun
Emplacement

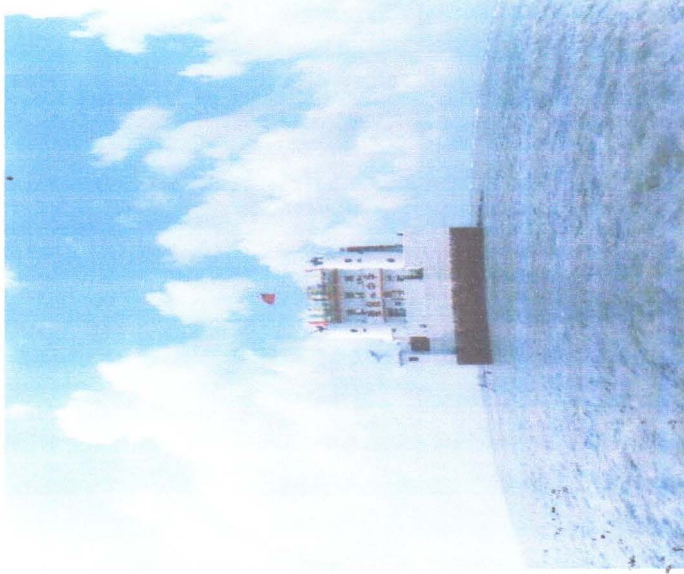
OP:
Observation
Post



Chigua (Kennan)
Reef,
http://community.middlebury.edu/johnson_south.html, Retrieved on
20 Oct 2013



Name: Johnson South Reef
Location: 270 nautical miles
west of Palawan
Fortifications:
AA Gun;
2 Naval guns;
Anti-aircraft gun
emplacements.



2013

Chigua Reef has also evolved into a developed Chinese-occupied feature in the Spratlys as of this date.

PAF Aerial Patrol over the KIG, Feb 2013

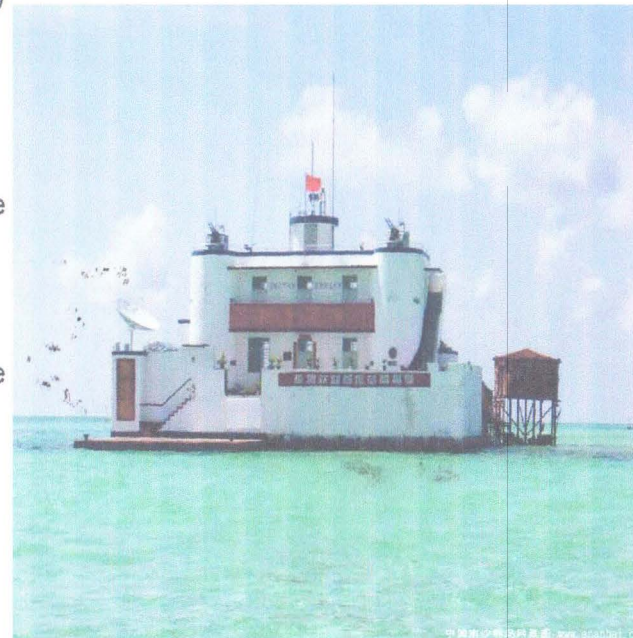
Structures sighted at Chigua (Kennan) Reef as of Feb 2013:

Buildings:

- one (1) three-storey concrete main building
- one (1) rectangular single-storey concrete building
- one (1) concrete platform
- one (1) concrete 40m x 40m helipad
- one (1) concrete light post
- three (3) solar panels polycrystalline-type power supply
- one (1) power house

Communications:

- three (3) dish antennas
- one (1) weather radar
- one (1) solar-powered weather instrument
- one (1) UHF/VHF
- seven (7) dipole antennas
- one (1) directional antenna
- one (1) communication tower antenna



Defense:

one (1) observation tower on top of main building
two (2) CCTV cameras

Military Hardwares:

two (2) ZPU 57-2 Anti-Aircraft Artillery (AAA)
two (2) QJZ 89 12.7mm HMGs

Others:

one (1) basketball court

Other Information:

Location: **9°53'N 114°27'E**

Description: Chigua Reef lies 254 nm west of Puerto Princesa or 590 nm southeast of Hainan. The area is approximately 24 meters x 43 meters.

It is naturally above water especially at low tide.


Occupier/Date of Occupation: **PROC 1988 (Mid-March)**

A Geographical Description of the Spratly Islands and Account of Hydrographic Surveys Among Those Islands by David Hancox and Victor Prescott (1995) from International Boundaries Research Unit, Maritime Briefing Vol. 1, Number 6, p.6

Annex 87

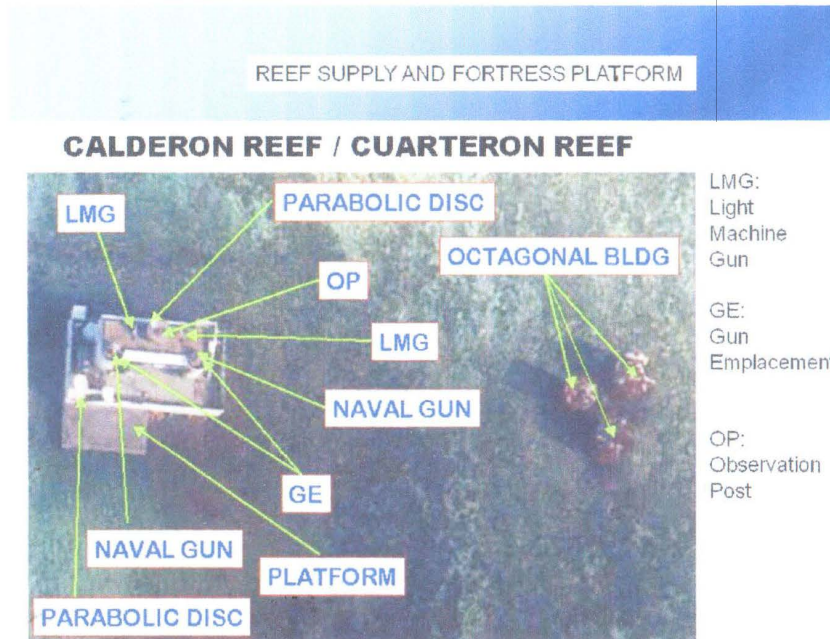
Armed Forces of the Philippines, *Matrix of Events: Cuarteron (Calderon) Reef (2013)*

CUARTERON (CALDERON) REEF

TIMELINE	SIGHTINGS AND CONSTRUCTION DEVELOPMENTS	PHOTOS	SOURCE
<p><u>1988</u></p>	<p>China was believed to have occupied Cuarteron Reef.</p>		<p>N2 Report: Analyzing China's Intentions in the South China Sea, 1997</p>
<p><u>1992</u></p>	<p>Three (3) buildings were initially constructed at Cuarteron Reef.</p>		

1997

From the first three (3) buildings, the reef has now five (5) buildings, two (2) wharves, one (1) UHF/VHF antenna, parabolic disc, two (2) naval guns and two (2) gun emplacements. An outpost with three (3) housing modules and a hut were added to the structures thereat.



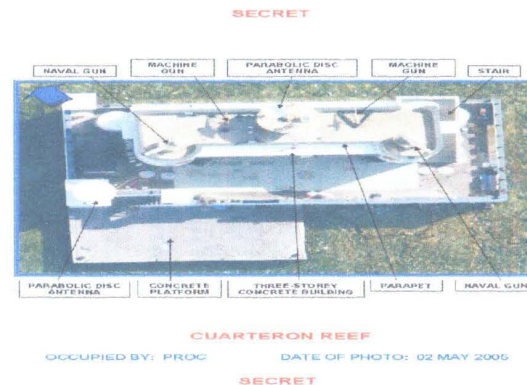
N2 Report: Analyzing China's Intentions in the South China Sea, 1997

Cuarteron Reef, <http://www.unahai.com>, Retrieved on 20 Oct 2013

2005

02 May 2005

PAF aerial survey conducted sighted a three-storey buildings a concrete platform, 2 parabolic disc antenna, 2 naval guns, a machine gun, and a parapet.



PAF Aerial Surveillance on 02 May 2005.

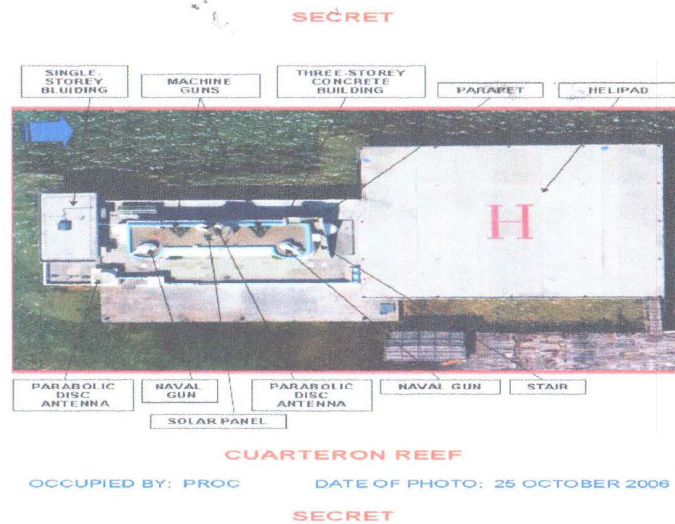
2006

25 Oct 2006 Aerial survey conducted by PAF sighted a three-storey building, a single storey building, 2 parabolic disc antenna, 2 naval guns, machineguns, a parapet, and a helipad.



Cuarteron Reef,
<http://www.unanhai.com>,
Retrieved on 20 Oct 2013

PAF Aerial Surveillance
on 25 Oct 2006



2012

26 Aug 2012

PLA Navy tugboat HUJU ATA 174 monitored transiting 17 NM north of Calderon Reef.

N2 Monitoring Report

2011

29 March 2011

China activated a mobile communications in Spratlys including Calderon Reef.

2013

27 Feb to 03 Mar 2013

Cuarteron Reef has also developed as advanced military outpost in the Spratlys.



Cuarteron Reef,
<http://www.unahai.com>,
Retrieved on 20 Oct 13.

Structures as of Feb to Mar 2013:

Buildings:

- one (1) three-storey concrete main building
- one (1) single-storey concrete building
- one (1) concrete platform
- one (1) concrete 40m x 40m helipad
- one (1) concrete light post
- four (4) solar panels polycrystalline-type power
- one (1) power house

Communications:

- three (3) dish antennas
- one (1) weather radar
- one (1) solar-powered weather instrument
- one (1) UHF/VHF
- nine (9) dipole antennas
- one (1) directional antenna
- two (2) long range Wi-fi dish antennas

Defense:

- two (2) observation towers on top of main building
- two (2) gun emplacements
- two (2) CCTV cameras

Military Hardwares:

- two (2) ZPU 57-2 Anti-Aircraft Artillery (AAA)

PAF Aerial Photo Coverage conducted over the West Philippine Sea from 27 Feb – 03 Mar 2013

N2 Report: Analyzing China's Intentions in the South China Sea (1997)



QUARTERON REEF

OCCUPIED BY: PROC DATE OF PHOTO 25 OCTOBER 2008

SECRET

- TWO (2) QJZ 89 12.7mm HMGs

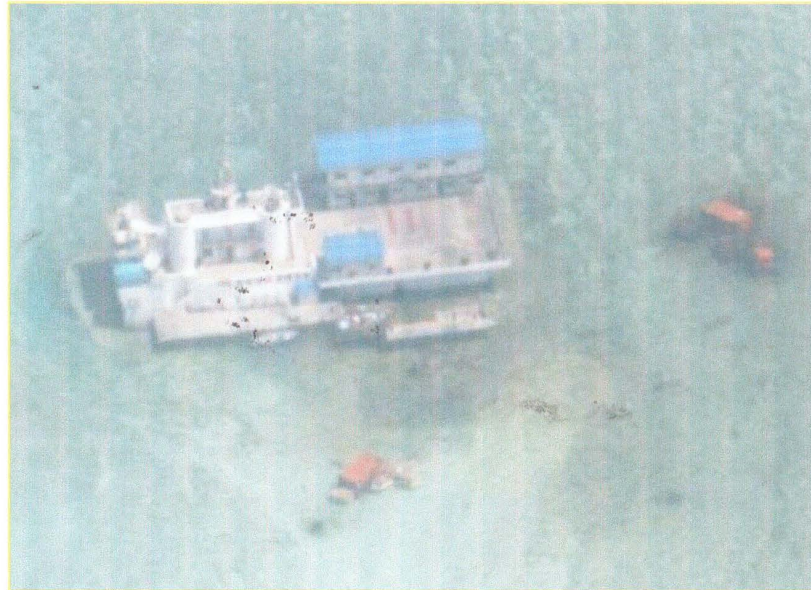
Others:

- one (1) basketball court
- 24m x 43m land area

01 Mar 2013 2 PLAN LSTs were sighted by PAF aerial survey

15 Oct 2013 PN and PAF aerial survey conducted sighted the following:

- Newly constructed two-storey building with approximately ten (10) rooms (up and down) built on the concrete helipad;
- Newly constructed one-storey building opposite the newly constructed two-storey building;
- One (1) square type structure situated near the docking area;
- Newly installed temporary pier (not concrete); and,
- Presence of barge (for hauling of construction materials) in the docking area.
- The two (2) new buildings on the helipad could have been



N2 Memo to FOIC re
Aerial Photo
Reconnaissance Over
Calderon (Cuarteron)
Reef dtd Oct 2013

conducted right after PAF conducted its aerial reconnaissance over the area on 01 March 2013 when no such buildings were sighted until September when two PLAN LSTs were reported to have delivered construction supplies to the reef. Further, the newly installed pier at the back of the garrison, presumed to be temporary since it is not made of concrete, was used during the docking and hauling of construction materials.

Other Information:

Location: 8051'N 112 49.7' E

Description: Cuarteron Reef is situated 353 nm west of Puerto Princesa City or 620 nm southeast of Hainan.

Occupier/Occupation: PROC 1998

N2 Report: Analyzing China's Intentions in the South China Sea (1997)

Annex 88

Armed Forces of the Philippines, *Matrix of Events: Fiery Cross (Kagitingan) Reef* (2013)

FIERY CROSS (KAGITINGAN) REEF

TIMELINE	SIGHTINGS/CONSTRUCTION DEVELOPMENTS	PHOTOS	SOURCE
<p><u>1988</u></p> <p>09 Feb 1988</p> <p>July 1988</p>	<p>Monitored date of China's occupation of Fiery Cross Reef.</p> <p>Three (3) JIANGHU class frigates, 1 YUKAN class LST, a replenishment oiler and a floating drydock were sighted near Fiery Cross Reef. Significantly, China was reported to be building a sea-lever oceanographic research station in said reef. A small naval post similar to the one constructed in Duncan Island in the Paracels was also built.</p> <p>An oceanographic observation post was completely built. The reef has a 300-meter pier capable of handling a 4,000 ton ship and can provide weather information even on the Pacific Ocean. Five (5) more buildings to the previous four (4) were added. The plant nursery has now roofings.</p>	<div style="border: 1px solid black; padding: 5px; text-align: center; background-color: #e0f0ff;"> <p>COMMAND CENTER / AIR and SURFACE RADARS / COMMUNICATIONS / METEOROLOGY MONITORING / CAN HOUSE 200 TROOPS / HELIPAD AND PIER / PLANTATION AREA</p> </div> <p style="text-align: center;">KAGITINGAN REEF / FIERY CROSS REEF</p> 	<p>N2 Report: Update of the Kalayaan Situation, 15 Sep 1994</p> <p>N2 Report: Analyzing China's Intentions in the South China Sea, 1997</p>

1992

1992

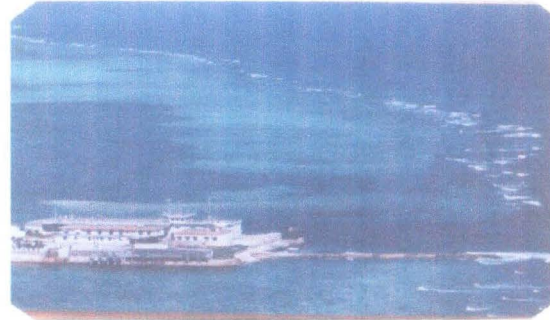
Structures sighted at Fiery Cross Reef included three (3) buildings, four (4) observation posts/towers, fuel depot/storage, a power house and a pier. Its communication system included an antenna and two (2) satellite disk types, while defense structures included five (5) gun emplacements and gun shelters. Military hardware found in Fiery Cross Reef were one (1) fast patrol boat, two (2) motorized boats, three (3) frigates and one (1) fast patrol craft.

N2 Report:
Analyzing China's
Intentions in the
South China Sea,
1997

1996

1996

PRC tugboat was noted moored at Fiery Cross Reef.



KAGITINGAN (FIERY CROSS) REEF

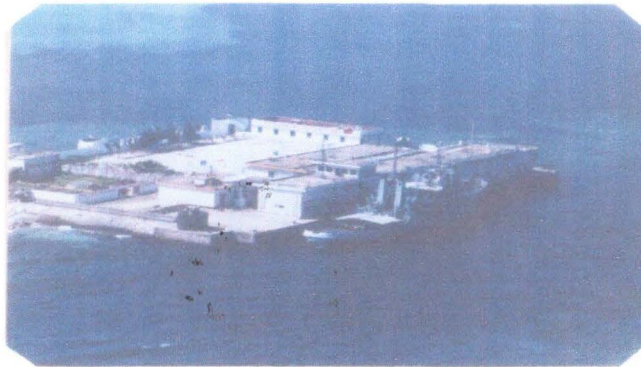


HUJIU CLASS OCEAN TUG (BN 156) MOORED AT KAGITINGAN (FIERY CROSS) REEF

N2 Compilation of Photos on Fiery Cross Reef



HUJIU CLASS OCEAN TUG (BN156) MOORED AT KAGITINGAN (FIERY CROSS) REEF



HUJIU CLASS OCEAN TUG (BN 156) MOORED AT KAGITINGAN (FIERY CROSS) REEF

1999

13 Jan
1999

A reliable foreign source disclosed that a JIANGHU I-class guided missile frigate was sighted in the vicinity of Fiery Cross Reef.

N2 Memo dtd 22
Jan 1999 re PLA
Navy Deployment
of a Kilo-class
submarine in the
KIG

25 Jan 1999	Aerial recon by Naval Intel revealed that there has been no development since the last sortie on 13 Jan 1999. The HUJIU-class ocean tug BN 156, JIANGHU I-class Guided Missile Frigate BN 558 and YANNAN-class Research and Survey Ship BN 24 are still moored in their previous locations in the reef.	N2 Ltr undated re KIG Update Nr 0199-002
<u>2000</u>		N2 Report: Chronology of Events in the KIG (1999 to 2000)
Sep 2000	China constructed a helicopter pad and installed a satellite antenna. The move was initiated to facilitate delivery of raw materials and provisions and to further enhance the defensive capability of Chinese forces manning the reefs.	
<u>2001</u>		N2 Report: Chronology of Events in the KIG (1999 to 2003)
29 Jun 2001	China has declared Fiery Cross Reef as the capital of the Spratly Islands.	

2004

2004

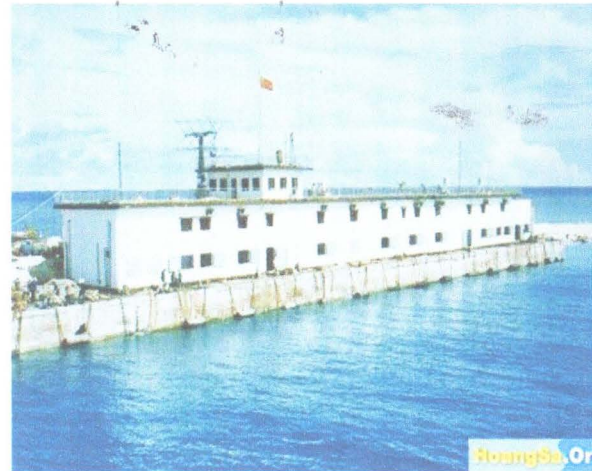


Fiery Cross Reef,
www.timawa.net,
Retrieved on 19 Oct
2013

2009

2009

China's military/weather station on
Fiery Cross Reef.



Fiery Cross Reef,
www.wikimapia.org,
Downloaded in 2011,
Retrieved on 19 Oct
2013

2010

31 Aug 2010 "Yan Lua" Class Tugboat was sighted near the Fiery Cross Reef.

N2 Monitoring Report
Aug 2010

2011

29 Mar 2011 China also installed lighthouses and mobile base stations in Fiery Cross Reef.



N2 Special Report on
China's "Blue Army"
and Installation of Base
Transceiver Station
(BTC) in Spratly Islands
dtd 06 Oct 2011

06 Aug 2011 "Hu Jiu" Class 174 Tugboat sighted at Fiery Cross Reef.

N2 Monitoring Report

2012

13 Mar 2012 "Hu Jiu" Class Tugboat 875 and "Nan Teng" Research Ship were sighted

N2 Monitoring Report

2013

2013 Fiery Cross Reef is now a complete complex of buildings with significant communications and defense and military features in the Spratlys. Notable is the installation of two (2) lighthouses.



Fiery Cross Reef photo by dinhquan58, www.photobucket.com 2013, Retrieved on 20 Oct 2013

13 Feb 2013 "Hu Jiu" class 875 Tugboat sighted at Fiery Cross Reef

Structures as of Feb to Mar 2013

Buildings:

one (1) three-storey building
two (2) two-storey buildings
six (6) single-storey buildings
one (1) reconstructed green house
one (1) single-storey rectangular-shaped building
one (1) power house
two (2) light posts
open area of the structure for a helipad

Communications:

two (2) light houses
eight (8) dish antenna
one (1) cross-slot weather radar
one (1) UHF/VHF; one (1) yagi array
nine (9) dipole antenna; one (1) comms tower
one (1) newly-installed directional antenna
six (6) newly-installed long range Wi-Fi dish antenna



N2 Monitoring Report

PAF Aerial Patrol over the KIG, Feb 2013

Defense:

five (5) observation posts/towers
five (5) gun emplacements
four (4) closed-circuit television
(CCTV) cameras

Military Hardwares:

one (1) tug boat
two (2) L70 40 mm Anti-Aircraft
Artillery (AAA)
three (3) QJZ 89 12.7mm Heavy
Machine Gun (HMG)

Other Information:

Location: 9°57'N 112°58'E

Description:

Fiery Cross Reef lies 46nm northwest from Maralie Reef. It has a linear shape aligned southwest-north east and its long axis measures 14nm while the maximum width is 4nm, giving a total of area about 110 km. The reef surrounds a lagoon. Several patches of coral uncover and between them, there are channels with depths from 15 to 40 meters. However, none of the sailing directions refer to any specific entrance or

A Geographical
Description of the
Spratly Islands and
Account of
Hydrographic
Surveys Among
Those Islands by
David Hancox and
Victor Prescott
(1995) from
International
Boundaries
Research Unit,
Maritime Briefing Vol.
1, Numer 6, p.6

mentions possible anchorages in the lagoon. Soundings in the lagoon give depths of 1.4 to 39 meters. At high water, the reef is covered except for a prominent rock 1 meter high on the southwest section. In calm weather, the sea does not cover the reef.

Occupier/Date of Occupation:
PROC 1988

Annex 89

Armed Forces of the Philippines, *Matrix of Events: Gaven (Burgos)* (2013)

GAVEN (BURGOS) REEF

TIMELINE	DEVELOPMENTS	PHOTOS	SOURCE
<p><u>1988</u></p> <p>Early Apr 1988</p>	<p>Believed date of China occupation.</p> <p>An outpost was built at Gaven Reef, where a Chinese minesweeper was monitored shuttling some of its members from the South Sea Fleet Marine Brigade to the outpost.</p>		<p>N2 Report: Analyzing China's Intentions in the South China Sea, 1997</p>
<p><u>1996</u></p> <p>1996</p>	<p>Gaven Reef now boasts of an outpost, barracks, workshop, two (2) eight-sided structures, one (1) main building, two (2) gun emplacements and two (2) naval guns.</p>		<p>N2 Report: Analyzing China's Intentions in the South China Sea, 1997</p>

2005

02 May 2005

PAF aerial surveillance showed three-storey building, a concrete platform, 2 machineguns, 2 naval guns, 2 parabolic disc antenna and a parapet.

PAF Aerial Surveillance conducted on 02 May 2005



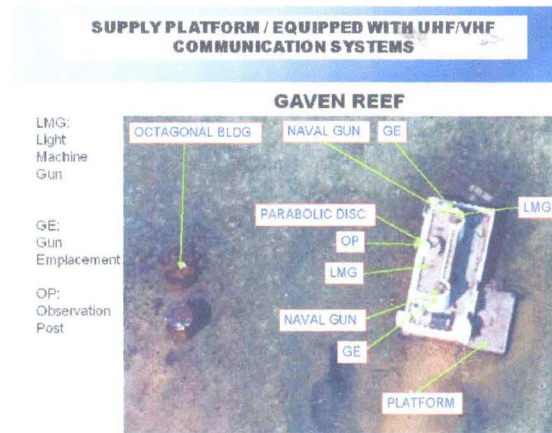
GAVEN REEF
 OCCUPIED BY: PROC DATE OF PHOTO: 02 MAY 2005
SECRET

2006

02 May 2006

No significant change noted.

Gaven Reef, www.timawa.net, Retrieved on 20 Oct 2013





2011

29 Mar 2011

China activates mobile communications in Spratlys including Gaven (Burgos) Reef.



N2 Special Report on Subject dtd 06 Oct 2011

Gaven Reef,
www.timawa.net,
Retrieved on 20 Oct 2013

2013

Gaven (Burgos) Reef also developed as advanced military outpost in the Spratlys.

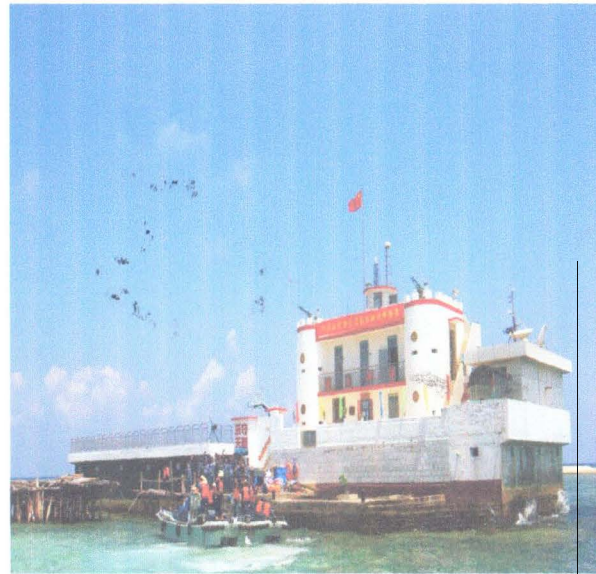
Structures sighted as of Feb-Mar 2013:

Buildings:

one (1) three-storey concrete main building
 one (1) rectangular single-storey concrete building
 one (1) concrete platform
 one (1) concrete 40m x 40m helipad
 four (4) solar panels
 polycrystalline-type power supply
 one (1) power house

Communications:

three (3) dish antennas
 one (1) weather radar
 six (6) dipoles
 one (1) solar-powered weather instrument
 one (1) directional antenna
 two (2) long range Wi-fi dish antennas



PAF Aerial Photo of Gaven Reef, Feb-Mar 2013

<http://www.timawa.net/forum/index.php?topic=30072.15>

one (1) communication tower
antenna

Defense:

one (1) observation towers
on top of the main building
two (2) gun emplacements
two (2) CCTV cameras

Military Hardwares:

two (2) ZPU 57-2 Anti-
Aircraft Artillery (AAA)
two (2) QJZ 89 12.7mm
HMGs

Others:

one (1) basketball court
(helipad)
24 m x 43 m land area

Other Information:

Location: 10° 13.0' N
114° 13.4' E

Description: Gaven Reef is
located 272 nm northwest of
Puerto Princesa City or 575
nm southeast of Hainan

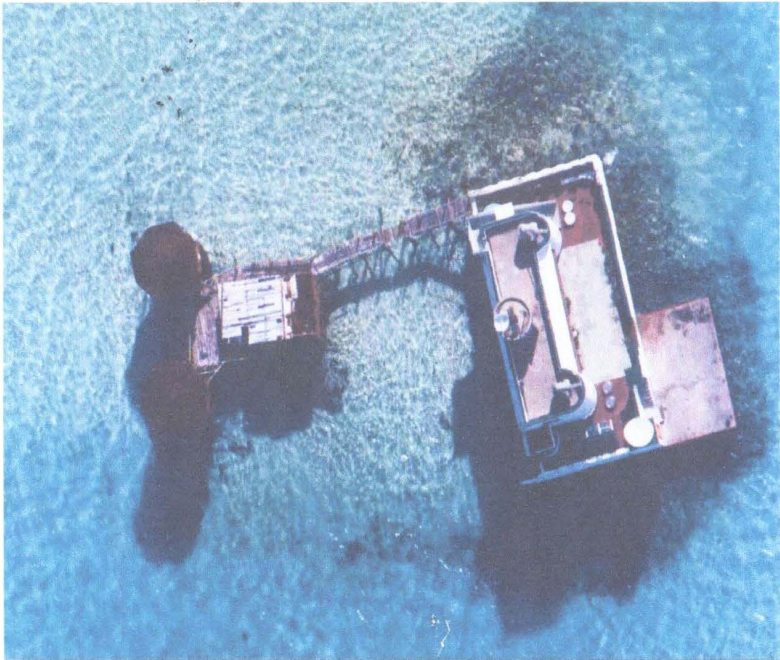
**Occupier/Date of
Occupation:** PROC Apr
1988

N2 Report: Analyzing
China's Intentions in
the South China Sea,
1997

Annex 90

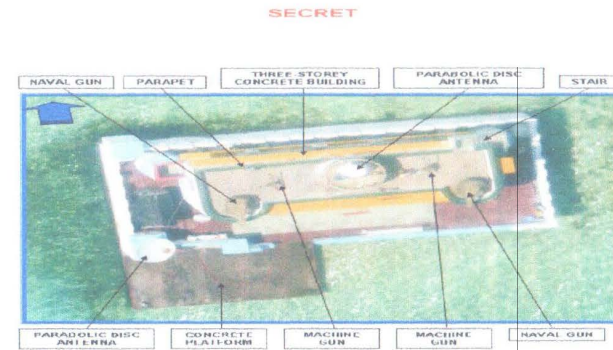
Armed Forces of the Philippines, *Matrix of Events: Johnson (Mabini) Reef* (2013)

JOHNSON (MABINI) REEF

TIMELINE	SIGHTINGS/CONSTRUCTION DEVELOPMENTS	PHOTOS	SOURCE
<p><u>1988</u></p> <p>Mar 1988</p>	<p>China's believed occupation of Johnson (Mabini) Reef.</p> <p>An outpost in Johnson Reef was sighted, where weather and ocean currents have cut the reef into two (2) sections.</p>		<p>N2 Report: Analyzing China's Intentions in the South China Sea, 1997</p>
<p><u>1992</u></p> <p>1992</p>	<p>Johnson Reef is now a heavily fortified area with an observation tower installed with a UHF/VHF and search radar antenna, anti-aircraft gun emplacements, an AA gun and two (2) naval guns.</p>		

2005

May 2005 PAF aerial surveillance showed a three-storey concrete building, a concrete platform, 2 machine guns, 2 naval guns, 2 parabolic antenna and a parapet.

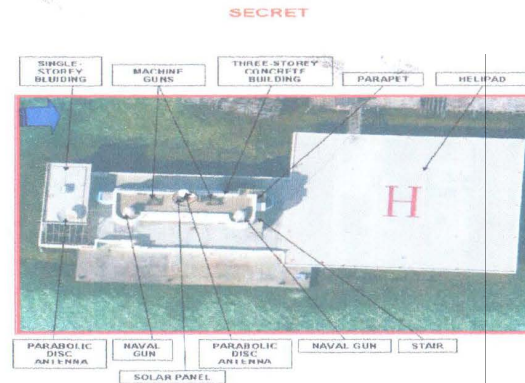


JOHNSON REEF
OCCUPIED BY: PROC DATE OF PHOTO: 01 MAY 2005
SECRET

PAF Aerial Surveillance on Johnson Reef on 01 May 2005

2006

27 Oct 2006 PAF aerial patrol showed a three-storey concrete building, a single-storey building, a solar panel, a parabolic disc antenna, 2 naval guns, 2 machine guns, a parapet and a helipad.



JOHNSON REEF
OCCUPIED BY: PROC DATE OF PHOTO: 27 OCTOBER 2006
SECRET

PAF Aerial Surveillance on Johnson Reef on 27 Oct 2006

2009

15 Apr 2009 PLA navy Frigate 560 sighted at Johnson Reef.

N2 Monitoring Report

2010

30 Aug 2010 PLA Navy Jianghu class Frigate 553 sighted at Johnson Reef.

-do-

2011

29 Mar 2011 China expanded mobile communications at Spratlys including Johnson Reef.

N2 Special Report on China's "Blue Army" and Installation of Base Transceiver's Station (BCT) in the Spratly Islands dtd 06 Oct 2011

05 Aug 2011 "Hu Jui" class tugboat monitored in Johnson Reef.

N2 Monitoring Report

"Huang Shi" Jianghu Type II Frigate 537 monitored at Johnson Reef.

-do-

2012

21 Mar 2012 "Linfen" Jianghu I class Frigate monitored on Johnson Reef.

N2 Monitoring Report

2013

Similar to other Chinese-occupied features, Johnson (Mabini) Reef likewise developed to an advanced military outpost in the Spratlys.

PAF Aerial Photo Coverage conducted over the West Philippine Sea from 27 Feb-03 Mar 2013

Structures sighted as of Feb-March 2013)

Buildings:

- one (1) three-storey concrete main building
- one (1) rectangular single-storey concrete building
- one (1) concrete platform
- two (2) octagonal-shaped structures
- one (1) concrete light house
- four (4) solar panels polycrystalline-type
- one (1) concrete 40m x 40m helipad



MABINI (JOHNSON) REEF

Communications:

- three (3) dish antennas
- one (1) weather radar
- eight (8) dipoles
- one (1) solar-powered weather instrument
- one (1) directional antenna
- two (2) long range Wi-fi dish antennas
- one (1) communication tower antenna

Defense:

one (1) observation towers on top
of main building
two (2) gun emplacements
two (2) CCTV cameras

Military Hardwares:

two (2) ZPU 57-2 Anti-Aircraft
Artillery (AAA)
two (2) QJZ 89 12.7mm HMGs
one (1) Frigate ship

Others:

one (1) basketball court (helipad)
24 m x 43 m land area

27 Feb 2013 PLA Frigate 553 sighted at
Johnson Reef.

N2 Monitoring
Report

Other Information:

Location: 9°42'N 114°22'E

Description: Johnson Reef lies 270
nm west of Puerto Princesa City or
600 nm southeast of Hainan.


Occupier/Date of Occupation:
PROC Mar 1998

N2 Report:
Analyzing China's
Intention in the
South China Sea,
1997

Annex 91

Armed Forces of the Philippines, *Matrix of Events: Subi (Zamora)* (2013)

SUBI (ZAMORA) REEF

TIMELINE	SIGHTINGS/CONSTRUCTION DEVELOPMENTS	PHOTOS	SOURCE
<p><u>1989</u></p> <p>1989</p>	<p>The Chinese occupied Zamora (Subi) Reef, which eventually became one of the most heavily-fortified islands in the Spratlys.</p>		<p>N2 Report: Analyzing China's Intentions in the South China Sea, 1997</p>
<p><u>1991-1992</u></p>	<p>Subi Reef has undergone considerable improvements. It had one (1) 4-storey building and three (3) circular shape one-storey building. Its communications system included two (2) UHF/VHF antennae and one (1) weather-type radar on top of the main building.</p>		<p>N2 Report: Analyzing China's Intentions in the South China Sea, 1997</p>

1993

Feb 1993 Two (2) buildings were added to the existing three (3) buildings noted. In this islet is a 16-sided structure with two openings which could serve as entrances. Also constructed is a parabolic disk antennae. One (1) more UHF/VHF antenna was added to the existing two (2).

The reef's defenses consist of four (4) naval guns and four (4) gun emplacements. Renovations on the helipad which started in 1992 were completed. The wooden Bridge was concreted. The wharf beside the constructed helipad was demolished and transferred to the four-storey building. (The islet could be used as an advanced command post suited to support forward operations in the South China Sea.

**SUPPLY PLATFORM / POWER PLANT / HELICOPTER LANDING
PAD / CAN HOUSE 160 TROOPS**

ZAMORA REEF / SUBI REEF



OP:
Observation
Post

N2 Report:
Developments in
the Kalayan Island
Group, 18 May
1994

1994

Considerable improvements have been made in Subi Reef, which now stands as a **permanent base**. Two (2) more buildings were added to the previous three (3) structures in 1993. Noted in this islet is a 16-sided structure with 2 openings which could serve as entrances.

N2 Report: Update of the KIG dtd 15 Sep 1994

1997

1997 Subi Reef now has an outpost, a helipad and a powerhouse.

N2 Report: Analyzing China's Intentions in the South China Sea, 1997

2000

Sep 2000 China constructed a helicopter pad and installed a television satellite antenna at Subi Reef.

N2 Report: Chronology of Events in the KIG (1995 to 2003)

2004

2004



Zamora (Subi) Reef,
<http://hfasia.blogspot.com/2011/04/chinese-military-radar-in-south-china.html>,
Retrieved on 20 Oct 2013

2006

2006



2009

N2 Monitoring
Report

15 Apr 2009 "Yuting I" class Landing Ship Tanks (BNs 991 and 995) were sighted at Subi Reef.

-do- Based on Philippine Air Force aerial photo, a lighthouse was seen near the entrance of the lagoon of said reef. Believed to be nearly-constructed.

N2/NISF Special
Report on
Lighthouse of Subi
Reef, 08 Nov 2010

2010

N2 Monitoring
Report

31 Aug 2010 "Yuting I" class Landing Ship Tank 994 was sighted.

2011N2 Monitoring
Report

05 Aug 2011 "Yuting I" class Landing Ship Tank was sighted.

29 Mar 2011 China Mobile has announced that it has expanded its coverage to the Spratly Islands. The extended coverage was designed to allow soldiers stationed on the islands as well as fishermen and merchant vessels to use mobile communications in this area. It is also aimed to provide assistance during rescues at sea. It has taken nearly a year to deploy the network to the widely distributed collection of islands. Military and civilian technicians have built China Mobile base stations in the Yongshu Reef (Fiery Cross), Zhubi (Subi) Reef, Dongmen (Hughes) Reef, Huayang (Cuarteron) Reef, Nanxun (Gaven) Reef and Chigua (Kennan) and Johnson (Mabini) Reef, activating mobile communication between the Nansha Islands and China mainland for the first time.

N2 Special Report on China's "Blue Army" and Installation of Base Transceivers Station (BTC) in the Spratly Islands dtd 06 Oct 2011

2012N2 Monitoring
Report

12 Mar 2012 "Yuting I" class Landing Ship Tank 936 was sighted.

15 July
2012

A fleet of 30 fishing vessels from Hainan, China arrived at the waters near Fiery Cross Reef after a 78-hour voyage. Reportedly, the fleet, including a 3,000-ton supply ship and 29 ships weighing more than 140 tons each, will spend the next five to 10 days fishing in the area. The fleet was escorted by a Chinese Fisheries Law Enforcement China Yuzheng 310 and accompanied by a 3,000-ton replenishment ship.

Twenty (20) of the vessels were also sighted escorted by a Chinese naval vessel along Pag-asa Island on 24 Jul 2012. On 26 Jul 2012, under the protective watch of warships, the Chinese fishing vessels anchored off the Philippine-occupied Pag-asa Island operated at will, catching fish but mainly collecting corals in large quantities. Kalayaan Mayor Eugenio BITO-ONON said the fishing boats were only 9 kilometers from Pag-asa, that municipal employees on the island could clearly see them using winches and booms to haul corals from the seabed to wooden "sampans" (junks). Reports from sources at the Department of National Defense indicated that there were more than 20 Chinese fishing boats around Pag-asa Island.

Surveillance photographed obtained by the Inquirer showed an unusual number of fishing vessels inside the protected lagoons of Mischief and Subi Reefs. At least 30 other Chinese fishing boats were reported to be at Subi Reef, just south of Pag-asa.

17 Jul 2012 Photo taken by the Philippine Navy shows Chinese concrete structures, including one looking like a helipad (R) and a dome-shaped radar, at Subi Reef in the South China Sea. The Philippine military said it has confirmed through aerial photos the presence of Chinese vessels in territories in the South China Sea that Manila claims are under its sovereignty and jurisdiction.



Zamora (Subi) Reef,
<http://english.kyodonews.jp/photos/2012/07/170840.html>,
 Retrieved on 20 Oct 2013

CHINA'S lighthouse located southwest of Subi Reef seen by the Philippine Navy.



Zamora (Subi) Reef,
<http://english.kyodonews.jp/photos/2012/07/170840.html>,
Retrieved on 20 Oct 2013



Lighthouse in Zamora Reef,
<http://newsinquirer.net/236827/facing-up-to-china-with-sheer-guts#ixzz>,
Retrieved on 20 Oct 2013

Subi Reef,
www.timawa.net,
Retrieved on 20 Oct
2013



17 Jul 2012 Defense sources in Palawan have told the Philippine Daily Inquirer that the national government had been notified about the site development by China on at least two (2) strategically important areas in the Spratly Islands, Subi Reef and Mischief Reef. Both reefs are within the Philippines' 370-kilometer exclusive economic zone. Mischief Reef is fully built up and the Chinese are busy building on Subi Reef.

COL NEIL ESTRELLA, spokesperson for the military's West Command on 16 Jul 2012 said the military was aware of Chinese construction activities on Subi Reef. ESTRELLA said a four-storey building with a large dome-shaped radar on top was completed on the reef in May 2012. ESTRELLA added the Chinese have also completed the construction of a helipad and the placement of buoys in a narrow channel to guide marine vessels into the reef's inner lagoon, which is around 3.7 kilometers in diameter.

Kalayaan Mayor Eugenio BITO-ONON said Subi Reef is near the Philippine-occupied Pag-asa Island and is visible from Kalayaan Island on a clear day. BITO-ONON



Philippine Daily
Inquirer, 17 Jul
2012

confirmed observations of Chinese construction sites on Subi Reef. He said the Chinese had only recently removed the scaffolding on the tall building that had a radar on the roof.

17 Jul 2012 Chinese fishing vessel sighted in the lagoon of Subi Reef.



PN Maritime Surveillance over Subi Reef on 17 Jul 2012

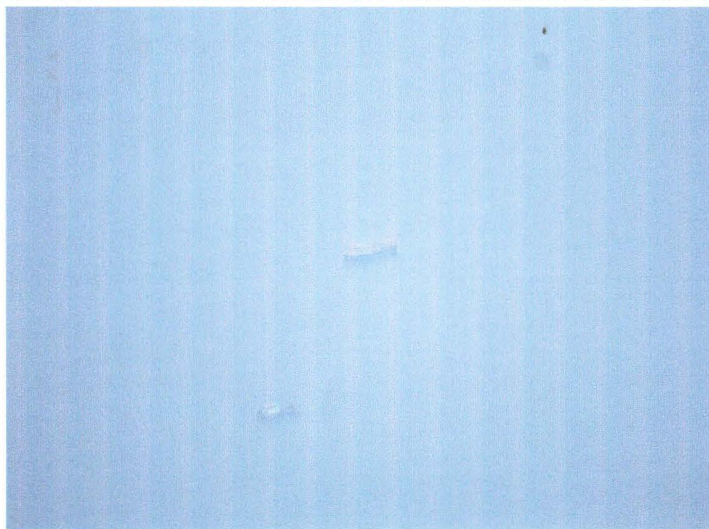
17 & 27 Jul 2012 PLAN YUTING I Class LST DANXIASHAN 934 was sighted anchored in the lagoon of Subi Reef on 17 and 27 July 2012.

Also sighted anchored in the lagoon on 14 August 2012 together with three fishing vessels.



PN Maritime Surveillance over Subi Reef on 17 Jul 2012

27 Jul 2012 Chinese vessels sighted inside the lagoon of Subi.



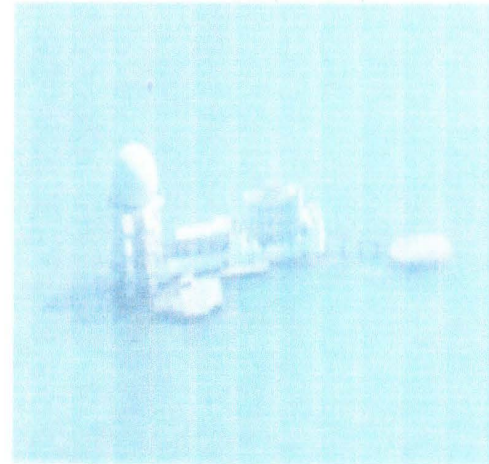
27 Jul 2012 Chinese vessels sighted at vicinity 2 NM Northeast off Subi Reef.



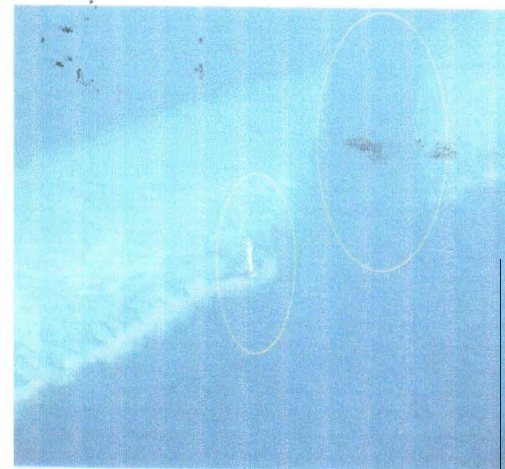
23 Jul 2012 China is reportedly planning to build its first airstrip adjacent to the Pagasa Island, a Philippine-held territory in the hotly-contested Spratlys archipelago. China's supposedly first air strip in the Spratlys region will be constructed at the Subi Reef, which is only 12 nautical miles from Pagasa Island, the seat of Kalayaan Island's municipality in the Spratly region. Aside from two (2) four-storey buildings and two (2) troop quarters, **China has also installed a big radar dome and a lighthouse within the six (6) kilometers long and 3.7 kilometers wide Subi Reef.** At the northern tip of the reef is a lighthouse that on calm seas can be seen from Pagasa.

In an aerial territorial patrol conducted in the third week of Jul 2013, the Philippine military spotted a Chinese landing ship armed with three (3) heavy weapons. The ship was moored in Subi Reef when spotted during the aerial inspection, which was conducted to monitor the fishing expedition of a Chinese fleet in the disputed region. Kalayaan Mayor Eugenio BITO-ONON said he received reports that China is planning to replicate in Subi Reef what the Malaysians have done in

ZAMORA REEF (SUBI REEF)



Zamora Reef (Subi Reef) with helipad and radome
Date taken: 11 July 2008



opening/entrance was dug in the reef to accommodate large vessels inside
lighthouse/post was established near the entrance of the lagoon of Zamora Reef
Date taken: 11 July 2008

The Philippine Star,
23 Jul 2012

Photos taken by PN
personnel on 11 Jul
2008

their occupied Layang-Layang Reef. Layang-Layang is currently being marketed by the Malaysian government as one of its finest dive resort in the region. From a reef, the Malaysians developed the area into an island resort with an airport, a hotel and a naval detachment. Subi Reef and nearby islets, shoal, cays, atolls and reefs in the Spratlys region are within the 64,976 square miles under the territorial jurisdiction of the Kalayaan Island municipality as per Presidential Decree 1596 declared by then late President Ferdinand Marcos.

30 Dec
2012

3 PLA Navy Vessels (2 identified as YUNSHU-Class LSMs) and 2 CMS vessels were anchored inside the lagoon of Subi Reef.



2013

Subi Reef today is one of the most advanced military outposts in the Spratlys.

Structures as of Feb 2013

Buildings:

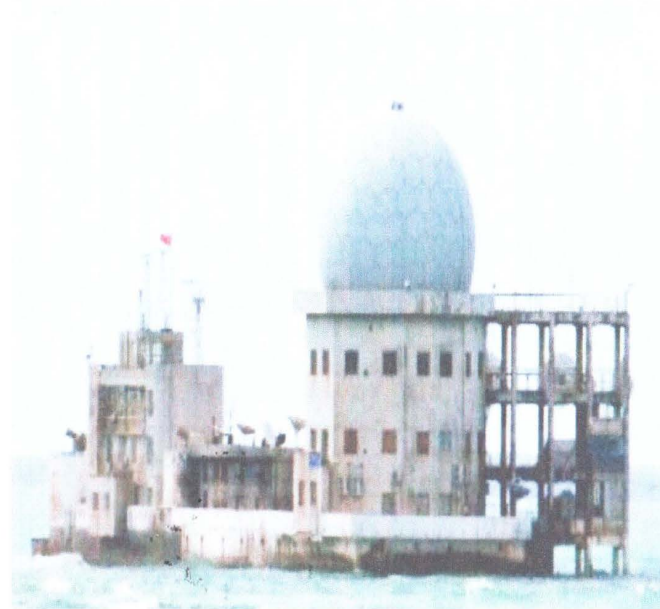
one (1) three-storey concrete main building
one (1) circular concrete structure
one (1) concrete platform
two (2) two-storey rectangular concrete building
one (1) three-story octagonal concrete building
three-layered parallel concrete structure
one (1) concrete circular platform/helipad
one (1) concrete light post
two (2) power supplies
one (1) lighthouse

Communications:

six (6) dish antennas
six (6) long range Wi-fi dish antennas
two (2) weather radars (cross-slot type)
one (1) four-stack UHF Yagi array
three (3) solar-powered weather instrument
one (1) directional antenna

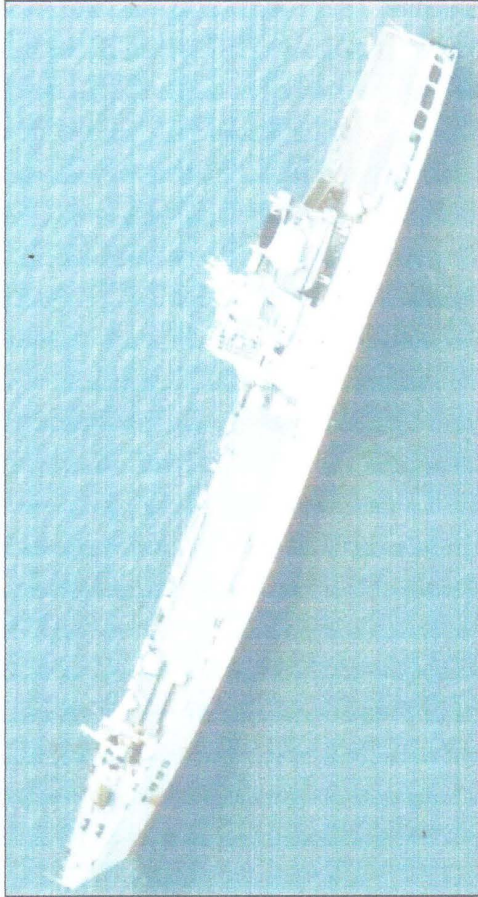
Defense:

one (1) observation post on top of the main building
four (4) gun emplacements on top of main building
two (2) closed-circuit television (CCTV) cameras



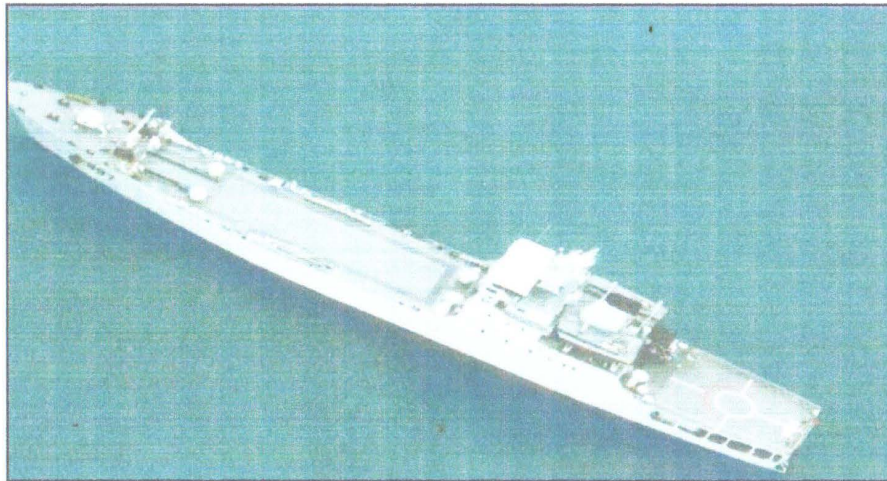
PAF Aerial Photo
Coverage over the
West Philippine
Sea from 27 Feb-03
Mar 2013

02 Jan 2013 Chinese vessels BN 557 anchored in the lagoon of Subi Reef.



04 Feb
2013

YUNWUSHAN 997 was also sighted
in the lagoon of the reef.



Other Information:

Location: 10°54'N 114°06'E

Description:

Subi Reef lies 7.5nm from Thitu Reef. This reef is shaped roughly like a diamond with long axis, alighted east-northeast, measuring 3.7nm and the shorter axis 2.7nm. The coral reef is continuous and surrounds a lagoon which has a maximum width of 1.9nm. The reef which dries is usually marked by breakers. It has a maximum width of 370 meters in the southeast and a maximum width of

A Geographical
Description of the
Spratly Islands and
Account of
Hydrographic
Surveys Among
Those Islands by
David Hancox and
Victor Prescott (1995)
from International
Boundaries Research
Unit, Maritime
Briefing Vol. 1,
Number 6, p.6

1,800 meters on the southwest. The reef is steep-to and the maximum recorded depth between Subi Reef and Thitu Reef is 1,018 meters.

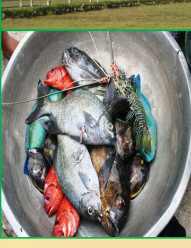
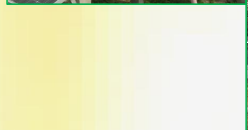
It only rises above water on low tide.

Occupier/Date of Occupation:
PROC 1989

Annex 92

Republic of the Philippines, Municipality of Kalayaan, *The Comprehensive Development Plan 2010-2016*
(5 Apr. 2013)

The Comprehensive Development Plan 2010 – 2016





Republic of the Philippines
Municipality of Kalayaan
MUNICIPAL DEVELOPMENT COUNCIL

Excerpts from the Minutes of Meeting of the Municipal Development Council of the Municipality of Kalayaan Held at Sunlight Hotel, Puerto Princesa City on April 03, 2013 at 8:00 in the morning

In Attendance:

Hon. Eugenio B. Bito-onon, Jr.	Municipal Mayor/ MDC Chairman
Hon. Rosendo L. Mantes	Municipal Vice Mayor
Hon. Roberto M. Del Mundo	Chairman, Institutional Sector Committee
Hon. Noel F. Osorio	Member, Economic Sector Committee
Hon. Roberto D. Saulon	Chairman, Environmental Sector Committee
Hon. Allan D. Delloso	Member, Infrastructure Sector Committee
Hon. Janet Villamor-Espinosa	Member, Social Sector Committee
Hon. Vicencio R. Milan	Chairman, Infrastructure Sector Committee
Hon. Hermosa A. Ornopia	Chairman, Economic Sector Committee
Hon. Mario O. Flores	Chairman, Social Sector Committee
Ms. Cynthia P. Noveno	MLGOO/ Member, Economic Sector Committee
Mr. Jorge G. Misajon	Mun. Admin/Vice Chair, Institutional Sector Committee
Ms. Dina M. Balofiños	MPDC/MDC Sec., Member, Envi. Sector Committee
Ms. Lucila S. Osorio	Mun. Accountant/Vice Chair, Social Sector Committee
Mr. Raul C. Villamor	Mun. Budget Officer/ Vice Chair, Economic Sector Committee
Ms. Ma. Sherlita M. Tamaño	SB Secretary/ Member, Institutional Sector Committee
Mr. Allan B. Arinos	Mun. Assessor/ Vice Chair, Environmental Sector Committee
Engr. Arnel V. Essler	Mun. Engineer/ Vice Chair, Infrastructure Sector Committee
Ms. Inocencia T. Magdayao	HRMO II/ Member, Institutional Sector Committee
Plinsp Rodelio M. Caballes	Chief, Kalayaan MPS/ Member, Social Sector Committee
Mr. Joey Vincent P. Rabanal, RN, MAN	OIC-Health & Social Welfare/ Member, Social Sector Committee
Mr. Jeffrey M. Flores	NGO/ KMPC Board Member/ Member, Economic Sector Committee
Ms. Dianne Melanie W. Pesito	Planning Assistant/ Secretariat
Mr. Alvin M. Natividad	Consultant/ Resource Person
Mr. Angelo P. Elim	HSWS Assistant/ Secretariat
Ms. Myla B. Panganiban	Secretariat
Mr. Zed B. Esmael	Secretariat

Absent:

Hon. Predicando M. Malabayabas	Pres., Liga ng mga Barangay/ Member, Infra Sector Committee
Ms. Jaratia I. Lacod	OIC Mun. Treasurer/ Member, Institutional Sector Committee

Resolution No. 01
Series of 2013

A RESOLUTION ADOPTING AND ENDORSING TO SANGGUNIANG BAYAN THE COMPREHENSIVE DEVELOPMENT PLAN OF THE MUNICIPALITY OF KALAYAAN, PALAWAN FOR THE PERIOD 2010 - 2016

WHEREAS, the formulation of Comprehensive Development Plan was mandated under Section 106 of the RA 7160, otherwise known as Local Government Code of 1991 which provides that each local government

unit shall have a comprehensive multi-sectoral development plan to be initiated by its Municipal Development Council and approved by its Sanggunian;

WHEREAS, this three-chapter Comprehensive Development Plan 2010 to 2016, was formulated utilizing the participatory and inclusive principles of planning that ensures efficiency, effectiveness, transparency and accountability from development planning stage up to utilization of public funds and resources;

WHEREAS, this plan is a comprehensive document that integrates different sectoral programs, projects and activities of the municipality that were identified during the series of MDC Sectoral Committees Planning Workshops starting August 2010 up to September 2012, participated in by members of the Municipal Development Council Sectoral Committees, department head and other stakeholders;

WHEREAS, this document shall serve as basis of the municipality in setting the direction of economic, social, environmental, institutional, and physical (infrastructure) development of the locality and in coordinating development efforts within its administrative jurisdiction;

NOW THEREFORE, upon motion of Hon. Vicencio R. Milan duly seconded by Hon. Roberto D. Saulon, be it;

RESOLVED, as it is hereby resolved, to adopt, as this council hereby adopts the Comprehensive Development Plan of the Municipality of Kalayaan for the period 2010 – 2016 as presented and to endorse the same to the Sangguniang Bayan for appropriate action;

RESOLVED FURTHER, that copies of this resolution be furnished to the Sangguniang Bayan, Office of the Municipal Mayor and other concerned offices/ agencies for their information and appropriate action.


UNANIMOUSLY APPROVED

I HEREBY CERTIFY TO THE CORRECTNESS OF THIS RESOLUTION.



DINA M. BALOFIÑOS
Mun. Planning & Devt. Coordinator
MDC Secretary

APPROVED:



EUGENIO B. BITO-ONON, JR.
Municipal Mayor
MDC Chairman

Date Approved: APR 05 2013

ATTESTED :



VICENCIO R. MILAN
SB Chairman, Committee on Finance,
Budget & Appropriation/MDC Member

The Local Economy

The Primary Sector

1. Agricultural Crops

The Municipal Government maintains a vegetable demo-garden in Pag-asa which provides minimal vegetable requirements for the community. Squash, radish, string bean, eggplant, and green pepper are some of the vegetables that grow in the island. Difficulty are met in planting agricultural crops due to the sandy characteristics of soil in Pag-asa, planting soil are transported from mainland Palawan to provide conducive environment for agricultural products.

Agricultural croplands

The total area planted to crops covered 4,246.144 square meters. Majority of the area are planted with vegetables which forms the demo-garden project of the locality. There is no rice or grain production in the island; the community relies mostly on the rice and basic commodity subsidy provided by the local government.

2. Livestock and poultry

Hog/ Swine

Swine production stopped on 2010 due to high maintenance cost of its operation. The requirement for its production even exceeds the cost provided for human food subsidy.

Goat

The local government maintains a goat raising project in Pag-asa Island in which its primary goal is to support the nutritional requirements of its residents. As of latest survey, the LGU have fifty (50) heads of goat in the island.

Chicken

Backyard growing of chicken is practiced in Pag-asa for domestic consumption. There is no available data on poultry population.

3. Fisheries

Municipal Fisheries

The agriculturist reported 14 motorized private bancas, 2 municipal owned utility motorized banca and 4 non-motor banca in Brgy. Pag-asa. The catch per unit effort (CPUE) of handline fishing in Pag-asa Island was estimated to be 4.2kg/person/hour (Gonzales et.al, 2008) compared to 1 kg/person/hour in Honda Bay (mainland Palawan). Recent survey provides fish production of 10 metric tons per year. The locals resort to drying most of their catch to lengthen its shelf life until transportation becomes available or use it for domestic consumption.

Commercial Fisheries

Commercial fishers from Luzon area (mostly from Batangas and Mindoro) are reported to engage in fishing activities in the municipal waters. Also, commercial fishers from neighboring countries are reportedly seen fishing in the area. No data on the volume of commercial fishing produce is available.

4. Food self-sufficiency assessment

The Municipality of Kalayaan is not self-sufficient in rice because of the absence of farmland in the area. In fact, one hundred percent (100%) are imported from mainland Palawan. Same is true in egg production. Livestock and poultry program supports minimal requirement of the community. Other basic commodities are imported from mainland Palawan and subsidized by the local government.

5. Forestry

Pag-asa Island, the urban area in the municipality, is covered by 44,170.175 square meters (12% of the total land area) of forest. However, no forest-based production activities are present in the area.

6. Agricultural support facilities

- a. Fish handling facility includes three (3) units of multi-freezer storage system maintenance in Pag-asa wherein fishermen can store their catches to extend shelf life.

Annex 93

Memorandum from the Secretary of Foreign Affairs of the Republic of the Philippines to the President of the Republic of the Philippines (23 Apr. 2013)

Kagawaran ng Agnayang Panlabas
CONFIDENTIAL AND URGENT



Department of Foreign Affairs

AFDR-324-13-C
MEMORANDUM FOR THE PRESIDENT

Department of Foreign Affairs
Office of the Secretary



IC-ASPAC-0025216
BY: PAC

DR: 23-APR-13
TR: 06:47 PM

Through : The Executive Secretary

Cc : The Cabinet Secretary
The Secretary, Presidential Management Staff
The Secretary of National Defense
The National Security Adviser

From : *Albert F. Del Rosario*
ALBERT F. DEL ROSARIO
Secretary of Foreign Affairs

Subject : Chinese Demarches on the Ayungin Shoal

Date : 23 April 2013

The Department wishes to inform the President that the Chinese Government already made three (3) demarches on the issue of Ayungin Shoal (Second Thomas Shoal).

First was on 11 April 2013 when Philippine Ambassador to China Erlinda Basilio was called to a meeting with Special Representative Wang Xiaodu of the Department of Boundary and Ocean Affairs of the Chinese Ministry of Foreign Affairs.

Second was on 16 April 2013 when Chinese Ambassador to the Philippines Ma Keqing requested a meeting with Undersecretary Evan Garcia.

Third was on 17 April 2013 during the courtesy call of Ambassador Basilio to Chinese Vice Foreign Minister Zhang Yesui. The Ayungin Shoal issue was one of the issues Vice Minister Zhang raised with Ambassador Basilio.

On the three occasions, the Chinese side said that the Philippine Navy vessel BRP Sierra Madre (LST 57), on the pretext of being stranded, was "illegally grounded" on Second Thomas Shoal on 07 May 1999. The Chinese side claimed that Philippine authorities promised China that they would immediately remove the stranded vessel but they have not done so up to this day.

The Chinese side highlighted that the Philippines has not honored this commitment. The Chinese side further alleged that "radar facilities" have been built (on the vessel) and "mooring ropes" were installed around the grounded vessel.

The Chinese side said they are afraid that the Philippines will build structures at the shoal "in violation of China's sovereignty and also the ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC)." The Chinese side has repeatedly made representations to the Philippines to honor its commitment. They said that fourteen years have passed and China "has given enough time to the Philippines and (China) has been very patient."

In Ambassador Basilio's meeting, the Chinese Special Representative added that "the Chinese side would not allow the continuous stranding of the vessel at the shoal."

The Department wishes to recall that the beaching of the BRP Sierra Madre was done in 1999 in the. Per latest information from the AFP, there are seven Filipino soldiers currently assigned to Ayungin Shoal and they are quartered in the vessel.

The Department wishes to note that per its records, the Philippines has always responded to the Chinese actuations by saying that the case of the stranded vessel is a maritime incident that happened in a shoal which is part of the Philippine territory.

Ayungin Shoal is a Philippine territory and part of the natural extension of the archipelago's land mass in the Palawan area. Ayungin Shoal is 105.77 M from the Philippine base point (Pinos Point under R.A. 9522) in South Western Palawan and within the 200 M of the Philippines.

The Philippines has been in long, continuous, peaceful, and effective possession of the shoal under international law, prior to and after the DOC.

In response to the demarches, the Philippine side clearly stated that:

1. The Philippines has not occupied any feature that is not part of Philippine territory.
2. As a coastal state, the Philippines enjoys sovereign rights and jurisdiction over certain maritime areas and features in accordance with international law, including UNCLOS.

COMMENTS AND RECOMMENDATION:

The Department is of the view that the Chinese may use the Ayungin Shoal situation as evidence to show other ASEAN countries that the Philippines is not complying with the DOC and is thus hindering the start of the negotiations for the Code of Conduct.

The Department recommends that the Philippines adopt a consistent message on the issue, conveying the following points:

- Ayungin Shoal is a Philippine territory and part of the natural extension of the archipelago's land mass in the Palawan area. Ayungin Shoal is 105.77 M from the Philippine base point (Pinos Point under R.A. 9522) in South Western Palawan and within the 200 M of the Philippines.
- The Philippines has been in long, continuous, peaceful, uninterrupted and effective possession of the shoal under international law, prior to and after the DOC.
- Accordingly, the Philippines is and should be able to do whatever other claimant countries have done or have been doing in the occupied features.

The Department further recommends that vigilant and continuous monitoring of Ayungin Shoal and its surroundings be undertaken by the DND/AFP to forestall any possible untoward action that China may take in the area.

For the President's consideration.

Annex 94

Armed Forces of the Philippines, *Near-occupation of Chinese Vessels of Second Thomas (Ayungin) Shoal in the Early Weeks of May 2012 (May 2013)*

SECRET**Near-occupation of Chinese vessels of Second Thomas (Ayungin) Shoal in the early weeks of May 2013**

It can be noted that since February 2012, there have been sightings of Chinese government vessels in the vicinity of the shoal, as well as an unidentified aircraft, as follows:

DTG	ACTIVITY/REMARKS
051830H June 2011	<p>CWC-West received information from a Filipino Boat Captain that a steel post was erected and partially submerged at vicinity Raja Soliman Reef or 19.5 NM ESE off Ayungin Shoal, described as a C-bar with a length of approx 3 meters with no unusual markings other than blue and red calibrations. The description is almost the same as that of the improvised tide staff that was recovered by LT501 at vicinity Amy Douglas Bank on 29 May 2011.</p> <p>On 06 June 2011, the Filipino Boat Captain said that they tried to pull the erected C-bar steel post but to no avail as it could have been planted deeper in the sand bar. The Chinese Tide Staff was recovered by personnel of PS74 on 061700H June 2011.</p>
12 Feb 2012	2 fishing vessels believed to be Chinese were monitored fishing using explosives and sodium cyanide 4 NM SW off LT57 in Ayungin Shoal. The fishing vessels were still sighted the following day, 13 February.
19 Feb 2012	1 PLA Navy Frigate passed by south to north MOL 4 NM NE off Ayungin Shoal.
141400H Mar 2012	Unidentified white foreign vessel believed to be CMLEA was monitored in transit heading in the direction of Panganiban Reef.
120955H Apr 2012	DONGDIAO-Class Survey and Research Ship with Bow Number 853 was monitored 25 NM South off Ayungin Shoal steaming on course 020° at approximately 22 knots.
111530H Jul 2012	While F/B RLG was tied to a "payaw" at vicinity 8 NM East off Ayungin Shoal, her Boat Captain sighted JIANGHU V FF (DONGGUAN 560) heading in a Southeast direction.
151330H Jul 2012	<p>Coast Watch Center- West reported the sightings of four Chinese ships with bow numbers 566 (Frigate), 560 (Frigate), 15 (Auxiliary) and 175 (Auxiliary) in convoy passing in the vicinity of Ayungin Shoal heading towards northwest direction with an estimated speed of 10 knots.</p> <p><i>The presence of the said naval vessels was due to the grounding of DONGGUAN 560 at Hasa-Hasa Shoal on 12 July 2012. The grounded vessel was refloated successfully from the shoal on 15 July 2012.</i></p>
26 July 2012	Two gray foreign vessels believed to be Chinese were sighted 9 NM SW off Ayungin Shoal heading East.
17 Sep 2012	Filipino fishing vessel at vicinity 13 NM SW off Ayungin

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	Shoal sighted 1 foreign vessel colored dirty white and believed to be Chinese passing 1.5 NM North from her position heading North with an estimated speed of 15 knots.
19 Nov 2012	JIANGWEI I FRIGATE ANQING 539 was sighted MOL 8 NM West off Ayungin Shoal
251830H Feb 2013	1 unidentified aircraft passed by the vicinity of the shoal heading East.
270825H Feb 2013	CMS 72 and CMS 84 were sighted Northwest off Ayungin Shoal at 2.8 NM and 2 NM, respectively. Both vessels were sighted in the vicinity of Lawak Island on 280930H Feb 2013 heading Northwest and at Patag Island on or about 281130H Feb 2013 heading North.
20 Mar 2013	PNI 314 sighted two (2) CMS vessels with unidentified bow numbers lying to at vicinity 3 NM Southeast off Ayungin Shoal.
230830H Apr 2013	Sighting of CMS 84 and another CMS vessel (BN: U/I) at Ayungin Shoal. <i>CMS 84 and CMS 74 were earlier sighted in Patag and Lawak Islands on 22 Apr 2013. The latter was suspected to be the unidentified CMS that was sighted in Ayungin Shoal the following day.</i> <i>CMS 74 and 84 belonged to a Chinese marine surveillance team that returned to Guangzhou City on 29 Apr 2013 after completing regular patrol operations in the the Paracel and Spratly Islands and their nearby waters for 12 days. The team covered a distance of more than 4,500 nautical miles. During the patrols, the two (2) ships performed monitoring, collected evidence of infringements and conducted law-enforcement to safeguard the country's marine interests.</i>
27 Apr 2013	JIANGHU V Missile Frigate 563 (DESIG: FOSHAN) was sighted in the vicinity of Ayungin Shoal heading West.
020750H May 2013	1 suspected PLA Navy vessel (BN: U/I) maneuvered to various courses/directions at Ayungin Shoal. At 0835H of same day, it left the area heading towards the direction of Panganiban Reef.
020825H May 2013	CMS 71 arrived in the vicinity of Ayungin Shoal and was monitored lying to at vicinity 2 NM West. <i>Report from personnel of LT57 states that a CMS vessel arrived on 020920H May 2013 and lying to at vicinity 3 NM East and left at 1800H of same day.</i>

These vessels and aircraft were believed to have conducted monitoring and surveillance in the vicinity of Second Thomas Shoal and immediate vicinity where the PN has a grounded vessel (BRP SIERRA MADRE LT57) that China has long demanded to be pulled out from Ayungin Shoal. The heightened activities of these vessels could be intended to pre-empt the Philippines' plan of fortifying its

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detachment in the said area. In April 2013, China rejected the Philippines' attempt to seek international arbitration in resolving the South China Sea dispute and demanded that the Philippines withdraw all its nationals and facilities from the disputed features in the Spratlys.

On 02 May 2013, personnel of the PN Detachment aboard LT57 at Second Thomas Shoal monitored a suspected PLA Navy vessel (type and bow number unidentified) that maneuvered to various courses/directions in the vicinity of the shoal and left afterwards heading towards Mischief (Panganiban) Reef. Also on the same day, personnel at the Detachment monitored the arrival of CMS 71 at the shoal.

Starting 03 May 2013, China maintained the presence of at least two (2) vessels at Ayungin Shoal. Since then, two (2) PLA Navy frigates (BN: 562 and 563) and five (5) CMLEA vessels (CMS BN: 84, 167, 75, 71 and 8002) have been monitored deployed in the shoal and its outlying areas on a rotation basis. Significantly, four of the five CMLEA vessels (except the newly deployed 8002) have been previously monitored at Bajo de Masinloc (BdM) earlier this year. CMS 72, which has been monitored at Ayungin Shoal prior 03 May 2013, has been recently sighted stationed at BdM.

DTG	ACTIVITY/REMARKS
031030H May 2013	2 CMS vessels (BN: U/I) arrived in the vicinity of Ayungin Shoal and was monitored lying to at vicinity 3 NM Southwest.
04-05 May 2013	1 PLA Navy, 2 CMS, and 1 Chinese steel-hulled fishing vessels were sighted in the vicinity of Ayungin Shoal during the MAS of PNI.
111130H May 2013	Personnel assigned Ayungin Detachment onboard LT-57 reported the presence of the following Chinese vessels: <ul style="list-style-type: none"> • PLA Navy Frigate at vicinity 6NM northwest off Ayungin Detachment; • 2 CMS vessels at vicinity 7NM southeast off Ayungin Detachment; • 1 CMS vessel at vicinity 4NM north off Ayungin Detachment; • 1 Hainan-type Fishing Vessel at vicinity 3NM northeast off Ayungin Detachment; and, • 1 Hainan-type Fishing Vessel at vicinity 3NM south off Ayungin Detachment.
160651H May 2013	PAF Nomad-22 MAS sighted JIANGHU V Missile Frigate 562 (DESIG: JIANGMEN), CMS 84 and 167 in the vicinity of Ayungin shoal, along with a steel-hulled Hainan fishing vessel and a suspected Hainan fishing vessel with three dinghies believed to be gathering corals and clams and dredging in the shoal. <p style="margin-left: 20px;"><i>The dredging of Chinese fishing vessels at the shallow part of Ayungin Shoal for more giant clams may be used as a ploy to clear the shoal of rocks and create an access to the</i></p>

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	<i>detachment.</i>
17 May 2013	1 PLA Navy, 4 CMS, and 1 Chinese fishing vessels were sighted at Ayungin Shoal– the highest number of Chinese vessels monitored thereat.
18 May 2013	CMS 75 was sighted underway at C-180T, S- 3 knots at vic 6 NM SE off Ayungin Detachment; CMS 84 was sighted lying- to at vic 11 NM NW off Ayungin Detachment; while CMS 167 was sighted underway at C-250T, S- 6 knots at vic 11 NM NE off Ayungin Detachment.
200500H May 2013	PLA Navy Frigate JIANGHU I UG FF 562, CMS 75 and CMS 84 were monitored at vicinity Ayungin Shoal.
21 May 2013	PLA Navy Frigate JIANGHU I UG FF 562 was sighted underway at C-103T, S- 13 knots at vic 8 NM SE off Ayungin Detachment; CMS 84 was sighted lying- to at vic 10 NM SW off Ayungin Detachment; while CMS 75 was sighted lying- to at vic 10 NM NE off Ayungin Detachment.
220500H May 2013	The presence of CMS 75 (approx 10NM NE off Ayungin Detachment), and FF 562 and CMS 84 (approx 12NM SE off Ayungin Detachment) in the vicinity of Ayungin Shoal were noted.
25 May 2013	2 CMS vessels were sighted by PAF OV-10 during the MAS-one was lying to about 3 NM NW while the other vessel about 7 NM East off Ayungin Shoal.
28-29 May 2013	<p>During the MAS of PNI312 over the WPS on 28 and 29 May 2013, CMS 75 and 8002 were sighted lying to in the vicinity of the shoal.</p> <p>Security personnel of Ayungin Detachment reported that a CMS vessel had laid down a rubber boat with 7 crews on board on 281525H May 2013. Accordingly, the RB, probably conducting visual survey of LT57 and of the shallow waters, came to as close as to 800 yards south of LT57.</p> <p><i>The reported CMS vessel could be the CMS 75 that was spotted by PNI312 lying to at vicinity 5NM east of Ayungin Shoal on the same day.</i></p>
302000H May 2013	2 CMS vessels were sighted lying to at vicinity 7 NM SW and 5 NM SE off Ayungin Shoal

In response to China's increased presence in the area, the Philippine government filed a diplomatic protest against China on 10 May 2013 for encroaching into the Philippines' established maritime borders, following the entry of Chinese vessels around Ayungin Shoal.

The two (2) PLAN frigates sighted at Second Thomas Shoal were also sighted in Chinese-occupied Mischief Reef during succeeding MAS missions of the Philippine Navy.

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Meanwhile, a Chinese warship on 160230H May 2013 reportedly chased and tailed, in a provocative manner, M/T QUEEN SEAGULL, the utility boat of Kalayaan Island town with 147 civilian passengers, including the group of re-elected Mayor Eugenio BITO-ONON, while sailing back to mainland Palawan from Pag-Asa Island in the KIG. BITO-ONON said the Chinese warship coming from the east side area of Ayungin Shoal, used its powerful floodlights while chasing and tailing for almost an hour M/T QUEEN SEAGULL, coming as close as 50 meters. The incident started when M/T QUEEN SEAGULL, that left Pag-Asa Island on 15 May 2013, was passing by at vicinity 3 NM East off Ayungin Shoal past midnight. BITO-ONON said the Chinese warship only stopped tailing them when their boat was already navigating around Hasa-Hasa (Half Moon) Shoal, an area where a Chinese frigate ran aground in 2012.

The unidentified frigate that tailed M/L PRINCESS SEAGULL could be the JIANGMEN 562 that was sighted by PAF Nomad-22 at 8 NM Southeast off Ayungin Shoal on 16 May 2013. Prior the said incident, JIANGMEN 562 was sighted by PNI314 on 150940H May 2013 lying to at vicinity 13 NM South Southeast off the shoal.

As these developed, the Hainan provincial marine and fishing department announced a two-and-a-half month fishing ban beginning 16 May 2013 in most parts of the South China Sea. The annual fishing ban, which had been in place since 1999, will last from May 16 to August 1 this year, covering areas north of the 12th parallel, including Bajo de Masinloc but excluding most of the Spratly Islands. Relatedly, at least 33 Chinese fishing vessels were said to have been fishing at the Chinese-occupied Mischief Reef and nearby features since 08 May 2013, escorted by a PLA Navy ship and CMS vessels, while another group of 31 Chinese fishing vessels was monitored at Zamora (Subi) Reef.¹

Moreover, China expressed concern that the Philippines might build structures in Ayungin Shoal. The issue was raised during an informal talk between Chinese Ambassador MA Keqing and Defense Secretary Voltaire GAZMIN in Camp Aguinaldo on 29 May 2013. Sec GAZMIN, however, said the government is just sending ships in the shoal to provide supplies to soldiers monitoring the area, adding that the ship that is moving towards Ayungin Shoal is only for provisions of food and water for soldiers who are there.

¹ It was reported earlier that a Chinese fishing fleet composed of 30 vessels under a unified command sailed on 06 May 2013 from Hainan province, China to the disputed Spratly Islands in the West Philippine Sea for a "40-day operation." The "40-day operation" is the second of its kind organized by local fishery associations after Sansha City was established by China in June 2012. Each vessel in the fleet, equipped with all-weather communication devices, weighs more than 100 metric tons. Further, a 4,000-ton supply ship and a 1,500-ton transport ship were supplying the fishing vessels with fuel, food, water and other necessities.

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SECRET**CHINESE VESSELS CURRENTLY DEPLOYED AT AYUNGIN SHOAL
ON ROTATION BASIS****PLA NAVY JIANGHU V (TYPE 053H1G) GUIDED MISSILE FRIGATE (FFG)
JIANGMEN (562) AND FOSHAN (563)**

PLA Navy frigates Jiangmen 562 and Foshan 563 are two of the six Type 053H1G missile frigates currently operational with the PLA South Sea Fleet. Referred to by the NATO as the Jianghu-V class, the Type 053H1G was generally based on the hull design of the Type 053H1 (Jianghu-II Class) originally introduced in the early 1980s, but with improved weapon systems and better living conditions for its crew. The first hull of Type 053H1G, Zigong (558), was launched in 1992 and commissioned in May 1993, while the last hull Foshan (563) was commissioned in 1995.

The six Type 053H1G missile frigates were built by the Guangzhou-based Huangpu Shipyard in the early 1990s under China's emergency construction programme in response to the worsening situation in the South China Sea. These vessels are currently undergoing a modernisation refit to replace their weapon systems with newer and more advanced designs. At least two hulls (560, 563) have completed their modernisation refit in 2008.¹

Hereunder are the specifications of FFGs 562 and 563:²

Displacement, tonnes	1,448 standard 1,729 full load
Dimensions, metres (feet):	103.2 x 10.8 x 3.1 (338.58 x 35.43 x 10.17)
Speed, knots:	26
Range, n miles:	4,000 at 15 kt 2,700 at 2,700 at 18 kt
Complement:	200 (30 Officers)
Machinery:	2 Type 12E 390V diesel; 14,400 hp(m) (10.6 MW) sustained ; 2 shafts.
Missiles:	SSM: 4 HY-2 (C-201) (CSSC-3 Seersucker) (2 twin) launchers; active radar or IR homing to 95 km (51 n miles) at 0.9 Mach; warhead 513 kg.
Guns	4 China 3.9 in (100 mm)/56 (2 twin); 25 rds/min to 22 km (12 n miles); weight of shell 15.6 kg.

¹ Sinodefence. http://www.sinodefence.com/navy/surface/type053h1g_jianghu5.asp (Accessed 02 June 2013).

² IHS Jane's, *Jane's Fighting Ships 2011-2012, 114th Edition* (UK: MPG Books Group, 2012), 146.

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	8 China 37 mm/63 (4 twin); 180 rds/min to 8.5 km (4.6 n miles) anti-aircraft; weight of shell 1.42 kg.
A/S Mortars:	2 RBU 1200 5-tubed fixed launchers; range 1,200m; warhead 34 kg.
Mines:	Can carry up to 60
Depth charges:	2 BMB-2 projectors; 2 racks.
Physical Countermeasures:	Decoys: 2 RBOC MK 33 6 –barrelled chaff launchers or 2 China 26-barrelled launchers.
Electronic countermeasures:	ESM: Jug Pair or Watchdog; radar warning
Radars:	Air search: Type 517 Knife Rest; A-band. Air/surface search: Type (unknown); I-band.
Navigation:	Don 2 or Fin Curve or Raccal Decca; I-band
Fire Control:	Type 347G Rice Bowl; I/J band Type 343 (Wok Won); I-band
IFF:	High Pole A. Yard Rake or Square Head
Sonars:	Echo Type 5; hull-mounted; active search and attack; medium frequency.
Remarks:	A larger bridge structure suggests a possible CIC compartment. The designation of the Air/Surface search radar in Type 053H1G is not yet known but it bears similarities to the I-band MR-36A which has been promoted as a replacement for Type 352 "Square Tie".

CHINA MARINE SURVEILLANCE VESSELS

Haijian (Chinese equivalent of "marine surveillance") 71, 75, 84, 167 and 8002 are vessels under the China Marine Surveillance (CMS). The CMS, created on 19 October 1998, is a paramilitary maritime law enforcement agency of the State Oceanic Administration (SOA) of the People's Republic of China. The force is responsible for enforcing laws and order within China's territorial waters, exclusive economic zones, and shore; protecting maritime environment, natural resources, navigation aids and other facilities; and, carrying out maritime surveys. In time of emergency, the force can also be deployed for other missions such as search and rescue. In recent years, marine surveillance vessels have also been carrying out patrols in disputed waters in the South and East China Sea in declaring China's sovereignty in the these regions.³

On 14 Mar 2013, to promote and attain better coordination of its maritime activities, China has merged the CMS with four other maritime law enforcement agencies, collectively called as the "Five Dragons Stirring up the Sea," as follows: The

³ Sinodefence. <http://www.sinodefence.com/navy/marine-surveillance/> (Accessed 02 June 2013).

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Border Control Department; The Fisheries Law Enforcement Command; General Administration of Customs; and, Maritime Safety Administration. The SOA has taken over control of these organizations and is now carrying out their maritime law enforcement duties under a new agency called the China Maritime Police Bureau. With the unification, China is also aiming at better managing and coordinating China's policies on maritime disputes.

CMS ships are not fitted with heavy armaments and are equipped only with small arms. Some of these ships are decommissioned PLA Navy vessels, which have been stripped and refitted to suit the maritime law enforcement functions of the CMS. Data on the sighted CMS vessels at Ayungin Shoal are limited to the following:

- Haijian 71- 1000 Ton-level, block-1 ship;
- Haijian 75- 1000 Ton-level ship, built by Wuchang Shipyard in the 1990s;
- Haijian 84- 1500 Ton-level, new block-2 ship.⁴
- Haijian 167- no available data; and,
- Haijian 8002- 1,337-ton, 79.9 meters long, 43 crew complement, can travel up to 5,000 nautical miles (9,260 km) without refuelling, launched on 14 Oct 2012 in Guangzhou, Guangdong province.⁵

These CMS vessels are integral part of China's strategy in asserting its claims at the West Philippine Sea. By deploying more civilian vessels, China can claim to be non-provocative yet just as aggressive and effective- as can be gleaned from the Bajo de Masinloc stand-off. Moreover, China's fishing ban which it started implementing annually since 1999 has been giving China a cloak of legitimacy and has become a convenient excuse for these CMS and other CMLEA vessels to harass and drive away foreign fishing vessels even in contested waters, allowing China to exercise its authority in claimed sovereign waters despite strong protestations from the other claimant countries.

⁴ <http://www.china-defense-mashup.com/full-list-of-china-marine-surveillance-ships-over-1000-ton-level.html> (Accessed 02 June 2013).

⁵ <http://www.sinodefenceforum.com/navy/china-coast-guard-patrol-vessels-12-4068.html> (Accessed 02 June 2013).

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CHINESE VESSELS DEPLOYED AT AYUNGIN SHOAL ON ROTATION BASIS IN MAY 2013



PLA NAVY JIANGHU CLASS MISSILE FRIGATE *JIANGMEN* 562

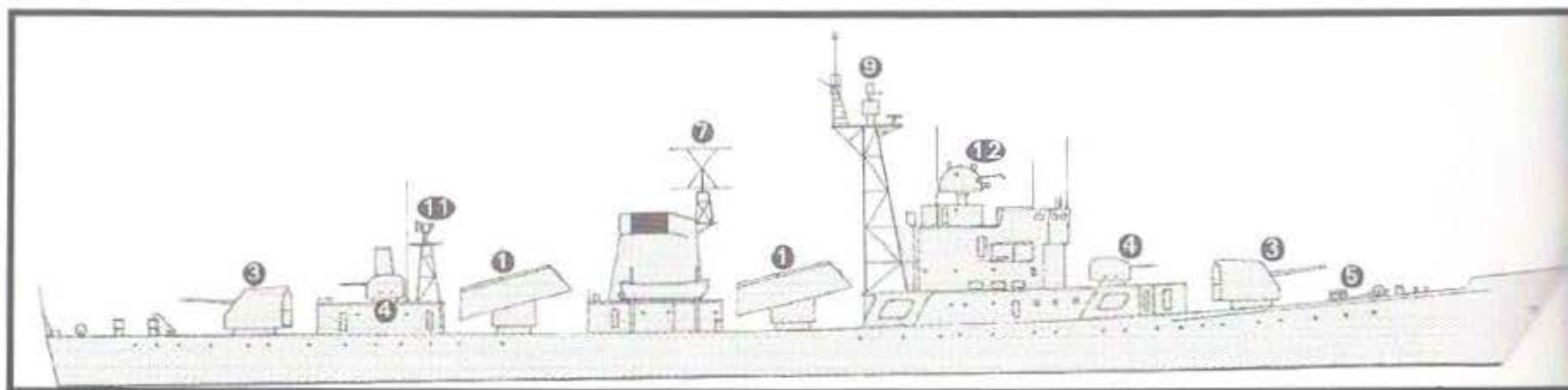


PLA NAVY JIANGHU CLASS MISSILE FRIGATE *FOSHAN* 563

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PLA NAVY JIANGHU V (TYPE 053H1G) CLASS (FFG)



NATO Type Code: *JIANGHU V*
PLAN Type Code: *TYPE 053H1G*
FFG: *Guided Missile Frigate*

- 1-SSM: HY-2 (C-201) (CSSC-3 Seersucker) (2 twin) launchers; active radar or IR homing to 95 km (51 n miles) at 0.9 Mach; warhead 513 kg.
- 3- Guns: China 3.9 in (100 mm)/56 (twin); 25 rds/min to 22 km (12 n miles); weight of shell 15.6 kg.
- 4- Guns: China 37 mm/63 (2 twin); 180 rds/min to 8.5 km (4.6 n miles) anti-aircraft; weight of shell 1.42 kg.
- 5- Mortars: 2 RBU 1200 5-tubed fixed launchers; range 1,200m; warhead 34 kg
- 7- Air search radar: Type 517 Knife Rest; A-band
- 9- Air/surface search radar: Type (unknown); I-band
- 11- Fire control: Type 347G Rice Bowl; I/J band
- 12- Fire control: Type 343 (Wok Won); I-band

Reference: Jane's Fighting Ships 2011-2012

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CHINA MARINE SURVEILLANCE HAIJIAN 71



CHINA MARINE SURVEILLANCE HAIJIAN 75



CHINA MARINE SURVEILLANCE HAIJIAN 84

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CHINA MARINE SURVEILLANCE *HAIJIAN* 167



CHINA MARINE SURVEILLANCE *HAIJIAN* 8002

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Annex 95

Armed Forces of the Philippines, *Ayungin Shoal: Situation Update* (11 May 2013)



AYUNGIN SHOAL

SITUATION UPDATE

OJ3, GHQ, Camp Aguinaldo



AYUNGIN SHOAL UPDATES

Purpose

Provide His Excellency with an update on the AFP Contingency Plan regarding the situation in Ayungin Shoal.

AYUNGIN SHOAL UPDATES

Scope

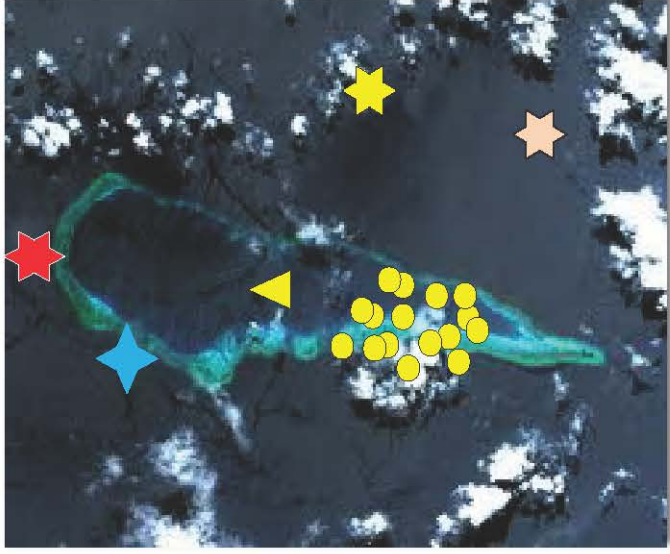
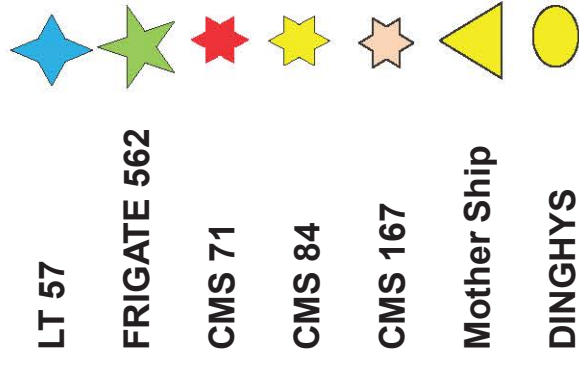
- Situation
- The AFP Plan
 - Mission
 - Concept of Operations
 - Contingencies
- Updates
- Conclusion

AYUNGIN SHOAL UPDATES

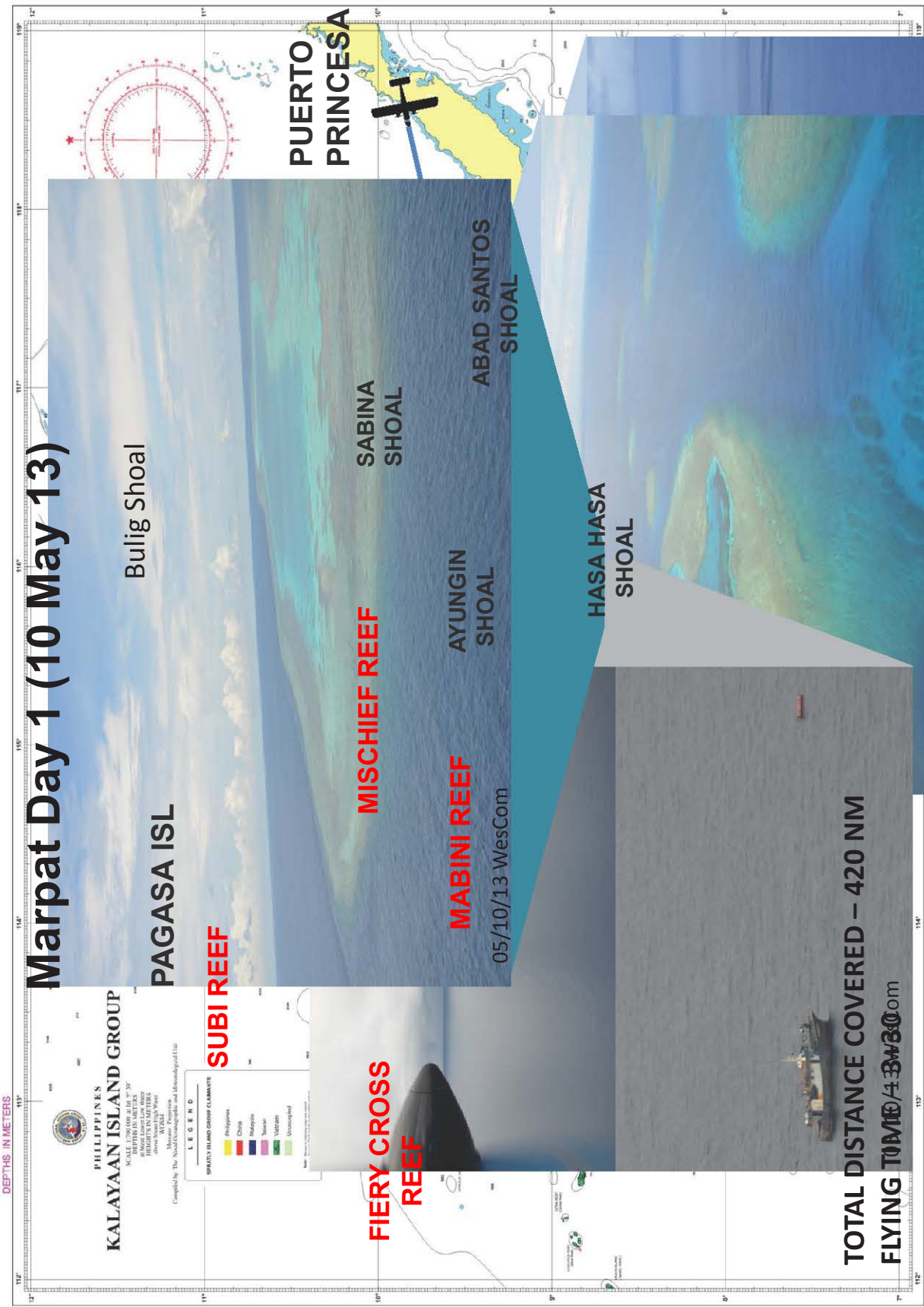
Situation

(as of 11 1800 May 2013)

- May 2, Chinese ships were sighted in Ayungin Shoal
- continued presence there (and in BdM) are major concerns (Threat Level 1)



Marpat Day 1 (10 May 13)



PHILIPPINES
KALAYAAN ISLAND GROUP
 SCALE 1:500,000 or 1 in 50 miles
 HORIZONTAL DISTANCE IN METERS
 HORIZONTAL DISTANCE IN MILES
 VERTICAL DISTANCE IN METERS
 VERTICAL DISTANCE IN MILES
 WGS84
 Modified from the National Hydrographic Office
 Compiled by The National Geospatial and Meteorological Unit

LEGEND

SPIRITLY ISLAND GROUP CLAIMANTS

- Philippines
- China
- Malaysia
- Taiwan
- Vietnam
- Uncontested

FIERY CROSS REEF

SUBI REEF

PAGASA ISL

Bulig Shoal

MISCHIEF REEF

MABINI REEF

05/10/13 WesCom

AYUNGIN SHOAL

SABINA SHOAL

ABAD SANTOS SHOAL

HASA HASA SHOAL

05/10/13 WesCom

05/10/13 WesCom

05/10/13 WesCom

05/10/13 WesCom

TOTAL DISTANCE COVERED – 420 NM
FLYING TIME 43 hrs 30 min

Panganiban (Mischief) to Ayungin: 23 miles

05/10/13 WesCom
 05/10/13 WesCom

LT-57

Marpat Day 1 (10 May 13)

PAGASA ISL
SUBI REEF CMS 167



05/10/13 WesCom

FIERY CROSS REEF



05/10/13 WesCom

PUERTO PRINCESA

SABINA SHOAL

05/10/13 WesCom

ABAD SANTOS SHOAL

HASA HASA SHOAL

Radars: air and surface search

Type 79A automatic dual-100mm/
56-calibre main guns

TOTAL DISTANCE COVERED - 420 NM
FLYING TIME - 3+30

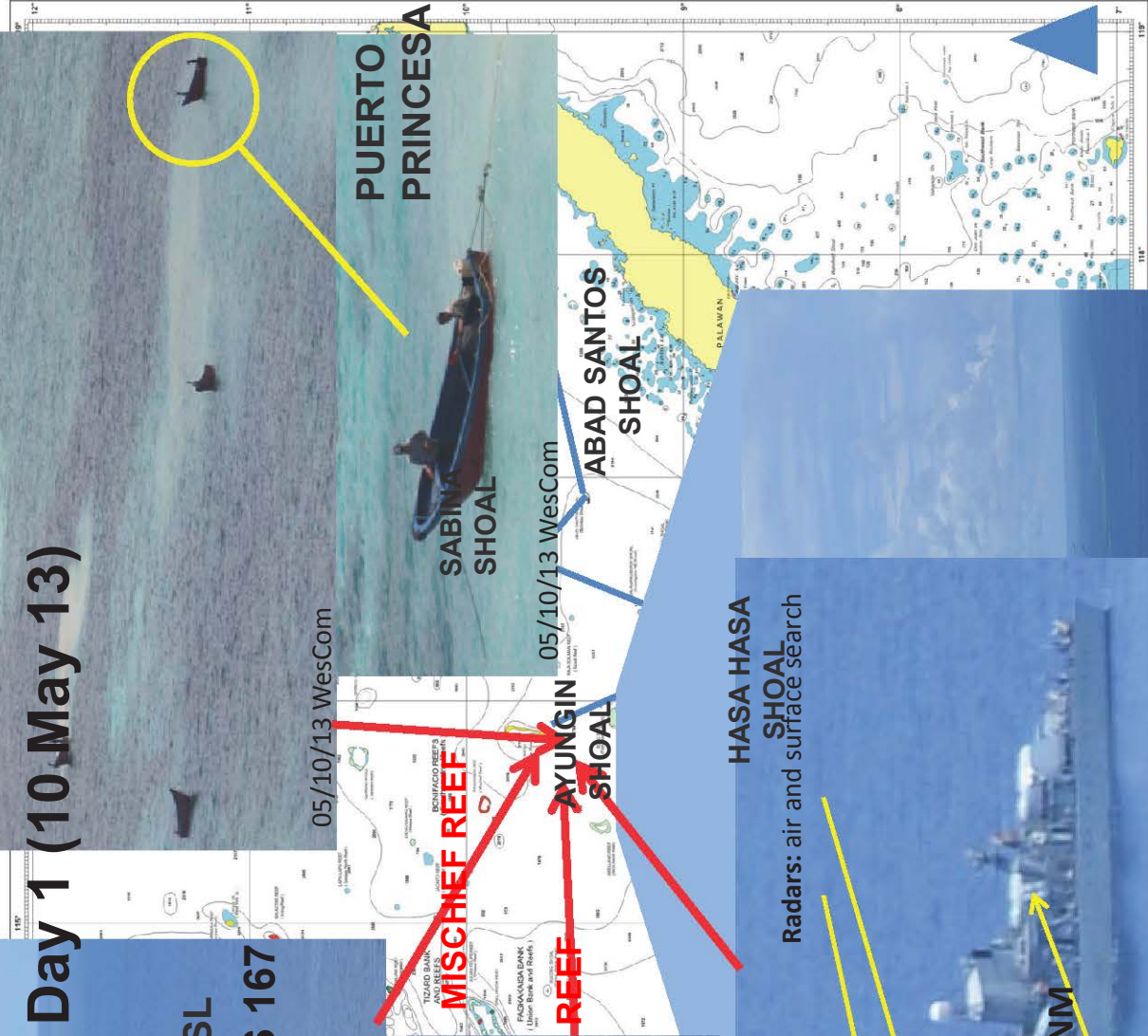
Missiles: 8X YJ-83 AShM

05/10/13 WesCom

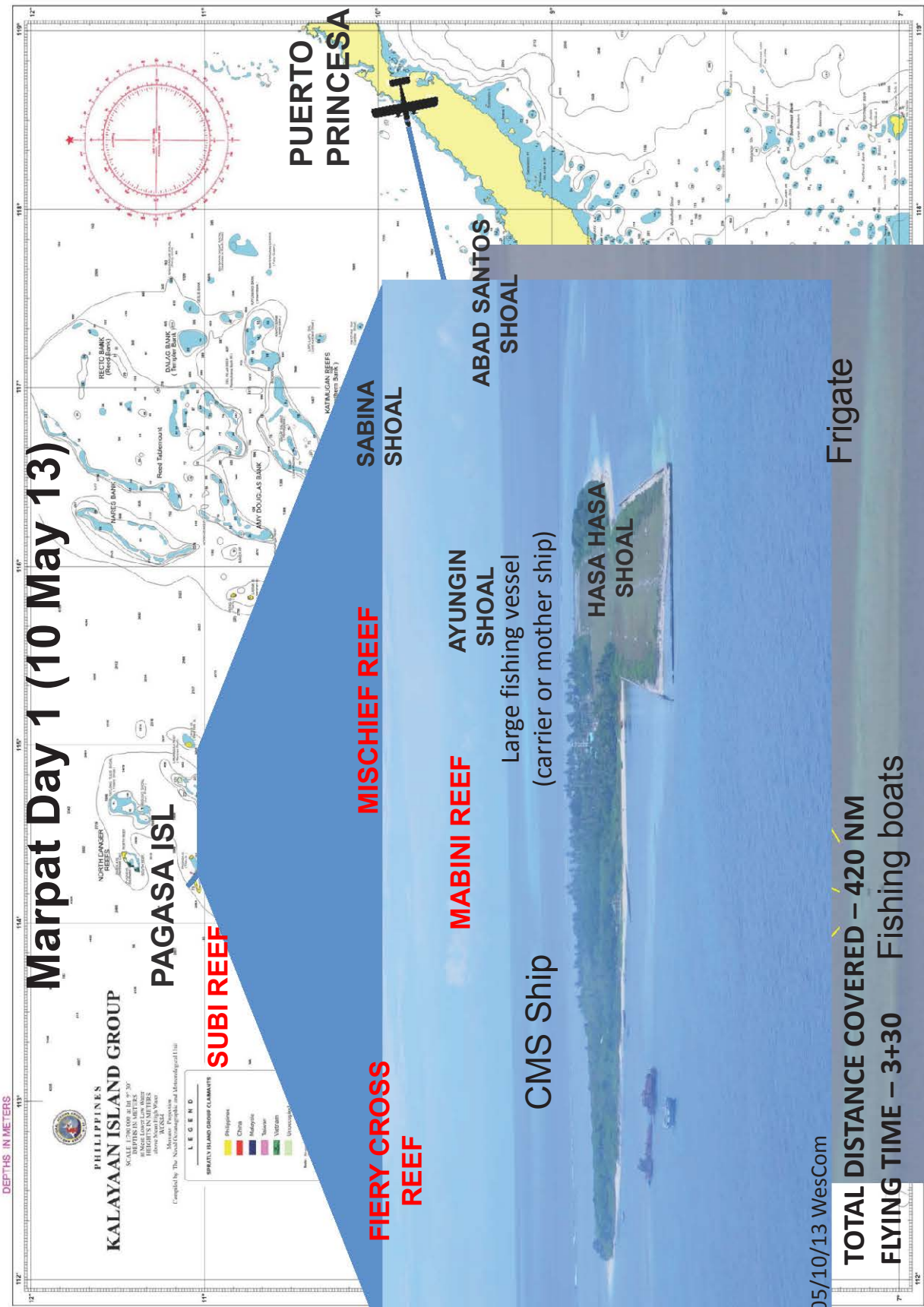
Panganiban (Mischief) to Ayungin: 23 miles

DEPTHS IN METERS

05/10/13 WesCom



Marpat Day 1 (10 May 13)



05/10/13 WesCom

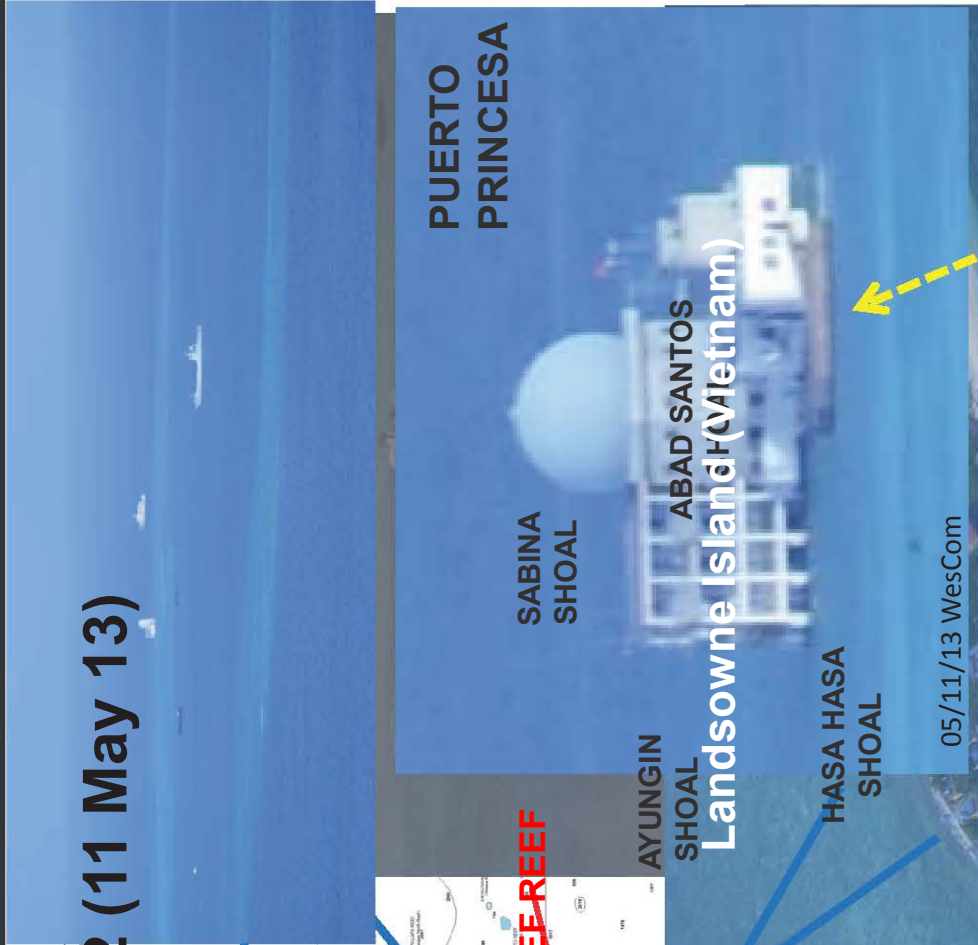
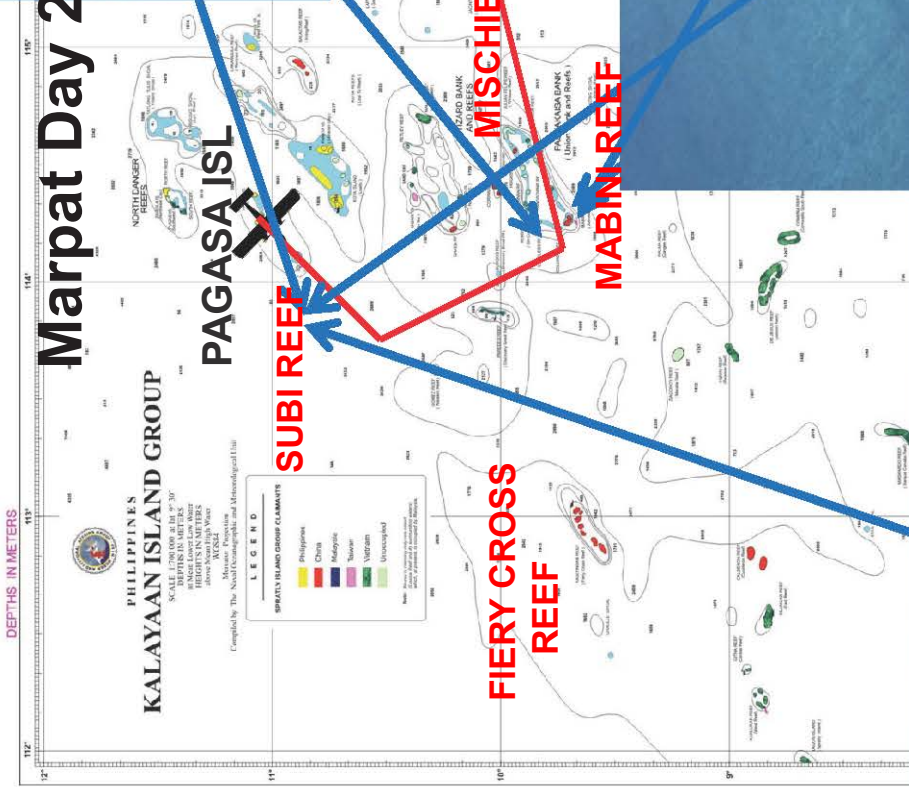
TOTAL DISTANCE COVERED – 420 NM

FLYING TIME – 3+30 Fishing boats

05/10/13 WesCom

Panganiban (Mischief) to Ayungin: 23 miles

Marpat Day 2 (11 May 13)



Marine scientific survey ship

Panganiban (Mischief) to Ayungin: 23 miles

05/11/13 WesCom

Replenishing ship (POL) with heli deck

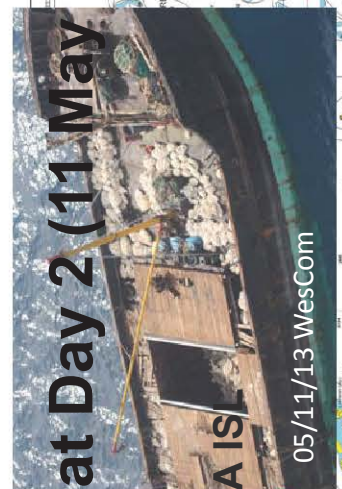
PAGASA – SUBI REEF – MABINI REEF – MISCHIEF REEF – AYUNGIN SHOAL – PUERTO FLYING TIME 3+45

05/11/13 WesCom

Marpat Day 2 (11 May 13)



05/11/13 WesCom



05/11/13 WesCom



05/11/13 WesCom



05/11/13 WesCom



05/11/13 WesCom



LEG:

PAGASA - SUBI REEF - MABINI REEF - MISCHIEF REEF - AYUNGIN SHOAL - PUERTO PRINCESA
FLYING TIME 3+45

05/11/13 WesCom



05/11/13 WesCom



PUERTO PRINCESA

SABINA SHOAL

AYUNGIN SHOAL

MISCHIEF REEF

MABINI REEF

ABAD SANTOS SHOAL

HASA HASA SHOAL

05/11/13 WesCom

AYUNGIN SHOAL UPDATES

Situation

As of 13 1300H May 2013, 1 Frigate (approx 10 nm away), 3 CMS vessels (3-4 nm away) and 2 Hainan f/v (3 nm away) remain in the vicinity of Ayungin Shoal.



END OF PRESENTATION

OJ3, GHQ, Camp Aguinaldo

Annex 96

Armed Forces of the Philippines, *Chronological Development of Artificial Structures on Features*

CHRONOLOGICAL DEVELOPMENT

NOTE: COLORED RED FONTS ON SIGNATURE MEANS DECREASE/DIMINISH STRUCTURES

NOTE: COLORED BLUE FONTS ON SIGNATURE MEANS INCREASE/NEW STRUCTURES

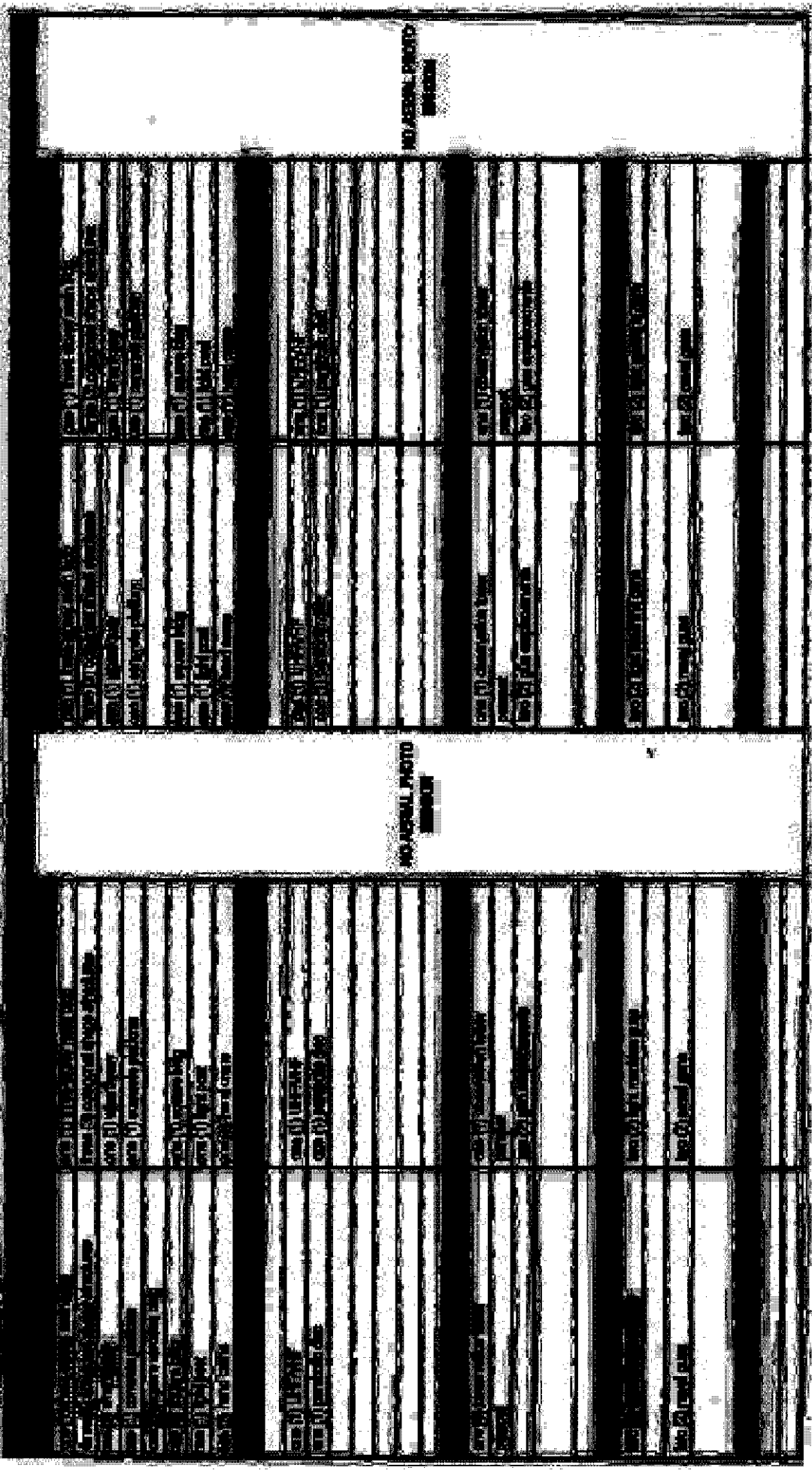
CECILIA REEL

0355 N 102 E
204 NW 1/4 of Range 10 North, Section 5, T10N, R10W
204 NW 1/4 of Range 10 North

NO AERIAL PHOTO SECTION	NO AERIAL PHOTO SECTION	WITH AERIAL PHOTO BUT NO PI REPORT	NO AERIAL PHOTO SECTION	NO AERIAL PHOTO SECTION
----------------------------	----------------------------	---------------------------------------	----------------------------	----------------------------

GHIGLIA REEF

01/04/11 11:42 AM, E
304-1084 Reef of Puerto Piñeros, Piñeros, Pinar
del Rio, Cuba



CUARTERON REEF

0851.0 N 112 49.7 E
 353 NM West of Puerto Princesa, Palawan
 206 NM West of Babac Island, Palawan

	2003	2004	2005	2006
NO AERIAL PHOTO MISSION	STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
	one (1) three-storey concrete building three (3) octagonal building	one (1) three-storey concrete building three (3) octagonal building	one (1) three-storey concrete building three (3) octagonal building	one (1) three-storey concrete building three (3) octagonal building
	one (1) concrete platform one (1) rectangular hut one (1) wooden platform	one (1) concrete platform	one (1) concrete platform	one (1) concrete platform
				one (1) single-storey concrete building one (1) rectangular concrete building one (1) helipad /40m x 40m)
	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
	one (1) UHF/MHF two (2) parabolic disc	one (1) UHF/MHF two (2) parabolic disc	one (1) UHF/MHF two (2) parabolic disc	one (1) UHF/MHF three (3) parabolic disc
	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
	one (1) observation towers two (2) gun emplacements parapet	one (1) observation towers	one (1) observation towers	one (1) observation towers
		parapet	parapet	parapet
	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
two (2) light machine guns two (2) naval guns	two (2) light machine guns two (2) naval guns	two (2) light machine guns two (2) naval guns	two (2) light machine guns two (2) naval guns	
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	
			one (1) solar panel/batt	

QUARTERON REEF

0651.0 N 112 49.7 E
 353 NM West of Puerto Princesa, Palawan
 206 NM West of Balabac Island, Palawan

2007	2008	2009	2010	2011
NO AERIAL PHOTO MISSION	NO AERIAL PHOTO MISSION	STRUCTURES	STRUCTURES	STRUCTURES
		one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building
		three (3) octagonal building	three (3) octagonal building	
		one (1) concrete platform	one (1) concrete platform	one (1) concrete platform
		one (1) single-storey concrete building	one (1) single-storey concrete building	one (1) single-storey concrete building
		one (1) rectangular concrete building	one (1) rectangular concrete building	
		one (1) helipad (40m x 40m)	one (1) helipad (40m x 40m)	one (1) helipad (40m x 40m)
		COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
		one (1) UHF/VHF	one (1) UHF/VHF	one (1) UHF/VHF
		three (3) parabolic disc	three (3) parabolic disc	three (3) parabolic disc
			one (1) weather radar	one (1) weather radar
			one (1) solar powered weather instrument	one (1) solar powered weather instrument
				seven (7) dipole antennas
				one (1) directional antenna
				two (2) long range Wi-Fi dish antennas
		DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
		one (1) observation towers	one (1) observation towers	one (1) observation towers
parapet	parapet	parapet		
	two (2) gun emplacements	two (2) gun emplacements		
		two (2) CCTV cameras		
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE		
two (2) light machine guns	one (1) light machine guns	one (1) light machine guns		
two (2) naval guns	two (2) naval guns	two (2) naval guns		
two (2) anti-aircraft artillery	two (2) anti-aircraft artillery	two (2) anti-aircraft artillery		
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY		
one (1) solar panel/belt	four (4) solar panel/belts	four (4) solar panel/belts		

CUARTERON REEF

0851.0 N 112.49.7 E
 353 NM West of Puerto Princesa, Palawan
 206 NM West of Batabac Island, Palawan

2012	2013
STRUCTURES	STRUCTURES
one (1) three-storey concrete building	one (1) three-storey concrete building
one (1) concrete platform	one (1) concrete platform
one (1) single-storey concrete building	one (1) single-storey concrete building
one (1) helipad (40m x 40m)	one (1) helipad (40m x 40m)
COMMUNICATIONS	COMMUNICATIONS
one (1) UHF/VHF	one (1) UHF/VHF
three (3) parabolic disc	three (3) parabolic disc
one (1) weather radar	one (1) weather radar
one (1) solar powered weather instrument	one (1) solar powered weather instrument
nine (9) dipole antennas	nine (9) dipole antennas
one (1) directional antenna	one (1) directional antenna
two (2) long range Wi-Fi dish antennas	two (2) long range Wi-Fi dish antennas
DEFENSE STRUCTURE	DEFENSE STRUCTURE
one (1) observation towers	one (1) observation towers
parapet	parapet
two (2) gun emplacements	two (2) gun emplacements
two (2) CCTV cameras	two (2) CCTV cameras
MILITARY HARDWARE	MILITARY HARDWARE
two (2) anti-aircraft artillery	two (2) anti-aircraft artillery
two QJZ 89 12.7mm heavy machine guns	two (2) QJZ 89 12.7mm heavy machine guns
POWER SUPPLY	POWER SUPPLY
four (4) solar panels/batteries	four (4) solar panels/batteries

FIERY CROSS REEF

09 33.0 N 112 54.0 E
 341 NM West of Puerto Princesa, Palawan
 253 NM West of Ramos Island, Palawan

1990	1991	1992	1993	1994
<p>STRUCTURES</p> <p>one (1) three-storey concrete building two (2) two-storey buildings one (1) single-storey buildings one (1) helipad (open area) one (1) pier</p> <p>COMMUNICATIONS</p> <p>one (1) disk type antenna</p>	<p>STRUCTURES</p> <p>one (1) three-storey concrete building two (2) two-storey buildings three (3) single-storey buildings one (1) helipad (open area) two (2) piers two (2) light towers</p> <p>COMMUNICATIONS</p> <p>two (2) satellite disk antenna</p>	<p>STRUCTURES</p> <p>one (1) three-storey concrete building two (2) two-storey buildings six (6) single-storey buildings one (1) helipad one (1) pier two (2) light towers</p> <p>COMMUNICATIONS</p> <p>two (2) satellite disk antenna</p>	<p>STRUCTURES</p> <p>one (1) three-storey concrete building two (2) two-storey buildings six (6) single-storey buildings one (1) helipad one (1) pier two (2) light towers</p> <p>COMMUNICATIONS</p> <p>two (2) satellite disk antenna</p>	<p>STRUCTURES</p> <p>one (1) three-storey concrete building two (2) two-storey buildings six (6) single-storey buildings one (1) helipad one (1) pier two (2) light towers</p> <p>COMMUNICATIONS</p> <p>two (2) satellite disk antenna</p>
<p>DEFENSE STRUCTURE</p> <p>four (4) observation post/towers trenches five (5) gun emplacements</p> <p>MILITARY HARDWARE</p> <p>one (1) fast boat two (2) motorized boat three (3) frigates one (1) PCF</p> <p>POWER SUPPLY</p>	<p>DEFENSE STRUCTURE</p> <p>four (4) observation post/towers trenches five (5) gun emplacements</p> <p>MILITARY HARDWARE</p> <p>one (1) supply ship two (2) motorized boat one (1) rigalis one (1) PCF</p> <p>POWER SUPPLY</p>	<p>DEFENSE STRUCTURE</p> <p>four (4) observation post/towers trenches five (5) gun emplacements</p> <p>MILITARY HARDWARE</p> <p>one (1) supply ship two (2) motorized boat one (1) rigalis one (1) PCF</p> <p>POWER SUPPLY</p>	<p>DEFENSE STRUCTURE</p> <p>five (5) observation post/towers trenches five (5) gun emplacements one (1) air raid shelter</p> <p>MILITARY HARDWARE</p> <p>five (5) naval guns four (4) motorized boat</p> <p>POWER SUPPLY</p>	<p>DEFENSE STRUCTURE</p> <p>five (5) observation post/towers trenches five (5) gun emplacements one (1) air raid shelter</p> <p>MILITARY HARDWARE</p> <p>five (5) naval guns four (4) motorized boat</p> <p>POWER SUPPLY</p>
<p>NO AERIAL PHOTO MISSION</p>		<p>WITH AERIAL PHOTO BUT NO PI REPORT</p>		

FIERY CROSS REEF

09 33.0 N 112 54.0 E

341 NM West of Puerto Princesa, Palawan

253 NM West of Ramos Island, Palawan

2000	2001	2002	2003	2004
STRUCTURES	STRUCTURES	NO AERIAL PHOTO MISSION	STRUCTURES	STRUCTURES
one (1) three-storey concrete building	one (1) three-storey concrete building		one (1) three-storey concrete building	one (1) three-storey concrete building
three (3) two-storey buildings	three (3) two-storey buildings		three (3) two-storey buildings	three (3) two-storey buildings
six (6) single storey structures	six (6) single storey structures		six (6) single-storey buildings	six (6) single-storey buildings
one (1) helipad	one (1) helipad		one (1) helipad	one (1) helipad
one (1) pier	one (1) pier		one (1) pier	one (1) pier
two (2) light towers	two (2) light towers		two (2) light towers	two (2) light towers
COMMUNICATIONS	COMMUNICATIONS		COMMUNICATIONS	COMMUNICATIONS
six (6) parabolic discs	three (3) parabolic discs		four (4) parabolic disc	four (4) parabolic disc
two (2) stick masts	two (2) stick masts		two (2) stick masts	two (2) stick masts
one (1) weather radar	one (1) weather radar		one (1) weather radar	one (1) weather radar
one (1) UHF/VHF	one (1) UHF/VHF		one (1) UHF/VHF	one (1) UHF/VHF
one (1) dipole type antenna				
DEFENSE STRUCTURE	DEFENSE STRUCTURE		DEFENSE STRUCTURE	DEFENSE STRUCTURE
five (5) observation posts/towers	five (5) observation posts/towers		five (5) observation towers	five (5) observation towers
trenches	trenches		trenches	
five (5) gun emplacements	five (5) gun emplacements	five (5) gun emplacements	five (5) gun emplacements	
		parapet	parapet	
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	
five (5) naval guns	five (5) naval guns	two (2) naval guns	five (5) naval guns	
		one (1) cargo ship		
one (1) cargo ship	one (1) cargo ship	one (1) tug boat	one (1) tug boat	
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	

FIERY CROSS REEF

05 33.0 N 112 54.0 E
 341 NM West of Puerto Pinossa, Palawan
 253 NM West of Ramos Island, Palawan

2005	2006	2007	2008	2009
STRUCTURES	STRUCTURES	NO AERIAL PHOTO MISSION	NO AERIAL PHOTO MISSION	STRUCTURES
one (1) three-storey concrete building	one (1) three-storey concrete building			one (1) three-storey concrete building
three (3) two-storey buildings	three (3) two-storey buildings			three (3) two-storey buildings
six (6) single-storey buildings	six (6) single-storey buildings			nine (9) single-storey buildings
one (1) helipad	one (1) helipad			one (1) helipad
one (1) pier	one (1) pier			one (1) pier
two (2) light towers	two (2) light towers			two (2) light house
COMMUNICATIONS	COMMUNICATIONS			COMMUNICATIONS
six (6) parabolic disc	five (5) parabolic disc			eight (8) parabolic disc
two (2) stick masts	two (2) stick masts			two (2) stick masts
one (1) weather radar	one (1) weather radar			one (1) weather radar
one (1) UHF/VHF	one (1) UHF/VHF			one (1) UHF/VHF
one (1) yagi array	one (1) yagi array			one (1) yagi array
				one (1) dipole antenna
DEFENSE STRUCTURE	DEFENSE STRUCTURE			DEFENSE STRUCTURE
five (5) observation towers	five (5) observation towers			five (5) observation towers
five (5) gun emplacements	five (5) gun emplacements			five (5) gun emplacements
parapel	parapel			parapel
MILITARY HARDWARE	MILITARY HARDWARE			MILITARY HARDWARE
five (5) naval guns	five (5) naval guns			five (5) naval guns
one (1) tug boat	one (1) tug boat			one (1) tug boat
POWER SUPPLY	POWER SUPPLY			POWER SUPPLY

FIERY CROSS REEF

09 33.0 N 112 54.0 E
 341 NM West of Puerto Princesa, Palawan
 253 NM West of Ramoa Island, Palawan

2010	2011	2012	2013
STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building
three (3) two-storey buildings	three (3) two-storey buildings	three (3) two-storey buildings	three (3) two-storey buildings
ten (10) single-storey buildings	six (6) single-storey buildings	six (6) single-storey buildings	six (6) single-storey buildings
one (1) helipad	one (1) helipad	one (1) helipad	one (1) helipad
one (1) pier	one (1) pier	one (1) pier	one (1) pier
two (2) light house	two (2) light house	two (2) light house	two (2) light house
	one (1) single-storey rectangular building	one (1) single-storey rectangular building	one (1) single-storey rectangular building
COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
ten (10) parabolic disc	eight (8) parabolic disc	ten (10) parabolic disc	ten (10) parabolic disc
two (2) stick masts	two (2) stick masts	two (2) stick masts	two (2) stick masts
one (1) weather radar	one (1) weather radar	one (1) weather radar	one (1) weather radar
one (1) UHF/MHF	one (1) UHF/MHF	one (1) UHF/MHF	one (1) UHF/MHF
one (1) yagi array	one (1) yagi array	one (1) yagi array	one (1) yagi array
three (3) dipole antennas	nine (9) dipole antennas	nine (9) dipole antennas	nine (9) dipole antennas
one (1) commo tower	one (1) commo tower	one (1) commo tower	one (1) commo tower
	four (4) directional antennas	four (4) directional antennas	four (4) directional antennas
	six (6) long range Wi-Fi disk antennas	six (6) long range Wi-Fi disk antennas	six (6) long range Wi-Fi disk antennas
	one (1) lattice mast antenna	one (1) lattice mast antenna	one (1) lattice mast antenna
DEFENCE STRUCTURE	DEFENCE STRUCTURE	DEFENCE STRUCTURE	DEFENCE STRUCTURE
five (5) observation towers	five (5) observation towers	five (5) observation towers	five (5) observation towers
	five (5) gun emplacements	five (5) gun emplacements	five (5) gun emplacements
	parapet	parapet	parapet
	four (4) CCTV cameras	four (4) CCTV cameras	four (4) CCTV cameras
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
three (3) machine guns	three (3) machine guns	three (3) machine guns	three (3) machine guns
two (2) anti-aircraft artillery	two (2) anti-aircraft artillery	two (2) anti-aircraft artillery	two (2) anti-aircraft artillery
one (1) tug boat	one (1) tug boat	one (1) tug boat	one (1) tug boat
	one (1) research ship	one (1) research ship	one (1) research ship
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY
	156 solar panels/bells	156 solar panels/bells	156 solar panels/bells
	one (1) power house	one (1) power house	one (1) power house

GAVEN KEEF

10 13.0 N 114 13.4 E
 272 NM West of Puerto Princesa, Palawan
 205 NM Northeast of Ramos, Palawan

2004	2007	2008	2009	2010
STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
two (2) octagonal building	two (2) octagonal building	two (2) octagonal building	two (2) octagonal building	two (2) octagonal building
one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building
one (1) nipa hut	one (1) nipa hut	one (1) nipa hut	one (1) nipa hut	one (1) nipa hut
one (1) concrete platform	one (1) concrete platform	one (1) concrete platform	one (1) concrete platform	one (1) concrete platform
one (1) light post	one (1) light post	one (1) light post	one (1) light post	one (1) light post
one (1) square platform	one (1) square platform	one (1) square platform	one (1) square platform	one (1) square platform
two (2) rectangular building	two (2) rectangular building	two (2) rectangular building	two (2) rectangular building	two (2) rectangular building
one (1) helipad	one (1) helipad	one (1) helipad	one (1) helipad	one (1) helipad
COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
three (3) parabolic dish	three (3) parabolic dish	three (3) parabolic dish	two (2) parabolic dish	two (2) parabolic dish
two (2) UHF/VHF	two (2) UHF/VHF	two (2) UHF/VHF	two (2) UHF/VHF	two (2) UHF/VHF
			one (1) weather radar	one (1) weather radar
			one (1) solar powered weather instrument	one (1) solar powered weather instrument
			two (2) dipole antenna	two (2) dipole antenna
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
one (1) observation tower	one (1) observation tower	one (1) observation tower	one (1) observation tower	one (1) observation tower
two (2) gun emplacements	two (2) gun emplacements	two (2) gun emplacements	two (2) gun emplacements	two (2) gun emplacements
parapet	parapet	parapet	parapet	parapet
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
two (2) naval guns	two (2) naval guns	two (2) naval guns	two (2) naval guns	two (2) naval guns
one (1) frigate ship	one (1) frigate ship	one (1) frigate ship	one (1) frigate ship	one (1) frigate ship
two (2) light machine gun	two (2) light machine gun	two (2) light machine gun	two (2) light machine gun	two (2) light machine gun
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY
				four (4) solar panels/bells

NO AERIAL PHOTO MISSION NO AERIAL PHOTO MISSION

JOHNSON REEF

09 42.0N 114 22.0 E

270 NM West of Puerto Princesa, Palawan

206 NM Northwest of Ramos, Palawan

2011	2012	2013
STRUCTURES	STRUCTURES	STRUCTURES
two (2) octagonal building	two (2) octagonal building	two (2) octagonal building
one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building
one (1) nipa hut	one (1) nipa hut	
one (1) concrete platform	one (1) concrete platform	one (1) concrete platform
one (1) light post	one (1) light post	one (1) light post
one (1) square platform	one (1) square platform	one (1) square platform
two (2) rectangular building	two (2) rectangular building	two (2) rectangular building
one (1) helipad	one (1) helipad	one (1) helipad
		one (1) light house
COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
two (2) UHF/VHF	two (2) UHF/VHF	two (2) UHF/VHF
two (2) parabolic disc	three (3) parabolic disc	two (2) parabolic disc
one (1) weather radar	one (1) weather radar	one (1) weather radar
one (1) solar powered weather instrument	one (1) solar powered weather instrument	one (1) solar powered weather instrument
seven (7) dipole antenna	eight (8) dipole antenna	seven (7) dipole antenna
two (2) long range wi-fi dish antenna	two (2) long range wi-fi dish antenna	two (2) long range wi-fi dish antenna
one (1) telecommunication antenna	one (1) telecommunication antenna	one (1) telecommunication antenna
	one (1) directional antenna	one (1) directional antenna
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
one (1) observation tower	one (1) observation tower	one (1) observation tower
parapet	parapet	parapet
two (2) gun emplacements	two (2) gun emplacements	two (2) gun emplacements
two (2) CCTV	two (2) CCTV	two (2) CCTV
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
two (2) naval guns	two (2) naval guns	two (2) naval guns
two (2) light machine gun	two (2) light machine gun	two (2) light machine gun
one (1) frigate ship	one (1) frigate ship	one (1) frigate ship
one (1) tug boat	one (1) tug boat	
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY
four (4) solar panels/cells	four (4) solar panels/cells	four (4) solar panels/cells

SUBI KEEF

08 06.5 N 114 06.0 E
 250 NM Southwest of Puerto Princesa, Palawan
 167 NM West of Bulabuk Island, Palawan

2010	2001	2003	2004
STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
one (1) three-story concrete building three (3) octagonal shaped structures	one (1) three-story concrete building three (3) octagonal shaped structures	one (1) three-story concrete building three (3) octagonal shaped structures	one (1) three-story concrete building three (3) octagonal shaped structures
one (1) circular concrete building one (1) platform	one (1) circular concrete building one (1) platform	one (1) circular concrete building one (1) platform	one (1) circular concrete building one (1) platform
COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
one (1) UHF/MF	one (1) UHF/MF	one (1) UHF/MF	one (1) UHF/MF
one (1) cross-slot type weather radar one (1) parabolic disc	one (1) cross-slot type weather radar two (2) parabolic disc	one (1) cross-slot type weather radar two (2) parabolic disc	one (1) cross-slot type weather radar two (2) parabolic disc
one (1) Yagi array	one (1) Yagi array	one (1) Yagi array antenna	one (1) Yagi array antenna
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
one (1) observation tower four (4) gun emplacements	one (1) observation tower four (4) gun emplacements	one (1) observation tower four (4) gun emplacements	one (1) observation tower four (4) gun emplacements
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
four (4) naval guns	four (4) naval guns	four (4) naval guns	four (4) naval guns
two (2) light machine guns	two (2) light machine guns		
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY

NO AERIAL PHOTO MISSION

SUBI REEF

08 06.5 N 114 06.0 E
 250 NM Southwest of Puerto Princesa, Palawan
 157 NM West of Balabac Island, Palawan

2005	2006	2007	2008	2009
STRUCTURES	STRUCTURES		STRUCTURES	
one (1) three-storey concrete building	one (1) three-storey concrete building		one (1) three-storey concrete building	
three (3) octagonal buildings				
one (1) circular concrete structure	one (1) circular concrete structure		one (1) circular concrete structure	
one (1) concrete platform	one (1) concrete platform		one (1) concrete platform	
	one (1) rectangular wooden platform		one (1) rectangular wooden platform	
	one (1) rectangular shaped building		one (1) rectangular shaped building	
	one (1) two-storey rectangular concrete bldg		one (1) two-storey rectangular concrete bldg	
	one (1) three-storey octagonal concrete bldg		one (1) three-storey octagonal concrete bldg	
	one (1) three-storey rectangular concrete bldg		one (1) three-storey rectangular concrete bldg	
COMMUNICATIONS	COMMUNICATIONS		COMMUNICATIONS	
one (1) UHF/VHF	one (1) UHF/VHF		one (1) UHF/VHF	
one (1) cross-slot type weather radar	two (2) cross-slot type weather radar		two (2) cross-slot type weather radar	
two (2) parabolic disc	two (2) parabolic disc		three (3) parabolic disc	
one (1) yagi array antenna	one (1) yagi array antenna		one (1) yagi array antenna	
			one (1) radome	
DEFENSE STRUCTURE	DEFENSE STRUCTURE		DEFENSE STRUCTURE	
one (1) observation tower	one (1) observation tower		one (1) observation tower	
four (4) gun emplacements	four (4) gun emplacements		four (4) gun emplacements	
MILITARY HARDWARE	MILITARY HARDWARE		MILITARY HARDWARE	
four (4) naval guns	four (4) naval guns		four (4) Anti-aircraft artillery	
	one (1) "Yukon" Class LST		two (2) machine guns	
			one (1) "Yukon" Class LST	
POWER SUPPLY	POWER SUPPLY		POWER SUPPLY	

NO AERIAL PHOTO MISSION NO AERIAL PHOTO MISSION

SIBI keef

08 06 5 N 114 06.0 E

290 NM Southwest of Puerto Princesa, Palawan

167 NM West of Balabac Island, Palawan

2010	2011	2012	2013
STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building	one (1) three-storey concrete building
one (1) circular concrete structure	one (1) circular concrete structure	one (1) circular concrete structure	one (1) circular concrete structure
one (1) concrete platform	one (1) concrete platform	one (1) concrete platform	one (1) concrete platform
one (1) rectangular wooden platform	one (1) rectangular wooden platform	one (1) rectangular wooden platform	one (1) rectangular wooden platform
one (1) rectangular shaped building	one (1) rectangular shaped building	one (1) rectangular shaped building	one (1) rectangular shaped building
one (1) two-storey rectangular concrete bldg	one (1) two-storey rectangular concrete bldg	one (1) two-storey rectangular concrete bldg	one (1) two-storey rectangular concrete bldg
one (1) three-storey octagonal concrete bldg	one (1) three-storey octagonal concrete bldg	one (1) three-storey octagonal concrete bldg	one (1) three-storey octagonal concrete bldg
one (1) three-storey rectangular concrete bldg	one (1) three-storey rectangular concrete bldg	one (1) three-storey rectangular concrete bldg	one (1) three-storey rectangular concrete bldg
COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
one (1) UHF/VHF	one (1) UHF/VHF	one (1) UHF/VHF	one (1) UHF/VHF
two (2) cross-slot type weather radar	two (2) cross-slot type weather radar	two (2) cross-slot type weather radar	two (2) cross-slot type weather radar
four (4) parabolic disc	four (5) parabolic disc	six (6) parabolic disc	six (6) parabolic disc
one (1) yagi array antenna	one (1) yagi array antenna	one (1) yagi array antenna	one (1) yagi array antenna
one (1) radome	one (1) radome	one (1) radome	one (1) radome
six (6) long range WFI dish antenna	six (6) long range WFI dish antenna	six (6) long range WFI dish antenna	six (6) long range WFI dish antenna
one (1) solar powered weather instrument	one (1) solar powered weather instrument	three (3) solar powered weather instrument	three (3) solar powered weather instrument
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
one (1) observation tower	one (1) observation tower	one (1) observation tower	one (1) observation tower
four (4) gun emplacements	four (4) gun emplacements	four (4) gun emplacements	four (4) gun emplacements
	two (2) CCTV cameras	two (2) CCTV cameras	two (2) CCTV cameras
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
four (4) Anti-aircraft artillery	four (4) Anti-aircraft artillery	four (4) Anti-aircraft artillery	four (4) Anti-aircraft artillery
two (2) machine guns	one (1) "Yukon" Class LST	one (1) "Yukon" Class LST	one (1) "Yukon" Class LST
one (1) "Yukon" Class LST			
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY

MISCHIEF REEF (PROC)

09 56.0 N 115 42.4 E
 183 NM West of Puerto Princesa, Palawan
 130 NM West of Tarupliao, Palawan

1995	1996	1997	1998
STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
Four (4) bldgs in triangular formation	Four (4) bldgs in triangular formation	Four (4) bldgs in triangular formation	Four (4) bldgs in triangular formation
Three (3) octagonal shaped structures	Three (3) octagonal shaped structures	Three (3) octagonal shaped structures	Three (3) octagonal shaped structures
One (1) six-sided structure	One (1) six-sided structure	One (1) six-sided structure	One (1) six-sided structure
Two (2) platforms	Two (2) platforms	Two (2) platforms	Two (2) platforms
COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
One (1) parabolic disc	One (1) parabolic disc	One (1) parabolic disc	One (1) parabolic disc
One (1) stick mast	One (1) stick mast	One (1) stick mast	One (1) stick mast
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
Seven (7) naval boats	Seven (7) naval boats		
Four (4) boats	Four (4) boats		
	One (1) survey ship	One (1) survey ship	
	One (1) supply ship	One (1) supply ship	
			Two (2) LST
			Four (4) cargo/supply ships

MISCHIEF REEF PHOTO

08 59-0 N 116 -02.4 E
100 NM West of Puerto Placeres, Palawan
130 NM West of Tarupapas, Palawan



NO AERIAL PHOTO
Mischief

NO AERIAL PHOTO

NO AERIAL PHOTO

MISCHIEF REEF (PROC)

09 58.0 N 115 42.4 E
 183 NM West of Puerto Princesa, Palawan
 130 NM West of Tanampiarao, Palawan

2000	2001	2002	2003	2004
5/9/2	5/9/2	5/9/2	5/9/2	5/9/2
STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
Five (5) octagonal shaped structures Two (2) hexagonal structure Four (4) platforms One (1) square hut One (1) rectangular bldg One (1) wharf Concrete foundation	Five (5) octagonal shaped structures Two (2) hexagonal structure Four (4) platforms One (1) rectangular bldg	Five (5) octagonal shaped structures Two (2) hexagonal structure Four (4) platforms	Five (5) octagonal shaped structures Two (2) hexagonal structure Four (4) platforms	Five (5) octagonal shaped structures
One (1) three-story bldg One (1) platform w/ construction materials One (1) concrete platform used as quay	One (1) three-story bldg One (1) platform w/ construction materials One (1) concrete platform used as quay	One (1) three-story bldg One (1) platform w/ construction materials One (1) concrete platform used as quay	One (1) three-story bldg One (1) platform w/ construction materials One (1) concrete platform used as quay One (1) wooden platform	One (1) three-story bldg One (1) concrete platform used as quay One (1) wooden platform
COMMUNICATIONS One (1) parabolic disc One (1) stick mast One (1) cross slot type radar	COMMUNICATIONS One (1) parabolic disc One (1) stick mast One (1) cross slot type radar	COMMUNICATIONS One (1) parabolic disc One (1) stick mast One (1) cross slot type radar	COMMUNICATIONS Three (3) parabolic disc One (1) stick mast One (1) cross slot type radar	COMMUNICATIONS Three (3) parabolic disc One (1) stick mast One (1) cross slot type radar
DEFENSE STRUCTURE Four (4) search lights	DEFENSE STRUCTURE Four (4) search lights	DEFENSE STRUCTURE Four (4) search lights	DEFENSE STRUCTURE Four (4) search lights	DEFENSE STRUCTURE Four (4) search lights
MILITARY HARDWARE	MILITARY HARDWARE Two (2) Survey ships	MILITARY HARDWARE Two (2) Survey ships	MILITARY HARDWARE Two (2) Survey ships	MILITARY HARDWARE Two (2) Survey ships
POWER SUPPLY	POWER SUPPLY One (1) solar panel	POWER SUPPLY One (1) solar panel	POWER SUPPLY One (1) solar panel	POWER SUPPLY One (1) solar panel

NO AERIAL PHOTO
MISSION

MISCHIEF REEF (PROC)

09 58.0 N 115 42.4 E
 183 NM West of Puerto Princesa, Palawan
 130 NM West of Tanampitao, Palawan

2010 Site 2	2011 Site 2	2012 Site 2	2013 Site 2
STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
Five (5) octagonal shaped structures	Five (5) octagonal shaped structures	Five (5) octagonal shaped structures	Five (5) octagonal shaped structures
One (1) three-storey bldg	One (1) three-storey bldg	One (1) three-storey bldg	One (1) three-storey bldg
One (1) concrete platform used as quay	One (1) concrete platform used as quay	One (1) concrete platform used as quay	One (1) concrete platform used as quay
One (1) wooden platform	One (1) wooden platform		
COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
Four (4) parabolic disc	Three (3) parabolic disc	Four (4) parabolic disc	Four (4) parabolic disc
One (1) stick mast	One (1) stick mast	One (1) stick mast	One (1) stick mast
One (1) cross slot type radar	One (1) cross slot type radar	One (1) cross slot type radar	One (1) cross slot type radar
One (1) yagi array antenna	One (1) yagi array antenna	One (1) yagi array antenna	One (1) yagi array antenna
One (1) weather instrument	One (1) weather instrument	One (1) weather instrument	One (1) weather instrument
	One (1) directional antenna	One (1) directional antenna	One (1) directional antenna
	Two (2) long range Wi-Fi dish antenna	Two (2) long range Wi-Fi dish antenna	Two (2) long range Wi-Fi dish antenna
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
Four (4) search lights	Four (4) search lights	Four (4) search lights	Four (4) search lights
	Two (2) CCTV Cameras	Two (2) CCTV Cameras	Two (2) CCTV Cameras
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
Two (2) Survey ships	Two (2) Survey ships	Two (2) Survey ships	One (1) Survey ship
			One (1) Frigate
			One (1) Heavy Machine Gun (HMG)
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY
Two (2) solar panels/batts	Two (2) solar panels/batts	Five (5) solar panels/batts	Five (5) solar panels/batts
	One (1) power house	One (1) power house	
			One (1) three bladed wind turbine

MISCHIEF REEF (PROC)

09 58.0 N 115 42.4 E
 183 NM West of Puerto Princesa, Palawan
 130 NM West of Tanampao, Palawan

1995 Site 3*	1996 Site 3*	1997 Site 3*	1998 Site 3*
STRUCTURES	STRUCTURES	STRUCTURES	STRUCTURES
Four (4) bldgs in triangular formation	Four (4) bldgs in triangular formation		
Three (3) octagonal shaped structures	Three (3) octagonal shaped structures	Three (3) octagonal shaped structures	Three (3) octagonal shaped structures
One (1) hexagonal structure	One (1) hexagonal structure	One (1) hexagonal structure	One (1) hexagonal structure
Two (2) platforms	Two (2) platforms	Two (2) platforms	Two (2) platforms
One (1) square hut	One (1) square hut	One (1) square hut	One (1) square hut
	Octagonal structures in triangular formation	Octagonal structures in triangular formation	Octagonal structures in triangular formation
			One (1) wharf
			Concrete foundation
			* Massive construction of concrete buildings. About 100-150 personnel working on site laying foundations for rectangular structure.
COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS
One (1) parabolic disc	One (1) parabolic disc	One (1) parabolic disc	One (1) parabolic disc
One (1) stick mast	One (1) stick mast	One (1) stick mast	One (1) stick mast
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY

MISCHIEF REEF (PROC)

09 58.0 N 115 42.4 E

163 NM West of Puerto Princesa, Palawan

130 NM West of Tarumpitao, Palawan

1998 Site "1"	2000 Site "2"	2001 Site "3"	2002 Site "3"	2003 Site "1"
NO AERIAL PHOTO MISSION	STRUCTURES:	STRUCTURES:	NO AERIAL PHOTO MISSION	STRUCTURES:
	One (1) three-storey bldg	One (1) three-storey bldg		One (1) three-storey bldg
	Three (3) octagonal shaped structures	Three (3) octagonal shaped structures		Three (3) octagonal shaped- structures
	One (1) hexagonal structure	One (1) hexagonal structure		
	One (1) concrete platform	One (1) concrete platform		One (1) concrete platform used as quay
	Two (2) nipa huts	Two (2) nipa huts		Two (2) nipa huts
	Octagonal structures in triangular formation			
	One (1) wharf			
	Concrete foundation			
	One (1) wooden platform	One (1) wooden platform		One (1) wooden platform
	COMMUNICATIONS:	COMMUNICATIONS:		COMMUNICATIONS:
	One (1) parabolic disc	One (1) parabolic disc		One (1) parabolic disc
One (1) stick mast				
One (1) cross slot type radar	One (1) cross slot type radar	One (1) cross slot type		
Two (2) dipole type antenna	Two (2) dipole type antenna			
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE		
Four (4) search lights	Four (4) search lights	Four (4) Search Lights		
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE		
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY		

MISCHIEF REEF (PROC)

09 58.0 N 115 42.4 E
 183 NM West of Puerto Princesa, Palawan
 130 NM West of Taruplao, Palawan

1995	1996	1997	1998	1999
Site "A"	Site "A"	Site "A"	Site "A"	Site "A"
STRUCTURES Four (4) bldgs in triangular formation	STRUCTURE B <i>Four (4) bldgs in triangular formation</i>	STRUCTURES	STRUCTURES	
Three (3) octagonal shaped structures	Three (3) octagonal shaped structures	Three (3) octagonal shaped structures	Three (3) octagonal shaped structures	
One (1) hexagonal structure	One (1) hexagonal structure	One (1) hexagonal structure	One (1) hexagonal structure	
Two (2) platforms	Two (2) platforms	Two (2) platforms	Two (2) platforms	
One (1) square hut	<i>One (1) square hut</i>			
COMMUNICATIONS	Octagonal structures in triangular formation	Octagonal structures in triangular formation	Octagonal structures in triangular formation	
	COMMUNICATIONS	COMMUNICATIONS	COMMUNICATIONS	
	One (1) parabolic disc	One (1) parabolic disc	One (1) parabolic disc	
	One (1) stick mast	One (1) stick mast	One (1) stick mast	
DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	DEFENSE STRUCTURE	NO AERIAL PHOTO MISSION
MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	MILITARY HARDWARE	
POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	POWER SUPPLY	

MISCHIEF REEF PROCP

08 5830 N 115 42.4 E

180 NM West of Puerto Princesa, Palawan

180 NM West of Tawi-tawi, Palawan

MISCHIEF REEF PROCP	
1. Name of the vessel	USCGC 30000
2. Date of departure	10/10/2000
3. Date of arrival	10/10/2000
4. Name of the skipper	USCGC 30000
5. Name of the observer	USCGC 30000
6. Name of the vessel	USCGC 30000
7. Name of the vessel	USCGC 30000
8. Name of the vessel	USCGC 30000
9. Name of the vessel	USCGC 30000
10. Name of the vessel	USCGC 30000
11. Name of the vessel	USCGC 30000
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97. Name of the vessel	USCGC 30000
98. Name of the vessel	USCGC 30000
99. Name of the vessel	USCGC 30000
100. Name of the vessel	USCGC 30000

Annex 97

List of Occupied Spratly Features: Geographic Coordinates, Claimants and Occupants

Philippines v. China

**List of Occupied Spratly Features
Geographic Coordinates, Claimants and Occupants**

International Name	Geographic Coordinates	Claimant(s)	Occupant(s)
Alison Reef	8°51'N, 114°00'E	Philippines, China, Vietnam	Vietnam
Amboyna Cay	7°51'N, 112°55'E	Philippines, China, Vietnam, Malaysia	Vietnam
Ardasier Reef	7°38'N, 113°56'E	Philippines, China, Vietnam, Malaysia	Malaysia
Ban Than Jiao	10°24'N, 114°24'E	Philippines, China, Vietnam,	China
Barque Canada Reef	8°10'N, 113°18'E	Philippines, China, Vietnam, Malaysia	Vietnam
Central Reef	8°55'N, 116°11'E	Philippines, China, Vietnam	Vietnam
Collins Reef	9°45'N, 114°14'E	Philippines, China, Vietnam	Vietnam
Commodore Reef	8°21'N, 115°17'E	Philippines, China, Vietnam, Malaysia	Philippines
Cornwallis South Reef	8°44'N, 114°11'E	Philippines, China, Vietnam	Vietnam
Cuarteron Reef	8°53'N, 112°51'E	Philippines, China, Vietnam	China
Discovery Great Reef	9°59'N, 113°51'E	Philippines, China, Vietnam	Vietnam
East Reef	8°52'N, 112°46'E	Philippines, China, Vietnam	Vietnam
Eldad Reef	10°21'N, 114°42'E	Philippines, China, Vietnam	Vietnam
Fiery Cross Reef	9°37'N, 112°58'E	Philippines, China, Vietnam	China
Flat Island	10°50'N, 115°49'E	Philippines, China, Vietnam	Philippines

International Name	Geographic Coordinates	Claimant(s)	Occupant(s)
Gaven Reef	10°13'N, 114°12'E	Philippines, China, Vietnam	China
Irving Reef	10°53'N, 114°56'E	Philippines, China, Vietnam	Philippines
Itu Aba	10°23'N, 114°21'E	Philippines, China, Vietnam	China
Johnson Reef	9°43'N, 114°18'E	Philippines, China, Vietnam	China
Lansdowne Reef	9°46'N, 114°22'E	Philippines, China, Vietnam	Vietnam
Lankiam Cay	10°44'N, 114°31'E	Philippines, China, Vietnam	Philippines
Loaita	10°41'N, 114°25'E	Philippines, China, Vietnam	Philippines
Louisa Reef	6°20'N, 113°14'E	China, Vietnam, Malaysia	Malaysia
Mariveles Reef	7°59'N, 113°50'E	Philippines, China, Vietnam, Malaysia	Malaysia
Mischief Reef	9°55'N, 115°32'E	Philippines, China, Vietnam	China
Namyit	10°11'N, 114°22'E	Philippines, China, Vietnam	Vietnam
Nanshan	10°45'N, 115°49'E	Philippines, China, Vietnam	Philippines
Northeast Cay	11°28'N, 114°21'E	Philippines, China, Vietnam	Philippines
Pearson Reefs	8°58'N, 113°41'E	Philippines, China, Vietnam	Vietnam
Petley Reef	10°24'N, 114°34'E	Philippines, China, Vietnam	Vietnam
Pigeon Reef	8°52'N, 114°39'E	Philippines, China, Vietnam	Vietnam
Sand Cay	10°23'N, 114°28'E	Philippines, China, Vietnam	Vietnam
Second Thomas Shoal	18° 23'N, 110 2'E	Philippines, China, Vietnam	Philippines

International Name	Geographic Coordinates	Claimant(s)	Occupant(s)
Sin Cowe	9°52'N, 114°19'E	Philippines, China, Vietnam	Vietnam
South Reef	11°23'N, 114°18'E	Philippines, China, Vietnam	Vietnam
Southwest Cay	11°26'N, 114°20'E	Philippines, China, Vietnam	Vietnam
Spratly	8°38'N, 114°25'E	China, Vietnam	Vietnam
Subi Reef	10°54'N, 114°06'E	Philippines, China, Vietnam	China
Swallow Reef	7°23'N, 113°48'E	China, Vietnam, Malaysia	Malaysia
Thitu	11°03'N, 114°17'E	Philippines, China, Vietnam	Philippines
West Reef	8°52'N, 112°15'E	Philippines, China, Vietnam	Vietnam
West York	11°05'N, 115°01'E	Philippines, China, Vietnam	Philippines
Whitson Reef	10°00'N, 114°43'E	China, Vietnam, Philippines	China

Annex 98

Memorandum from the Embassy of the Republic of the Philippines in Beijing to the Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-070-2014-S (7 Mar. 2014)

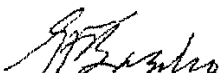
CONFIDENTIAL/EXTREMELY URGENT

To: SFA
 Rt: OSEC, OUP, WPS Center, ASPAC
 Cc: OCO
 Fr: Beijing PE
 Re: **Chinese MFA representations on Ayungin Shoal**
 Dt: 07 March 2014
 Cn: **ZPE - 070 - 2014 - S**

1. The Embassy was invited for a meeting this afternoon by the Department of Boundary and Ocean Affairs of the Chinese Foreign Ministry to discuss matters related to Ayungin Shoal. Representative Xiao Jiangguo met with Minister Evangeline Jimenez-Ducrocq, Third Secretaries Lily Cheng and Nomer Ado.
2. The following points were conveyed by Representative Xiao through an Interpreter:
 - a) The Chinese side heard that the Philippine plans to carry out "large scale construction" in Ayungin Shoal /Second Thomas shoal, "(which is) in Chinese Nansha Islands." (Mr. Xiao referred to Ayungin by its Chinese name Ren'ai Reef throughout the meeting). China expresses grave concern, and seeks some clarification. If this is true, he said, China opposes and resolutely objects such course of action.
 - b) In 1999, the Philippines illegally run aground a warship in Ayungin and immediately China made representations and "repeatedly made representations" to the Philippines to tow away the ship as soon as possible. The Philippines promised China that it would tow away this ship, but it has not done so. The Philippines "has no intention of removing this warship" and even engaged in construction. The Philippines "has failed on its promise and has engaged in constant illegal activities." Last year's "piling" and this year's "planned construction and reinforcement" are "cases in point."
 - c) The Philippines has also "distorted the fact, misguided the public and covered up the truth." "We believe such actions blatantly over-turned the promise of the Philippines." "The rhetoric and behavior of the Philippines is provocative to China's sovereignty and sovereign rights and China will not tolerate such." It is also a "severe violation of the DOC". "China has indisputable sovereignty over the Nansha Islands and adjacent waters."
 - d) The Chinese side is asking the Philippines to respect China's sovereignty and sovereign rights, tow away the grounded vessel and "put an end to any construction work or plans" and observe its commitments. "China would never accept the Philippines occupying Ren'ai Reef under any circumstance and in any form."
 - e) "If the Philippines chooses to ignore China's major concerns and resolute objections, insists on construction, this would severely violate China's sovereign rights, push China's bottom line, and severely undermine DOC, the peace and stability in the SCS, China will not sit idly by and tolerate. We will take resolute measures and actions. There will be further damage to relations. All consequences will borne by the Philippines side.

CONFIDENTIAL

2. In response, the Embassy assured Representative Xiao that it will convey China's concern. The Embassy also mentioned that Ayungin is 105 NM from Palawan and stressed that any action that the Philippines' undertake in the area are within its rights.
3. Mr. Xiao immediately pointed out that distance is not a factor in determining sovereignty. Embassy replied that the mention of distance would illustrate the significance of the shoal to Philippines security, what transpires in the area so close to the Philippines is of concern to it, and told him that matters relating to claims would have to be discussed by experts.
4. Mr. Xiao then mentioned that "we claim territorial sea, EEZ, and continental shelf from the Nansha Islands, and any overlapping claims we can engage in delimitation. Anything can be negotiated by talks and meetings – no problem." (Note that when Mr. Xiao said this, he was not already talking to an interpreter, but Embassy wishes to point out that Mr. Xiao's English is not as fluent as the interpreter's).
5. The Embassy then extended its congratulations to the on-going National People's Congress and expressed its hope that China's NPC would have a successful outcome. The Embassy told Mr. Xiao that the continuous development of China and its stability are very important for countries in the region, including the Philippines, that this time of reform is very crucial but difficult for China, and that the Philippines wishes China success. This is because the Philippines wishes to see a stable and successful China, and that the Philippines is a friend to China. The Embassy assured Mr. Xiao that, despite China's view that the Philippines has undertaken a "hostile act" towards China because of arbitration proceedings, this is not the view of the Philippines, that the Philippines remains a committed friend to China, and that it continues to support China's peaceful rise.
6. For the Department's information.

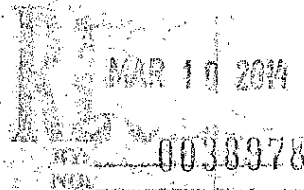

ERLINDA F. BASILIO
Ambassador

Annex 99

Letter from the Virgilio A. Hernandez, Major General, Armed Forces of the Philippines, to the Secretary of Foreign Affairs, Department of Foreign Affairs of Republic of the Philippines (10 Mar. 2014)

GENERAL HEADQUARTERS
ARMED FORCES OF THE PHILIPPINES
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR INTELLIGENCE, J2
Camp General Emilio Aguinaldo, Quezon City

The Honorable
ALBERTO F DEL ROSARIO
Department of Foreign Affairs
Roxas Boulevard, Manila



Dear **Secretary Del Rosario**:

May I have the honor to convey intelligence received concerning the recent incident involving Chinese and Philippine vessels in Ayungin Shoal.

At 10:00 AM of March 06, 2014, the Naval Forces for WESCOM (NWF) dispatched one (1) Auxiliary Monitoring Ship (AM700) and one (1) civilian-contracted vessel to conduct rotation of personnel and resupply operations at Ayungin Shoal. However, according to a report from the civilian-contracted vessel on 9:30 AM of March 9, 2014, while en route to Ayungin Shoal at the area 7.2 NM NE off Bullg Shoal on course 055 degrees true, two (2) Chinese Coast Guard (CCG) vessels with bow numbers 3112 and 3113 suddenly appeared and trailed them at a distance of 1,400 yards.

Thirty (30) minutes later, CCG 3113 approached the port quarter of AM700 at a distance of 400 yards while CCG 3112 approached the port beam of the civilian-contracted vessel at a distance of 200 yards. Both CCG vessels were blocking and preventing AM700 and the civilian-contracted watercraft from proceeding to Ayungin Shoal.

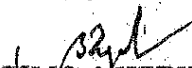
At 12:40 PM, in the area NW off Hasa-Hasa Shoal at latitude 09.223 degrees North longitude 116.05 degrees true, CCG 3112 relayed to our vessels through digital signboard, sirens and megaphones at a distance of 1,000 yards that the CCG vessels were carrying out routine patrols in the area, which is under the jurisdiction of the People's Republic of China. Furthermore, they warned that our ships have to leave the area and should bear full responsibility of the consequences resulting there from.

At 2:30PM, while the civilian-contracted vessel was avoiding contact with the CCG vessel, the former's engine suffered a mechanical breakdown, leaving her stranded in the water. The AM700 provided assistance to the civilian-contracted vessel and towed her back to Balabac, Palawan. The planned resupply and personnel rotation operations at Ayungin Shoal were aborted due to the said incident.

I hope this information merits the appreciation of the Honorable Secretary.

FOR THE CHIEF OF STAFF, AFP:

Very truly yours,


VIRGILIO A. HERNANDEZ
Major General AFP

Annex 100

Memorandum from the Embassy of the Republic of the Philippines in Beijing to the Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-071-2014-S (10 Mar. 2014)

CONFIDENTIAL**CONFIDENTIAL/ URGENT**

To: SFA
 Rt: OSEC, OUP, WPS Center, ASPAC
 Cc: OCO
 Fr: Beijing PE
 Re: **Chinese MFA representations on Ayungin Shoal**
 Dt: 10 March 2014
 Cn: **ZPE-071-2014-S**

ORIGINAL TO ASPAC	
ACTION OFFICE	
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COPY FOR:

Further to *ourfax* ZPE-070-2014-S on the meeting with the Department of Boundary and Ocean Affairs of the Chinese Foreign Ministry on Ayungin Shoal (attached for ease of reference), the Embassy submits the following additional information:

1. On item 3, Mr. Xiao said in particular that "according to the international law of the sea, or international law, or customary international law, you can never judge the sovereignty rights or sovereignty according to distance. So I think you cannot use this so-called distance criteria to justify your claim."
2. On item 4, Mr. Xiao also particularly mentioned that "according to international law of the sea and also according to our domestic law, we claim territorial sea, EEZ, and continental shelf from the Nansha Islands."
3. The Embassy emphasized that the Philippines is very committed to peace and stability and it is trying to work with ASEAN and engage China toward these ends. It was stressed that regional stability cannot be secured by one party alone, so everyone must be involved and all sides can make contributions to the same goal.
4. Embassy reiterated the position of the Philippines on arbitration, to which Mr. Xiao responded that "we reject the arbitration proceedings by the Philippines. We will remain with this position. We think that arbitration is a political provocation under the cloak (sic);"

For the Department's information


ERLINDA F. BASILIO
 Ambassador

RECEIVED
 March 10, 2014
CORATEL

Annex 101

Memorandum from Assistant Secretary, Asian and Pacific Affairs, Department of Foreign Affairs of the Republic of the Philippines, to Secretary of Foreign Affairs of the Republic of the Philippines
(11 Mar. 2014)

Kagawaran ng Ugnayang Panlabas

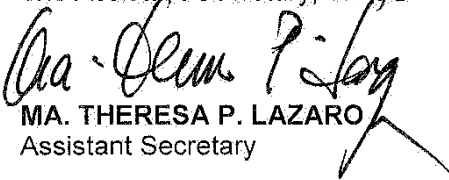


Department of Foreign Affairs

OFFICE OF ASIAN AND PACIFIC AFFAIRS

MEMORANDUM FOR THE SECRETARY

Through : The Undersecretary for Policy
Cc : The Assistant Secretary, WPSC

From : 
MA. THERESA P. LAZARO
Assistant Secretary

Subject : PH Protest on China's Actions in the vicinity of
Ayungin Shoal

Date : 11 March 2014

ASPAC summoned the Chinese Embassy today at 2:00pm to hand over Note Verbale No. 14-0711 dated 11 March 2014 protesting China's actions in the vicinity of Ayungin Shoal on 09 March 2014 (**Annex A**). This was based on information from AFP J2 in a letter dated 10 March 2014 (**Annex B**) and the representation of the Chinese Ministry of Foreign Affairs with Beijing PE on 07 March 2014 (**Annex C**).

ASPAC also requested Beijing PE to make similar representations (**Annex D**).

The Chinese Embassy represented by CDA Sun Xiangyang¹ responded with the following:

- China does not accept the PH protest. Ren'ai reef (Ayungin Shoal) is part of Nansha islands and China has indisputable sovereignty over the Nansha islands and their adjacent waters.
- PH violated the Declaration on the Conduct of Parties in the South China Sea and severely infringed China's sovereignty and jurisdiction over Ren'ai reef. The grounding of the PH ship does not constitute its occupation of the Ren'ai reef.
- China is resolute and firm in safeguarding its national sovereignty and will never accept the Philippines' illegal occupation of the Ren'ai reef in any form.

Attached is a draft Memorandum for the President on the matter.

For the Secretary's consideration.

¹ CDA Sun was accompanied by Mr. Liang Jianjun, First Secretary and Head of the Political Section and Mr. Shan Ao, Third Secretary.

**CHINESE REACTION TO PH PROTEST ON CHINESE ACTIONS IN THE
VICINITY OF AYUNGIN SHOAL**

11 March 2014

VERBATIM

"Your Honorable, I remember we met for this matter last year also in this room. At that time we had a very good mutual understanding.

The Chinese side does not accept the protest from the Philippine side. The Ren'ai reef is part of the Nansha islands and China has indisputable sovereignty over the Nansha islands and their adjacent waters. The Philippines grounding its warship on China's Ren'ai reef in 1999 due to so-called malfunction. The Philippines refused to honor its commitment of pulling away the ship on the excuse of technical problems despite China's persistent request.

The Philippines violated the Declaration on the Conduct of Parties in the South China Sea and severely infringed China's sovereignty and jurisdiction over Ren'ai reef. It should be pointed out that the grounding of the Philippine ship does not constitute its occupation of the Ren'ai reef.

China is resolute and firm in safeguarding its national sovereignty and never accepts the Philippines' illegal occupation of the Ren'ai reef in any form.

I think maybe you have received a report from your embassy in Beijing. Mr. Xiao Jianguo met with your chargé d'affaires. Mr. Xiao Jianguo also expressed China's position and concern, maybe last week.

Of course I will report this back to Beijing and we will reply to you in a note verbale."

NAU

Annex 102

Memorandum from the Embassy of the Republic of the Philippines in Beijing to the Secretary of Foreign Affairs of the Republic of the Philippines, No. ZPE-075-2014-S (11 Mar. 2014)

ORIGINAL**CONFIDENTIAL****CONFIDENTIAL/URGENT**

To: SFA
 Rt: WPS Center
 Cc: OUP, OCO, ASPAC
 Fr: Beijing PE
 Re: Chinese state news agency confirms China's expulsion of PH vessels
 Dt: 11 March 2014
 Cn: **ZPE-075-2014-S**

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1. Attached is the report from Xinhua, China's state news agency, confirming that China "had driven away two Philippine ships from the Ren'ai Reef off China's Nansha Islands" on 09 March 2014. "Ren'ai Reef" is the Chinese name for Ayungin Shoal.
2. The report was quoting Chinese Foreign Ministry Spokesman Qin Gang. According to the Foreign Ministry, Chinese Coast Guard "patrolling the Ren'ai Reef" identified "two ships loaded with construction materials and carrying the flag of the Philippines" on Sunday and "having been warned by the Chinese vessels, the two Philippine ships left the reef."
3. Xinhua quoted Mr. Qin saying that "China has indisputable sovereignty over the Nansha Islands and their adjacent waters including Ren'ai Reef." He also reportedly said that, "The moves infringed China's sovereignty and violated the spirit of the Declaration on the Conduct of the Parties in the South China Sea...China had no choice but to respond to the Philippines move." (The Chinese MFA has yet to publish Mr. Qin's statements in its website).

Comments:

4. Post wishes to note that in the meeting with the Chinese MFA, Boundaries Department, on Friday, 7 March 2014, MFA representative said that they "have learned that the Philippine side plans to carry out large scale construction work" at Ayungin Shoal (please see ZPE-070-2014-S). However, the date cited by the MFA, as reported above, is on Sunday, two days after summoning the Embassy. Post also notes the sense of urgency on the part of the Chinese side as they called the Embassy for the meeting last Friday afternoon, with Ayungin as the only agenda. If the reports are true that Philippine vessels were carrying construction materials to Ayungin, the Chinese side's prior knowledge of Philippine moves seems to indicate the Chinese side's increasing surveillance and pressure on Ayungin, pointing to a possible next stand-off point in the WPS.

For the Department's information and consideration.


ERLINDA F. BASILIO
 Ambassador

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 March 12, 2014
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China expels Philippine vessels from Ren'ai Reef

BEIJING, March 10 (Xinhua) -- China on Monday confirmed that coast guard vessels had driven away two Philippine ships from the Ren'ai Reef off China's Nansha Islands.

Chinese Foreign Ministry spokesman Qin Gang said coast guard vessels, patrolling the Ren'ai Reef, identified two ships loaded with construction materials and carrying the flags of the Philippines, approaching the reef on Sunday.

Having been warned by the Chinese vessels, the two Philippine ships left the reef, referred to as "Ayungin Shoal" by the Philippines, on Sunday afternoon, according to Qin.

"China has indisputable sovereignty over the Nansha Islands and their adjacent waters including the Ren'ai Reef," said the spokesman.

Qin recalled how a Philippine warship had illegally grounded on the Ren'ai Reef in 1999, claiming it had been stranded. Since then, China has repeatedly demanded the Philippines retrieve the warship, but all requests have been ignored and with "technical reasons" cited for the failure to do so, Qin said.

This time, again the Philippine side attempted to start construction on the reef, he said. "The moves infringed China's sovereignty and violated the spirit of the Declaration on the Conduct of the Parties in the South China Sea."

China had no choice but to respond to the Philippines' moves, he said.

10 March 2014