

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 X
ANNEXES

30 MARCH 2014

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Z. Gao and B.B. Jia, "The Nine-Dash Line in the South China Sea: History, Status, and Implications", *American Journal of International Law*, Vol. 107, No. 1 (2013)

THE NINE-DASH LINE IN THE SOUTH CHINA SEA: HISTORY, STATUS, AND IMPLICATIONS

*By Zhiguo Gao and Bing Bing Jia**

The South China Sea has generally been a calm area of sea since ancient times. Until the late twentieth century, it had provided a fertile fishing ground for local fishermen from China and other littoral states, and a smooth route of navigation for the nations of the region and the rest of the international community. This tranquility has been disturbed, however, by two recent developments. The first was the physical occupation of the Nansha, or Spratly, Islands by some of the coastal states in the 1970s. This process continued through the rest of the century. Now, nearly all the islands and insular features within the Spratly Islands have been subjected to physical control by one littoral state or another.

The second development occurred more recently: under Article 76(8) of the UN Convention on the Law of the Sea (hereinafter UNCLOS),¹ states around the world submitted the limits of their claims to the continental shelf beyond two hundred nautical miles from their coastal baselines to the Commission on the Limits of the Continental Shelf. The joint submission of Malaysia and Vietnam in May 2009 was followed by exchanges of *notes verbales* among the littoral states that appear to have shifted the focus of the controversy to debates about the role of the nine-dash line drawn by China in the South China Sea, as depicted on the map that China attached to its initial response to Malaysia and Vietnam.

Several interrelated issues have emerged. First, what is the function of the nine-dash line and its design? Second, how did it come about, and does it have a foundation in international law? Third, if it is equivalent to an assertion of sovereignty, what is the scope of that assertion, as reflected in Chinese practice over the years? Fourth, is there a role for historic title to play in this situation? If so, what rights are underpinned by that title?

This article attempts to address these important questions by exploring and weighing the historical, legal, and other relevant evidence, with a view to providing some elaboration of its legal nature, current status, and possible implications. To this end, part I contains a brief introduction to the geography and significance of the South China Sea. Part II traces the historical evolution of the nine-dash line in Chinese practice during different periods of history. Part III examines the purpose and status of the line. Part IV addresses various relevant legal issues. Part V sets forth some policy considerations and prospects with respect to dispute resolution. The final part offers some concluding remarks.

The overall position of the authors is that the nine-dash line has always had a foundation in international law, including the customary law of discovery, occupation, and historic title, as well as UNCLOS itself. The article attempts to show that the line, albeit based in customary law,

* Zhiguo Gao is Senior Research Fellow and Executive Director of the China Institute of Marine Affairs, Beijing, and has been a member of the International Tribunal for the Law of the Sea since 2008. Bing Bing Jia is Professor of International Law at Tsinghua University School of Law, Beijing. The views expressed in this article are solely those of the authors and do not necessarily represent the opinion of any institution. The authors wish to acknowledge the research assistance rendered by Tan Zhongzheng and Xu Dong, both doctoral candidates at Tsinghua University School of Law; Jiang Chaoyi, currently a master's degree student at the New York University School of Law; and Jia Yu, Senior Research Fellow, and Mi Chenxi, Research Fellow, at the China Institute of Marine Affairs.

¹ UN Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 UNTS 396, *available at* <http://www.un.org/Depts/los/index.htm> [hereinafter UNCLOS].

does not in its current form contradict China's obligations under UNCLOS; rather, by virtue of the wider scope of the rules of customary international law, the line supplements what is provided for under UNCLOS. In this context, the article argues that historic title provides the basis for China's possession of certain historic rights in addition to the rights granted under UNCLOS.

I. GEOGRAPHY AND ITS SIGNIFICANCE

In geographical terms, the South China Sea covers an area of sea of some 3.5 million square kilometers, semi-enclosed by Brunei, China,² Indonesia, Malaysia, the Philippines, and Vietnam.³ It is dotted by numerous islands, islets, shoals, cays, reefs, and rocks that, in the area surrounded by China's nine-dash line, are conveniently gathered into island groups. Four island groups, including more than two hundred islands, islets, reefs, shoals, and rocks, are pertinent to the present context, known to both Chinese and foreign sources as the Xisha, or Paracel, Islands;⁴ Dongsha, or Pratas, Islands; Zhongsha Islands, including Macclesfield Bank and certain reefs, sandbanks, and shoals; and Nansha, or Spratly, Islands.⁵ Those four groups fall within an area with the coordinates of 3° 57' to 21° N and 109° 30' to 117° 50' E, stretching for a distance of approximately 1800 km from the north to the south, and about 900 km from the east to the west.⁶ By virtue of its geographic position, the South China Sea forms part of the vital route of maritime trade and transport for East Asian and Southeast Asian states and their trading partners in Asia, Africa, and beyond.⁷ There are rich fisheries in the South China Sea,⁸ along with expanding prospects for oil and natural gas in the seabed and

² In this article, the term *China* refers to the state of China both before and after 1949, when the People's Republic of China was founded.

³ See the map printed with the Editors' Introduction, 107 AJIL 95 (2013). See also INTERNATIONAL HYDROGRAPHIC ORGANIZATION, LIMITS OF OCEANS AND SEAS 30–31 (3d ed. 1953), available at http://www.iho.int/iho_pubs/standard/S-23/S23_1953.pdf; CHINA INSTITUTE OF MARINE AFFAIRS, STATE OCEANIC ADMINISTRATION, ZHONG GUO HAI YANG FA ZHAN BAO GAO [CHINA'S OCEAN DEVELOPMENT REPORT] 19–20 (2011). This report, published in Chinese as one volume in an annual series, contains a more detailed description of the geography of the South China Sea than the International Hydrographic Organization publication, with coordinates of major turning points all clearly given. On the semi-enclosed sea status of the South China Sea, see Hasjim Djalal, *Indonesia and the South China Sea Initiative*, 32 OCEAN DEV. & INT'L L. 97, 98 (2001).

⁴ The term *islands* in the pinyin romanization of Chinese is spelled as *qun dao*, which in connotation can also include an archipelago.

⁵ CHINA INSTITUTE OF MARINE AFFAIRS, *supra* note 3, at 20. The report also provides, at page 24, the following details: the Xisha Islands comprise 32 islands and islets, each possessing a surface area larger than five hundred square meters; the Zhongsha Islands are composed of rocks, sandbanks, and reefs, among which, by virtue of two rocks, only Huang Yan Island (or Scarborough Shoal or Reef) rises above sea level at high tide; the Nansha Islands consist of over 230 islands, islets, rocks, banks, and shoals, among which 25 are islands. Another Chinese publication describes the Dongsha Islands as comprising Dongsha, or Pratas, Island, the Dongsha, or Pratas, Reef, and two banks. See GEOGRAPHICAL NAMES COMMISSION, GUANG DONG PROVINCE, NAN HAI ZHU DAO DI MING ZI LIAO HUI BIAN [COLLECTION OF MATERIALS REGARDING THE GEOGRAPHICAL NAMES OF THE ISLANDS IN SOUTHERN CHINA SEA] 164–68 (1987). Useful references with regard to the geography and names of those islands may also be found in publications in English. See MARWYN S. SAMUELS, CONTEST FOR THE SOUTH CHINA SEA 183–94 (1982).

⁶ CHINA INSTITUTE OF MARINE AFFAIRS, *supra* note 3, at 20.

⁷ Nguyen Hong Thao & Ramses Amer, *A New Legal Arrangement for the South China Sea?* 40 OCEAN DEV. & INT'L L. 333, 334 (2012).

⁸ Zhao Lihai, *Guan Yu Nan Hai Zhu Dao De Ruo Gan Fa Lü Wen Ti* [Certain Legal Questions Concerning Islands in the South China Sea], 4 FA ZHI YÜ SHE HUI FA ZHAN [RULE L. & SOCIETAL DEV.] 50, 51–52 (1995); Tao Cheng, *The Dispute over the South China Sea Islands*, 10 TEX. INT'L L.J. 265, 266–67 (1975).

subsoil.⁹ While their location provides the littoral states of the South China Sea with the opportunity to become seafaring nations, their proximity to one another surrounding a semi-enclosed sea¹⁰ can also fuel disputes for regional control and influence.¹¹ The South China Sea's strategic and economic significance is by no means of recent origin; it can be traced back two millennia. The developments in the South China Sea and the major disputes now festering among the region's littoral states have a long history indeed, upon which a long shadow has been cast by a heavy Chinese influence.

II. HISTORIC EVOLUTION OF THE NINE-DASH LINE IN CHINESE PRACTICE

The Pre-1935 History of Chinese Activities in the South China Sea: Peaceful and Effective Use

In 1935, a commission appointed by the then Chinese government published a list of geographical names for islands in the South China Sea. Prior to that, however, the South China Sea had been known to Chinese fishermen and seafarers from time immemorial. There are historical accounts aplenty.¹²

The early history of Chinese use of the South China Sea and its islands includes accounts of tributes made to the Imperial Court of various dynasties before the third century AD by "barbarians" from the southern seas.¹³ The term *Nan Hai* (Southern Sea) appeared in the classic poetry book *Shi Jing* (The Classic of Poetry), a publication of the Spring and Autumn Period (475–221 BC),¹⁴ and it has remained the standard appellation in Chinese for the South China Sea ever since. In later Chinese dynasties—from the fifth century AD forward, as knowledge of the seas was increasingly corroborated by travelers and other seafarers—references to the southern seas and islands became more frequent in geographical and literary works.¹⁵ The clarification of the location and environs of the South China Sea and beyond, together with advances in shipbuilding and the navigational use of compass, enabled regular journeys to other states in the region¹⁶ and inspired, among others, the famed "Seven Voyages"

⁹ See *infra* part II.

¹⁰ Article 122 of UNCLOS, *supra* note 1, provides that "'enclosed or semi-enclosed sea' means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States."

¹¹ John O'Callaghan, *Southeast Asia Splashes Out on Defense, Mostly Maritime*, REUTERS, Oct. 7, 2012, at <http://www.reuters.com/article/2012/10/07/us-defence-southeastasia-idUSBRE8960JY20121007> (between 2002 and 2011, defense spending by Southeast Asian countries grew by 42 percent in real terms).

¹² WO GUI NAN HAI ZHU DAI SHI LIAO HUI BIAN [COLLECTION OF HISTORICAL MATERIALS CONCERNING OUR COUNTRY'S ISLANDS IN THE SOUTH CHINA SEA] (Han Zhenhua, Lin Jinzhi & Wu Fengqi eds., 1988) [hereinafter COLLECTION OF HISTORICAL MATERIALS]; NAN HAI WEN TI WEN XIAN HUI BIAN [COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA] (Wu Shicun, Li Xiuling, Zhong Tianxiang, Wu Yan & Fu Yu eds., 2001) [hereinafter COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA].

¹³ Jianming Shen, *China's Sovereignty over the South China Sea Islands: A Historical Perspective*, 1 CHINESE J. INT'L L. 94, 102–05 (2002). In the present article, translations from the Chinese are given by the authors unless otherwise indicated.

¹⁴ *Id.* at 104.

¹⁵ Ministry of Foreign Affairs of the People's Republic of China, *Nan Hai Zhuan Ti* [The Issue of the South China Sea], pt. II (Nov. 22, 2000), at <http://www.fmprc.gov.cn/chn/pds/ziliao/zt/ywzt/wzzt/2305/>.

¹⁶ Shen, *supra* note 13, at 119–20 (relating to a Chinese publication in the year 1178 that described the tributary routes to and from China in the South China Sea). But the more impressive account was by Zhao Rushi of Southern Song Dynasty in his *Zhu Fan Zhi* [Records of Foreign Peoples], compiled in the years 1225 to 1242, which provided

by the “Three-Jewel Eunuch,” Zheng He, in the Ming dynasty of the early fifteenth century.¹⁷ The voyages, conducted between 1405 and 1433, were official in nature, as Zheng was appointed fleet admiral by the Ming emperor, Yong Le, with a mandate to spread overseas the knowledge of the emperor’s “majesty and virtue.”¹⁸ Although records of his voyages were destroyed or lost in the late Ming dynasty due to anti-maritime policies, other Chinese written records reported on the activities of Chinese nationals in parts of the South China Sea along the routes of those voyages; “the local gazetteers for Hainan infer[red] that all offshore areas, including the Sea of Banks east of Wan-chou, were part of an extended tortoise-gathering, fishing and guano collection zone.”¹⁹

The so-called Silk Road on the Sea was first used in the Qin and Han dynasties (221 BC–220 AD) and flourished in popularity in the Tang and Song dynasties (618–1279 AD). This maritime route of trade and commerce not only preceded its counterpart on land but also extended farther to reach the northern shores of the Mediterranean.²⁰ It may well be the most enduring maritime trade route in history. It did not decline in use until the late Ming and early Qing emperors issued a ban on maritime trade between 1474 and 1551. After the (first) Opium War broke out in 1840 between China and Great Britain, the Silk Road on the Sea fell into disuse.

The South China Sea lay at the center of this famous route. Chinese ships, loaded with silk, porcelain, tea, and other commodities, set sail from southeast China and navigated along the coasts of the Philippines, Vietnam, Malaysia, and Thailand and through the Malacca Strait to India and the Mediterranean.²¹

Early in the twentieth century, the geographical scope of the Chinese state’s dominion increasingly came to attract the attention of both cartographers and the government itself.²² In 1914, a continuous boundary line enclosing part of the South China Sea, along with two island groups, appeared in a Chinese national atlas compiled by two private cartographers.²³ No later than 1935, the boundary line was extended (again by private cartographers) to include the four island groups in the South China Sea.²⁴ In January 1935, a government-appointed

“locational coordinates” that left little doubt about the objects of his account: the Xisha and Zhongsha Islands. See SAMUELS, *supra* note 5, at 16–17.

¹⁷ BRICE SWANSON, EIGHTH VOYAGE OF THE DRAGON: A HISTORY OF CHINA’S QUEST FOR SEAPOWER 37–38 (1982), *cited in* Shen, *supra* note 13, at 121–22.

¹⁸ SAMUELS, *supra* note 5, at 20–22.

¹⁹ *Id.* at 22.

²⁰ Chen Yan, *Lun Hai Shang Xi Chou Zhi Lu Yu Zhong Wai Wen Hua Jiao Liu* [The Maritime Silk Road and Sino-Foreign Cultural Relations], in ZHONG GUO YU HAI SHANG SI CHOU ZHI LU [CHINA AND THE MARITIME SILK ROUTE: PROCEEDINGS OF THE UNESCO QUANZHOU INTERNATIONAL SEMINAR ON CHINA AND THE MARITIME ROUTES OF THE SILK ROADS] 1, 1–4 (1991). The naval expeditions by Admiral Cheng He demonstrated the great importance of the “Silk Road of the Sea” and represented the peak of its popularity. See Wu Ding Guo, *Zheng He Xia Xi Yang Zai Hang Hai Shang De Wei Da Cheng Jiu* [Great Achievement of Zheng He in Seafaring by His Voyages], in CHINA AND THE MARITIME SILK ROUTE, *supra*, at 266, 270.

²¹ Li Zhi Yan, *Hai Shang Si Chou Zhi Lu De Kai Tuo Dui Zhong Guo Tao Ci Fa Zhan De Gong Xian* [The Contribution of the Opening of the Maritime Silk Road to the Development of China’s Porcelain Industry], in CHINA AND THE MARITIME SILK ROUTE, *supra* note 20, at 86, 87, 89, 91–92.

²² For early published maps, see Shen, *supra* note 13, at 126–28 (commenting that although the “ancient maps lack precision due to limitations on map drawing techniques, they do establish that China not only considered the South China Sea Islands her territory by action and words, but also illustrated her sovereignty over these areas through visual devices”).

²³ COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 355.

²⁴ *Id.* at 356.

commission, which was established to examine maps and atlases produced by private sources in China, published its list of 132 names, in both English and Chinese, for islands and other insular features in the South China Sea.²⁵ In April 1935, the commission's gazette published an atlas of the islands in the South China Sea.²⁶

Developments Between 1936 and 1956

In 1946, China, pursuant to the Cairo Declaration and the Potsdam Proclamation, recovered the Xisha and Nansha Islands in the South China Sea from Japan.²⁷ There was no reaction from Vietnam or any other state, and the Chinese naval contingent sent to the islands for the task erected stone markers on Yong Xing, or Woody, Island, of the Xisha Islands and Tai Ping, or Itu Aba, Island of the Nansha Islands.²⁸

Following further inspections and surveys, the Chinese government internally circulated an atlas in 1947, drawing an eleven-dash line to indicate the geographical scope of its authority over the South China Sea, right down to the Zengmu Ansha, or James Shoal, at 3° 58' N, 112° 17' E.²⁹ In the same year, the Ministry of the Interior published a list of 172 geographical names, in both Chinese and English, for the islands in the South China Sea.³⁰ It may be recalled from the discussion in the preceding section that ministry personnel were included in the

²⁵ COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA, *supra* note 12, at 13–19 (reproducing the commission's bulletin, especially the pages on which the list of names was set forth). The commissioners were drawn from the foreign ministry, ministry of the interior, ministry of education, ministry of the navy, chiefs of staff, and Mongolian-Tibet Commission.

²⁶ *Id.* at 14. It may be that the incentive for establishing the commission was the confusion caused by an incident in which France took possession of nine small islets in the Nansha group by force on July 25, 1933: see Hungdah Chiu & Choon-Ho Park, *Legal Status of the Paracel and Spratly Islands*, 32 OCEAN DEV. & INT'L L. 1, 12–13 (1975). Deciding to protest, China immediately notified the French ambassador, on August 4, 1933, that it reserved its right in connection with this incident, pending further information required of the French side as to the location and coordinates of the seized islets. See COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 261 (reporting the statement by the spokesperson of the Chinese Foreign Ministry); COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA, *supra* note 12, at 8 (the original Chinese *note verbale*).

²⁷ The Cairo Declaration stated that it was the "purpose" of the "Three Great Allies" that

Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed.

Point 8 of the Potsdam Proclamation stated that the "terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine." See U.S. DEPARTMENT OF STATE, THE AXIS IN DEFEAT: A COLLECTION OF DOCUMENTS ON AMERICAN POLICY TOWARD GERMANY AND JAPAN 4–5, 27–28 (1946).

²⁸ COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 180–81 (reproducing, in a publication of May 1948, an account by the Chinese naval command of the Chinese navy's action on the islands, which included a surrender ceremony and the hoisting of the national flag, firing of gun salutes, and erecting of commemorative stone tablets).

²⁹ COLLECTION OF MATERIALS REGARDING THE GEOGRAPHICAL NAMES OF THE ISLANDS IN SOUTHERN CHINA SEA, *supra* note 5, at 45 (showing the atlas (as produced by the Ministry of the Interior's Frontier Department), which was the first to contain the dashed lines); COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 181–82 (reproducing a resolution by the Ministry of the Interior, Foreign Ministry, Defense Ministry, and Naval Command to confirm Chinese sovereignty over the Xisha and Nansha Islands, among others); see also Chiu & Park, *supra* note 26, at 14 & n.66.

³⁰ COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA, *supra* note 12, at 28–36.

1935 government commission in devising the earlier list of 132 names for islands in the South China Sea, resulting in significant continuity between the two lists. In February 1948, China published an atlas of national administrative districts through the Commerce Press, Beijing, reflecting the 1947 atlas that was internally circulated.³¹ In May 1949, the four island groups in the South China Sea and other attached islands were placed under the authority of the Hainan District of Guang Dong Province.³²

The underlying reason for the eleven-dash line was presumably to reaffirm and reiterate China's sovereignty over the island groups in the South China Sea at the beginning of a new, postwar era.³³

In early 1949, news reports indicated that the Philippines, which gained independence in July 1946, began to show interest in the Nansha Islands. In response to an inquiry by China that referred to "China's Tai Ping Island," the Philippines explained that it was concerned only with protecting its fishermen in the waters adjacent to that island.³⁴

On May 29, 1956—seven years after the founding of the People's Republic of China on October 1, 1949—China issued a statement in response to a suggestion by the Philippines that some islands of the Nansha Islands "should" belong to the Philippines because of their proximity to it.³⁵ This 1956 statement repeated the statement by the Chinese foreign minister, Zhou Enlai, dated August 15, 1951, that "the Xisha Islands and Nanwei Dao [Spratly Islands] are inherently Chinese territory, just like the whole of the Nansha Islands, Zhongsha Islands and Dongsha Islands. They fell during the war of aggression waged by Japanese imperialists, but were fully recovered by the then Chinese Government upon Japan's surrender."³⁶

In 1953, two dashes were removed from the eleven-dash line, leaving nine segments, and in that same year the new line made its first appearance in atlases produced on the mainland of China.³⁷

³¹ COLLECTION OF MATERIALS REGARDING THE GEOGRAPHICAL NAMES OF THE ISLANDS IN SOUTHERN CHINA SEA, *supra* note 5, at 212.

³² COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA, *supra* note 12, at 37–38.

³³ DANIEL J. DZUREK, THE SPRATLY ISLANDS DISPUTE: WHO'S ON FIRST? 12, 14, 46–47, 49 (1996) (suggesting that the dashed lines roughly followed the 200-meter isobath). The 1945 Truman Proclamation on the continental shelf was based on a rough estimate of 100 fathoms, or 600 feet of depth, for the water column above the seaward edge of the shelf. See 4 MARJORIE WHITEMAN, DIGEST OF INTERNATIONAL LAW 757–58 (1965) (reproducing a White House press release of September 28, 1945, commenting on the proclamation). The same idea is reflected in the reference to the slightly deeper, 200-meter isobath in the definition of the continental shelf in Article 1 of the 1958 Convention on the Continental Shelf, Apr. 29, 1958, 499 UNTS 311.

³⁴ COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 270–71 (reproducing *notes verbale* of the two states).

³⁵ 4 ZHONG HUA REN MIN GONG HE GUI DUI WAI GUAN XI WEN JIAN JI [COLLECTION OF DOCUMENTS ON THE FOREIGN RELATIONS OF THE PEOPLE'S REPUBLIC OF CHINA] (1956–1957), at 61–62 (1961) [hereinafter COLLECTION OF DOCUMENTS ON THE FOREIGN RELATIONS OF THE PEOPLE'S REPUBLIC OF CHINA].

³⁶ 2 COLLECTION OF DOCUMENTS ON THE FOREIGN RELATIONS OF THE PEOPLE'S REPUBLIC OF CHINA (1951–1953), *supra* note 35, at 30 (1961).

³⁷ Jia Yu, *Nan Hai "Duan Xu Xian" De Fa Lü Di Wei* [Legal Status of the "Broken Line" in the South China Sea], 15 ZHONG GUO BIAN JIANG SHI YAN JIU [CHINA'S BORDERLAND HISTORY AND GEOGRAPHY STUDIES] 112, 113 (2005). As for the reason of this reduction, it likely reflected a warming in relations between China and Vietnam in the 1950s. The first two lines lay within the Beibu Gulf, or Gulf of Tonkin, bordered by Vietnam and China, and they were taken as effective during the pre-1949 period. When the nine-dash line emerged in the 1950s, the two states were politically close, with each having a three-mile territorial sea. Although political circumstances have changed again since the two dashes were removed, the nine-dash line has remained the norm for Chinese-published maps and atlases. *Id.* at 115, 120.

The Evolution of the Nine-Dash Line: 1958–2011

Relevant Chinese legislations and administrative measures. On September 4, 1958, China promulgated its Declaration on the Territorial Sea, which has since become the foundation for China's maritime order.³⁸ Article 1 not only provided for a twelve-nautical-mile territorial sea for China but applied that breadth both to the mainland and the coastal islands and to the off-lying islands of Dongsha, Nansha, Penghu, Taiwan, Xisha, and Zhongsha, among others.

In 1959, the Hainan District established an administrative office on Yong Xing Island to administer the affairs of the Xisha, Zhongsha, and Nansha Islands. The office was transferred to Guang Dong Province in 1969.³⁹ In 1984, the National People's Congress included within the territorial scope of the newly established Hainan Administrative Region "the islets, reefs and sea areas of Xisha, Nansha, and Zhongsha islands."⁴⁰

In anticipation of the ratification of UNCLOS, China promulgated its Law on the Territorial Sea and the Contiguous Zone on February 25, 1992.⁴¹ Article 2 includes within the land territory of China the four island groups in the South China Sea, as well as other islands,⁴² to which China's twelve-mile territorial sea attaches. Article 3 authorizes the use of straight baselines for measuring the breadth of the territorial sea.

On June 7, 1996, on depositing its instrument of ratification of UNCLOS, China stated that "the People's Republic of China reaffirms its sovereignty over all its archipelagos and islands as listed in article 2 of the Law of the People's Republic of China on the territorial sea and the contiguous zone, which was promulgated on 25 February 1992."⁴³ On May 15, 1996, China promulgated base points for measuring its territorial sea, which included those on the Xisha Islands.⁴⁴

³⁸ 5 COLLECTION OF DOCUMENTS ON THE FOREIGN RELATIONS OF THE PEOPLE'S REPUBLIC OF CHINA (1958), *supra* note 35, at 162–63 (1959). The declaration was approved by the Standing Committee of the People's Congress on September 4, 1958, thus making it part of Chinese law.

³⁹ COLLECTION OF MATERIALS REGARDING THE GEOGRAPHICAL NAMES OF THE ISLANDS IN SOUTHERN CHINA SEA, *supra* note 5, at 163.

⁴⁰ LEGISLATIVE AFFAIRS COMMISSION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1983–1986), at 146 (1987). The region was under the authority of the Guang Dong Province. This arrangement was reaffirmed when Hainan became a province in April 1988. See THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1987–1989), *supra*, at 249 (1990).

⁴¹ THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1990–1992), *supra* note 40, at 343 (1993).

⁴² It provides, in relevant part:

The land territory of the People's Republic of China includes the mainland of the People's Republic of China and its offshore islands, Taiwan and all islands appertaining thereto including the Diaoyu Islands; the Penghu Islands; the Dongsha Islands; the Xisha Islands; the Zhongsha Islands and the Nansha Islands; as well as all the other islands that belong to the People's Republic of China.

This English translation is available at <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/law-of-the-peoples-republic-of-china-concerning-the-territorial-sea-and-the-contiguous-zone-1992.html>.

⁴³ See United Nations, Division for Ocean Affairs and Law of the Sea, Declarations and Statements, at http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm.

⁴⁴ OFFICE OF POLICY, LEGISLATION AND PLANNING, STATE OCEANIC ADMINISTRATION, ZHONG HUA REN MIN GONG HE GUO HAI YANG FA GUI XUAN BIAN [COLLECTION OF SELECT MARITIME LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA] 8 (1998).

On June 26, 1998, China promulgated its Law on the Exclusive Economic Zone (EEZ) and the Continental Shelf.⁴⁵ Article 14 provides that the provisions of this law do not prejudice “historic rights” enjoyed by China.

Chinese Action at the International Level

It is a common (and correct) view that tensions in the South China Sea began to emerge in the late 1960s as the potential of oil and natural gas in this area came to be appreciated.

The situation in the area changed quickly in the early 1970s. In July 1971, the Philippines declared possession of the so-called Kalayaan Group.⁴⁶ In January 1974, China took back the Xisha Islands after a successful, but minor, war with the then Republic of Vietnam (South Vietnam), which earlier had also announced the inclusion within Vietnamese territory of more than ten islands and islets from the Nansha Islands.⁴⁷ Vietnam was more assertive in later years and, by 2004, had managed to occupy twenty-nine of the Nansha Islands.⁴⁸ Malaysia has claimed about five reefs in the Nansha Islands.⁴⁹

China has consistently protested against foreign challenges to its sovereignty over the affected islands and other insular features in the South China Sea, including adjacent waters. In addition, China asserted its position during the sessions of the Third United Nations Conference on the Law of the Sea.⁵⁰

One episode deserves special attention. On December 25, 2000, China and Vietnam concluded the Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones, and Continental Shelves in the Beibu Gulf/Bac Bo Gulf (or Tonkin Gulf).⁵¹ In the course of the negotiations, the two parties debated the appropriateness of using the meridian drawn in

⁴⁵ LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1998), *supra* note 40, at 61 (1999).

⁴⁶ Cheng, *supra* note 8, at 270–71 (citing a *New York Times* report, July 11, 1971, at A18, on the content of the note); see also Diane C. Drigot, *Oil Interests and the Law of the Sea: The Case of the Philippines*, 12 OCEAN DEV. & INT'L L. 23, 24, 36 & n.65, 41 (1982). This declaration was followed by Presidential Decree No. 1596, June 11, 1978. See SAMUELS, *supra* note 5, at 89 & n.60.

⁴⁷ SAMUELS, *supra* note 5, at 99. In June 1956, Vietnam's vice foreign minister stated to the Chinese chargé d'affaires in Hanoi that according to Vietnam's historical records, the Xisha and Nansha Islands belong to China. See *The Issue of the South China Sea*, *supra* note 15, pt. V. In September 1958, the premier of the Democratic Republic of Vietnam wrote a letter to his Chinese counterpart, Zhou Enlai, to inform the latter of Vietnam's recognition of, and respect for, the Chinese Declaration on the Territorial Sea. That declaration included the four island groups within Chinese territory. See also COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 542–43 (reproducing a news report published in the REN MIN RI BAO [PEOPLE'S DAILY], Sept. 22, 1958, at 3). As for the legitimacy of the Democratic Republic of Vietnam in representing the people of Vietnam and the merger of South Vietnam with North Vietnam, see JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 476–77 (2d ed. 2006). As regards the representation of the state of Vietnam by North Vietnam, see Communiqué of the Political Consultative Conference on National Reunification, in *THE REUNIFICATION OF VIET NAM (DOCUMENTS OF THE POLITICAL CONSULTATIVE CONFERENCE ON NATIONAL REUNIFICATION)* 99, 101 (1975).

⁴⁸ Gao Zhiguo, *The South China Sea: From Conflict to Cooperation?* 25 OCEAN DEV. & INT'L L. 345, 348 (1994). Vietnam had occupied twenty-one islands and the like by 1993 and had taken another eight by 2004.

⁴⁹ COLLECTION OF MATERIALS REGARDING THE GEOGRAPHICAL NAMES OF THE ISLANDS IN SOUTHERN CHINA SEA, *supra* note 5, at 381–82 (citing CAN KAO XIAO XI [REFERENCE NEWS], Mar. 31, 1983; the newspaper has been published by the New China News Agency since 1931).

⁵⁰ COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA, *supra* note 12, at 63–69 (citing the statement by the head of the Chinese delegation to UNCLOS III on July 2, 1974).

⁵¹ 2336 UNTS 179. The treaty entered into force on June 30, 2004, upon exchange of instruments by the parties in Hanoi in accordance with Article 11 of the Agreement.

the 1887 treaty between France and China.⁵² Vietnam proposed using the meridian as the maritime boundary in the Tonkin Gulf.⁵³ China opposed the proposal because, in its view, the line was drawn in the 1887 treaty for the purpose of allocating islands.⁵⁴ In other words, the boundary between the two states' maritime spaces in the Tonkin Gulf was not fixed by the 1887 treaty. The meridian in question, if adopted as the boundary as Vietnam wished during the negotiations leading to the 2000 agreement, would have been too close to the coast of China's Hainan Island, resulting in inequity. It is interesting that neither party rejected the line as such.

In respect of the May 6, 2009, joint submission by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf (of whose content Malaysia had informed China before filing it),⁵⁵ China stated in its *note verbale* of May 7 [hereinafter Chinese Note I]:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map). . . .

The continental shelf beyond 200 nautical miles as contained in the Joint Submission . . . has seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea.⁵⁶

The map attached to Chinese Note I showed the nine-dash line.

In its *note verbale* of May 8,⁵⁷ Vietnam stated:

The Hoang Sa (Paracels) and Truong Sa (Spratlys) archipelagoes are parts of Viet Nam's territory. Viet Nam has indisputable sovereignty over these archipelagoes. China's claim over the islands and adjacent waters in the Eastern Sea (South China Sea) as manifested in the map attached with the Notes Verbale CML/17/2009 and CML/18/2009 has no legal, historical or factual basis, therefore is null and void.

In its note of May 20,⁵⁸ Malaysia stated that the submission was made "without prejudice to the delimitation of the continental shelf between States with opposite or adjacent coasts in

⁵² Convention Concerning the Delimitation of the Border Between China and Tonkin, June 26, 1887, at <http://www.chinaforeignrelations.net/node/167>.

⁵³ Ted L. McDorman, *Central Pacific, East Asia, Southeast Asia*, in 5 INTERNATIONAL MARITIME BOUNDARIES 3446 (David A. Colson and Robert W. Smith eds., 2005).

⁵⁴ See SINANET interview with Director of the Law of the Sea, Department of Treaties and Law, Ministry of Foreign Affairs of the People's Republic of China (Aug. 3, 2004), at <http://news.sina.com.cn/c/2004-08-03/04203274593s.shtml>, on the effect of the delimitation agreement on Chinese fishing rights, in which he confirmed China's view on the effect of the 1887 treaty's dividing line of longitude 108° 03' 13" E. See also Nguyen Hong Thao, *Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf*, 36 OCEAN DEV. & INT'L L. 25, 26-28 (2005).

⁵⁵ Joint Submission by Malaysia and the Socialist Republic of Vietnam to the Commission on the Limits of the Continental Shelf, May 6, 2009, at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm. In a written communication addressed to the UN secretary-general, the commission, and all states parties to UNCLOS, filed on May 20, 2009, Malaysia acknowledged that it had informed China of its position before the filing of the joint submission, at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_re_chn_2009re_mys_vnm_e.pdf.

⁵⁶ Note Verbale CML/17/2009 from the Permanent Mission of the People's Republic of China to the UN Secretary-General (May 7, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf.

⁵⁷ Note Verbale No. 86/HC-2009 from the Permanent Mission of the Socialist Republic of Viet Nam to the UN Secretary-General (May 8, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_chn_2009re_mys_vnm_e.pdf.

⁵⁸ Note Verbale HA 24/09 from the Permanent Mission of Malaysia to the UN Secretary-General (May 20, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_re_chn_2009re_mys_vnm_e.pdf.

consonance with Article 76(10) of UNCLOS 1982” and “to the position of States which are parties to a land or maritime dispute in consonance with Paragraph 5(b) of Annex I to the Commission’s Rules of Procedure.” It did not engage with the substance of Chinese Note I.⁵⁹

Another party to the South China Sea saga, the Philippines, initially did not comment on the Chinese note. In its *note verbale* of August 4, 2009, the Philippines expressed disquiet over the joint submission by Malaysia and Vietnam.⁶⁰ Vietnam, in its *note verbale* of August 18, while responding to the Philippines’ note, reaffirmed its position regarding the Nansha and Xisha Islands, and indicated a commitment to peaceful negotiations in accordance with international law, in general, and UNCLOS and the 2002 Declaration on the Conduct of Parties in the South China Sea, in particular.⁶¹

In July 2010, Indonesia entered the debate by filing its own *note verbale* with the United Nations,⁶² focusing on the implications of Chinese Note I. While maintaining that it was not a claimant state in the sovereignty dispute in the South China Sea, Indonesia was nonetheless attentive to the substantive issues in respect of the map attached to Chinese Note I. It challenged the entitlement of “remote or very small features in the South China Sea” to an EEZ or continental shelf “of their own” and concluded that “the so called ‘nine-dotted-lines map’ . . . clearly lacks international legal basis and is tantamount to upset the UNCLOS 1982.”

On April 5, 2011, the Philippines submitted a *note verbale* (Philippine Note) in response to Chinese Note I.⁶³ First, the Philippines claimed that “the Kalayaan Group (KIG) constitutes an integral part of the Philippines.” Second, it claimed “sovereignty and jurisdiction over the waters around or adjacent to each relevant geological feature in the KIG as provided for” by UNCLOS. The extent of the waters “adjacent” to the features was “definite and determinable under UNCLOS, specifically under Article 121.” Third, “the relevant waters as well as the seabed and subsoil thereof,” as shown in the “so-called 9-dash line map attached to” the Chinese *note verbale*, “would have no basis under international law, specifically UNCLOS.” In the Philippines’ view, sovereignty and jurisdiction or sovereign rights over those areas

necessarily appertain or belong to the appropriate coastal or archipelagic state—the Philippines—to which these bodies of waters as well as seabed and subsoil are appurtenant, either in the nature of Territorial Sea, or 200 [mile] Exclusive Economic Zone (EEZ), or Continental Shelf (CS) in accordance with Articles 3, 4, 55, 57, and 76 of UNCLOS.

⁵⁹ Malaysia has so far claimed some of the shoals of the Nansha Islands. See HUNGDAH CHIU, XIAN DAI GUO JI FA [MODERN INTERNATIONAL LAW] 565 (2d rev. ed. 2006); see also Gao, *supra* note 48, at 346.

⁶⁰ Note Verbale No. 000819 from the Permanent Mission of the Republic of the Philippines to the UN Secretary-General (Aug. 4, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/clcs_33_2009_los_phl.pdf.

⁶¹ See Note Verbale No. 240HC-2009 from the Permanent Mission of the Socialist Republic of Viet Nam to the UN Secretary-General (Aug. 18, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_re_phl_2009re_mys_vnm_e.pdf. The declaration is available at <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>.

⁶² Note Verbale No. 480/POL-703/VII/10 from the Permanent Mission of the Republic of Indonesia to the UN Secretary-General (July 8, 2010), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010re_mys_vnm_e.pdf.

⁶³ Note Verbale No. 000228 from the Permanent Mission of the Republic of the Philippines to the UN Secretary-General (Apr. 5, 2011), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/phl_re_chn_2011.pdf.

China responded on April 14, 2011, in a *note verbale* (Chinese Note II).⁶⁴ Reiterating what had been stated in Chinese Note I, China further stated that its claims “are supported by abundant historical and legal evidence” and that the Philippine Note was “totally unacceptable” to it. In addition, China noted that the KIG group to which the Philippine Note referred was part of China’s Nansha Islands and that the treaties that defined the limits of the Philippines’ territory had never claimed the Nansha Islands or any of its components. The Philippine invasion and occupation of some of the islands in question since the 1970s constituted a violation of Chinese sovereignty, whereas China had since 1930s given publicity to its claim to the islands.

Vietnam’s *note verbale* of May 3, 2011, responded to both the Philippines and China.⁶⁵ Vietnam reasserted its sovereignty over the Xisha and Nansha Islands, and claimed to have “sufficient historical evidences and legal foundation to assert her sovereignty over these two archipelagoes.”

The exchanges among those states highlighted the significance of international law in the formulation of their respective positions, and in this respect the exchanges also highlighted the issue to which this article is addressed.

III. THE LEGAL PURPOSE AND STATUS OF THE NINE-DASH LINE: SOVEREIGNTY AND JURISDICTION

The nine-dash line is known by many other names.⁶⁶ What interests lawyers and governments alike is its purpose and status. Does it indicate ownership, sphere of influence, a shorthand for maritime zones established under international law, or something else?⁶⁷

The reasonable proposition—in the view of the authors of this article—is that the nine-dash line, after sixty years of evolution, has become synonymous with a claim of sovereignty over the island groups that always belonged to China and with an additional Chinese claim of historical rights of fishing, navigation, and other marine activities (including the exploration and exploitation of resources, mineral or otherwise) on the islands and in the adjacent waters. The lines may also have a residual function as potential maritime delimitation boundaries.

The proposition is based on a consideration of several factors.

First, the consistent line of Chinese legislation adopted since 1958 has shown convincingly that China enjoys sovereignty over the Dongsha, Nansha, Xisha, and Zhongsha Islands, as well as over other islands in the South China Sea. The nine-dash line, in the light of that body of national law, is not intended to assert a *historic* title of sovereignty over the sea areas, as enclosed by the lines, beyond what is allowed under international law. Chinese Note I, of 2009, explains this point clearly. The straight baselines drawn around the Xisha Islands, promulgated by

⁶⁴ Note Verbale CML/8/2011 from the Permanent Mission of the People’s Republic of China to the UN Secretary-General (Apr. 14, 2011), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf.

⁶⁵ Note Verbale No. 77/HC-2011 from the Permanent Mission of the Socialist Republic of Viet Nam to the UN Secretary-General (May 3, 2011), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_2011_re_phlchn.pdf.

⁶⁶ Zou Keyuan, *China’s U-Shaped Line in the South China Sea Revisited*, 43 OCEAN DEV. & INT’L L. 18, 18 (2012) (including “dotted-line,” “tongue-shaped line,” “U-shaped line,” and “nine-interrupted-lines”).

⁶⁷ See *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay./Sing.)*, 2008 ICJ REP. 12, para. 222 (May 23) (deeming “ownership” equivalent to sovereignty).

China in June 1996, further prove the point.⁶⁸ The consistency in China's legislative and administrative practice is also matched by its maps.⁶⁹

Second, the disputes with other states in this area have always concerned sovereignty over islands or insular features in the South China Sea. That could be why the concerns with the dashed lines, unlike with the ownership of the islands, were raised only recently in the *notes verbales* of the relevant states.⁷⁰

Third, while the precise meaning of the reference in Chinese Note I to "adjacent waters" over which it has sovereignty and "relevant waters as well as the seabed and subsoil thereof" over which it enjoys sovereign rights and jurisdiction has never been defined by China, its claim over such waters—in view of China's ratification of UNCLOS—is necessarily conditioned by Convention's relevant provisions.⁷¹ There has also been no evidence that China has enforced its domestic law in those waters as if they were part of internal waters.⁷²

Fourth, while it is certainly not the case today, it may be that at some time in the past, the nine-dash line and its predecessors had embraced the idea of historic waters.⁷³ Support for this view may be found in the resolution adopted at the 1947 inter-ministry meeting; the expression "limit of territory in the South China Sea" was employed in the resolution, which extended that limit to Zengmu Ansha, or James Shoal.⁷⁴ It may also be the case, however, that the expression simply implied that the *land* territory of the state extended to that shoal—which is an entirely possible interpretation of the original Chinese.

Finally, there is evidence that the dashed lines were designed at a time with the nascent notion of the continental shelf in mind; they might be dictated by the geographical reality of the South China Sea in that the 200-meter isobath runs close to the shores of the coastal states except for China and, to a lesser extent, Vietnam.⁷⁵ Thus, it has been suggested that the dashed lines were drawn in the 1948 atlas as if they were median lines between the islands and the opposite coasts of the neighboring states,⁷⁶ thus serving a potential delimitation purpose. The selection of these lines is also said to reflect a reasonable and mild approach by the then Chinese government to the growing clamor among states for the continental shelf following the Truman Proclamation.⁷⁷

All of the above suggests that the proposition presented in this article is a reasonable one—that is, that the nine-dash line is in the nature of a potential maritime boundary between China and opposite states and that within the line, China claims sovereignty over the island groups under international law. In addition, to these rights conferred by UNCLOS, China can assert

⁶⁸ See *supra* note 44 and accompanying text.

⁶⁹ DZUREK, *supra* note 33, at 12.

⁷⁰ See *supra* part II.

⁷¹ See Note Verbale CML/8/2011, *supra* note 62 (citing UNCLOS in support of the Nansha Islands having a territorial sea, EEZ, and continental shelf).

⁷² *The Issue of the South China Sea*, *supra* note 15, pt. IV.

⁷³ DZUREK, *supra* note 33, at 14; Michael Sheng-Ti Gau, *The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea*, 43 OCEAN DEV. & INT'L L. 57, 62 (2012).

⁷⁴ COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 181–82.

⁷⁵ Chiu & Park, *supra* note 26, at 5.

⁷⁶ Li Jinming & Li Dexia, *The Dotted Line on the Chinese Map of the South China Sea: A Note*, 34 OCEAN DEV. & INT'L L. 287, 290 (2003) (noting that this information came from an interview with one of the employees of the Ministry of the Interior who was involved in producing the 1948 atlas that first showed the eleven lines).

⁷⁷ KUEN-CHEN FU, NAN (ZHONG GUO) HAI FA LÜ DI WEI ZHI YAN JIU [LEGAL STATUS OF THE SOUTH (CHINA) SEA], 43–44 (1995).

historic rights within the nine-dash line—under Article 14 of its 1998 law on the EEZ and the continental shelf⁷⁸—in respect of fishing, navigation, and exploration and exploitation of resources.

Another related point, if only for the sake of completeness of our discussion, is that in delineating the national borders, the authoritative atlases currently produced in China show a ten-dash line, with the traditional nine dashes located in the South China Sea and one additional one in the East China Sea.⁷⁹

Having examined the nature and scope of the nine-dash line, attention is now turned to a brief discussion of several legal issues associated with the line and their continuing relevance to the situation in the South China Sea.

IV. ISSUES OF LAW IN THE PRESENT CONTEXT

Discovery and Occupation

The dispute regarding sovereignty over the islands in the South China Sea, as it stands, chiefly concerns three states (China, the Philippines, and Vietnam) and two island groups (the Xisha and Nansha Islands). The Philippines and Vietnam rely heavily on the law of occupation, including a nod to the mode of discovery, in developing their respective arguments.⁸⁰ The problem with their approaches, however, is that they may easily be undone by a holistic view of the law, as will be explained below.

Two points need to be made in respect of the significance of discovery. First, at the early stages of modern international law, discovery might have been sufficient to establish title to sovereignty.⁸¹ The evidence of China's discovery of the islands in the South China Sea, which preceded the Philippines' and Vietnam's discovery of them by many years, is simply overwhelming.⁸²

Second, by the early twentieth century, as in the 1928 arbitration in *Island of Palmas*, international law came to see discovery as creating an inchoate title that needs to be maintained through peaceful and continuous acts of the claimant state.⁸³ Such later actions cannot be taken to be effective in maintaining title, however, unless an inchoate title had already been in place.

The legal effect of occupation was well established after the *Island of Palmas*,⁸⁴ *Legal Status of Eastern Greenland*,⁸⁵ and *Minquiers and Ecrehos* decisions.⁸⁶ Acts of occupation by a sovereign state of a piece of land territory must be preceded by a finding of *terra nullius* with respect

⁷⁸ See *supra* note 40.

⁷⁹ See, e.g., NATIONAL ADMINISTRATION FOR SURVEYING, MAPPING AND GEO-INFORMATION, JI CHU DI TU: GUO JIE [BASIC MAP: NATIONAL BORDERS] (2005), at <http://www.webmap.cn/basicmap/index.php?&embedded=&map=guojie>. This map, with a scale of 1:4,000,000, was itself based on the topographical *Atlas of the People's Republic of China* that the National Administration of Surveying, Mapping and Geo-Information and Foreign Ministry produced in 2004.

⁸⁰ Cheng, *supra* note 8, at 276.

⁸¹ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 140 (7th ed. 2008).

⁸² Chiu & Park, *supra* note 26, at 20; Fu, *supra* note 77, at 57–108.

⁸³ *Island of Palmas* (Neth./U.S.), 2 R.I.A.A. 829, 869 (Perm. Ct. Arb. 1928).

⁸⁴ *Id.*

⁸⁵ *Legal Status of Eastern Greenland* (Den. v. Nor.), 1933 PCIJ (Ser. A/B) No. 53 (Apr. 5).

⁸⁶ *Minquiers and Ecrehos* (Fr./UK), 1953 ICJ REP. 47 (Nov. 17).

to the territory concerned.⁸⁷ The finding of *terra nullius* is for the occupying state to make at the time of occupation, and it cannot be lightly assumed.⁸⁸ When *terra nullius* is said to occur due to lapse of authority or abandonment, there must be a showing of “definite renunciation” on the part of the abandoning state.⁸⁹ Abandonment or dereliction is “effected through the owner-state completely abandoning territory with the intention of withdrawing from it forever, thus relinquishing sovereignty over it.”⁹⁰ Once occupation commences, it is required to be peaceful and continuous.⁹¹

In this connection, the form of occupation known as symbolic annexation may also play a role in the case of the South China Sea, where “very little in the way of the actual exercise of sovereign rights” may equally suffice to establish the Chinese title by discovery and occupation.⁹² As in the *Isle of Clipperton* arbitration,⁹³ if a territory was completely uninhabited and “from the first moment when the occupying State made its appearance there, was at the absolute disposition of that state, the possession of the territory must from that moment be considered as accomplished and the occupation by that State of the territory is complete.”⁹⁴

When France acted on the pretext of *terra nullius* in seizing the nine islets of the Nansha Islands in 1933, that seizure could not lead to title since the islets were not *terra nullius*; among other things, China had previously discovered and exercised authority over them.⁹⁵ Nor was the seizure likely to be peaceful or effective, given China’s prompt objection and the advent of the world war in the Pacific. In September 1947, when the then Chinese Ministry of the Interior formally decreed to have the four island groups included under the authority of the Guang Dong Province, neither France nor any other state reacted.⁹⁶ Indeed, from 1933 to 1956, when it departed from Indochina, France performed no further sovereign acts in the region.⁹⁷ It is therefore not surprising that by 1974, France conceded to England that its title to the Nansha Islands had lapsed.⁹⁸

⁸⁷ See Legal Status of Eastern Greenland, *supra* note 85, at 44; see also Western Sahara, Advisory Opinion, 1975 ICJ REP. 12, para. 79 (Oct. 16) (“it was a cardinal condition of a valid ‘occupation’ that the territory should be *terra nullius*”).

⁸⁸ Western Sahara, *supra* note 87.

⁸⁹ Legal Status of Eastern Greenland, *supra* note 85, para. 102; see also Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.; Eq. Guinea, intervening), 2002 ICJ REP 303, para. 223 (Oct. 11).

⁹⁰ 1 OPPENHEIM’S INTERNATIONAL LAW 717 (Robert Jennings & Arthur Watts eds., 9th ed. 1996); see also Jon Van Dyke and Robert A. Brooks, *Uninhabited Islands: Their Impact on the Ownership of the Ocean’s Resources*, 12 OCEAN DEV. & INT’L L. 265, 267–70 (1983).

⁹¹ See Island of Palmas, *supra* note 83, at 867.

⁹² Legal Status of Eastern Greenland, *supra* note 85, para. 98 (“[I]n many cases the tribunal has been satisfied with very little in the way of the actual exercise sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries.”).

⁹³ Island of Clipperton (Mex. v. Fr), 2 R.I.A.A. 1105 (Mar. 2, 1909).

⁹⁴ *Id.* at 1110 (English translation by present authors).

⁹⁵ When the French landed, they were met by Chinese fishermen living on the islets. FU, *supra* note 77, at 91.

⁹⁶ *Id.* at 94.

⁹⁷ Chiu & Park, *supra* note 26, at 18.

⁹⁸ E. M. Denza, Legal Adviser’s Re-examination of Claims to Sovereignty over the Spratly Islands in a Minute of 1 February 1974 from Mrs Denza to Mr Chapman in South-East Asia Department (annex to “The Spratly Islands,” a memorandum of the British Foreign & Commonwealth Office, Research Department, South and South East Asia Section, D.S. No. 5/75, FCO 51/411 (Jan. 21, 1975)).

Of course, it must be noted that France had never acquired a title to some of the Nansha Islands that they occupied back in the 1930s; among the various obstacles was the 1887 Sino-French treaty that had allocated the islands, together with the other island groups in the South China Sea, to China.⁹⁹ In addition, China's 1902, 1908, and 1928 official inspections of the Xisha Islands, in addition to China's administrative absorption of them into Guang Dong Province in 1911,¹⁰⁰ perfected the Chinese claim to these latter islands during the same period.¹⁰¹ Yet another factor undercutting France's acquisition of title is that China had always disputed, by action and protests, later French encroachments on the Xisha Islands.¹⁰²

The same general reasoning applies equally to the Philippines' move on the Nansha Islands in 1971.¹⁰³ As correctly pointed out by an informed writer, "The Philippine position that the Kalayaan area was *terra nullius* following World War II is obviously false."¹⁰⁴ Besides, the Chinese claim to the islands had already withstood the French onslaught of 1933 and was significantly enhanced by the publication of the 1948 atlas.¹⁰⁵ Moreover, occupation by force, on a disingenuous pretext of *terra nullius*, may well constitute an illegal use or threat of force in the post-1945 world.

A word should also be said of the situation with Huang Yan Island, or Scarborough Shoal—part of the Zhongsha Islands. Since 2009, the Philippines has sought to base its claim to the feature on effective occupation since Philippine independence in 1946.¹⁰⁶ The Philippines has made no finding, however, of *terra nullius* in respect of the feature. The Philippine claim is *not* based on Treaty of Paris of 1898 between the United States and Spain¹⁰⁷—which is exactly where the claim goes awry. Given that the claim seeks to show that in the eighteenth century, Spain discovered and included the feature in the boundary of the Philippines,¹⁰⁸ it would mean that the feature was not *terra nullius* in 1898, thus preventing a claim based on the classic doctrine of occupation. The claim by the Philippines is further weakened by the fact that the 1898 treaty actually defined the boundary of the Philippines with such accuracy that it leaves no room for interpretation with regard to the feature in question: it was not part of the territory

⁹⁹ See *supra* note 52 and accompanying text.

¹⁰⁰ Liu Wenzong, *Yue Nan De Wei Zheng Yu Zhong Guo Dui Xi Sha Qun Dao He Nan Sha Qun Dao Zhu Quan De Li Shi He Fa Li Yi Ju* [Forged Evidence of Vietnam vis-à-vis Historical and Legal Grounds for China's Sovereignty over the Xisha and Nansha Islands], 1989 CHINESE Y.B. INT'L L. 336, 344.

¹⁰¹ SAMUELS, *supra* note 5, at 53–54, 57–60; see also COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 196–208 (reproducing original official documents on the inspections of the Xisha Islands, including the plan for inspection as approved by the Guang Dong provincial government, and relevant official reports, such as the report on the inspection filed with the Guang Dong provincial government by the Department of the Civil Administration and published in the *Guang Dong Government Gazette* of July 27, 1928. The report stated that "Xisha Islands have always been our territory, and, while desiring them, the Japanese have not dared to make a move.").

¹⁰² COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA, *supra* note 12, at 9, 20–27 (in a series of *notes verbales* to France, between July 1934 and June 1947, China reaffirmed its sovereignty over the Xisha Islands).

¹⁰³ DIETER HEINZIG, DISPUTED ISLANDS IN THE SOUTH CHINA SEA 42 (1976).

¹⁰⁴ DZUREK, *supra* note 33, at 49.

¹⁰⁵ See *supra* note 31 and accompanying text.

¹⁰⁶ Department of Foreign Affairs, *Philippine Position on Bajo de Masinloc (Scarborough Shoal) and the Waters Within Its Vicinity*, OFFICIAL GAZETTE OF THE REPUBLIC OF THE PHILIPPINES, Apr. 28, 2012, available at <http://www.gov.ph/2012/04/18/philippine-position-on-bajo-de-masinloc-and-the-waters-within-its-vicinity/>.

¹⁰⁷ *Id.*; Treaty of Peace Between the United States and Spain, Dec. 10, 1898, at http://avalon.law.yale.edu/19th_century/sp1898.asp; see also 1 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW 530 (1906).

¹⁰⁸ *Supra* note 106, at 3.

that Spain ceded to the United States by the treaty, and was therefore not part of the Philippines.¹⁰⁹ This boundary as defined by the treaty has also been reaffirmed in subsequent practice, including the Philippine Constitution of 1935.¹¹⁰

Also worth noting is that China can show a consistent line of legislative and administrative acts in respect of both the relevant areas of the South China Sea and the islands concerned,¹¹¹ together with other acts of sovereignty displayed down through the ages.¹¹² The same consistency is nonexistent with regard to the acts of both the Philippines and Vietnam.

Historic Title and Prescription

China's claim can also be based on a historic title¹¹³ that, as discussed in *Eritrea v. Yemen*,¹¹⁴ can potentially be established through common knowledge of the possession of a territory.¹¹⁵ Based on the survey of the history presented in this article, China's title appears to be the only one that could boast of genuine timelessness or that could be described as in place "from time immemorial"; no other claim can be so characterized. The earliest evidence of a sovereign act invoked by Vietnam, for instance, is the alleged 1816 occupation of some of the Xisha Islands. But since Vietnam remained a tributary to China until 1884,¹¹⁶ it is difficult to regard that "occupation" as an independent act of state that supports a Vietnamese claim to that territory. Likewise, between 1887 and 1954, China dealt with France as the protecting power of Vietnam.¹¹⁷ And it is not possible to see any historic title emerging since 1956 in favor of Vietnam.¹¹⁸ In fact, the Vietnamese claim based on historic title was definitively deprived of any effect by the 1887 Sino-French treaty. The earliest evidence of the Philippine involvement would be the 1971 statement by its president—which was promptly met by protests from China.¹¹⁹

Given these facts, even assuming, hypothetically, that China's official claims to the island groups in the South China Sea became known only at the end of the nineteenth century in its military encounters with Western powers, the Philippines and Vietnam would assert no

¹⁰⁹ Treaty of Peace Between the United States and Spain, *supra* note 107, Art. III.

¹¹⁰ Republic Act No. 3046 of 17 June 1961: An Act to Define the Baselines of the Territorial Sea of the Philippines, Art. 1, at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1961_Act.pdf; *see also* Drigot, *supra* note 46, at 31 (the map showing the treaty boundary of the Philippines), 63 n.89 (on the history of the language change in Article 1 of the 1973 Constitution from the 1935 version).

¹¹¹ Legal Status of Eastern Greenland, *supra* note 85, at 48 ("Legislation is one of the most obvious forms of the exercise of sovereign power . . .").

¹¹² *See supra* part II.

¹¹³ Shen, *supra* note 13, at 94–157 (note, in particular, pages 155–56).

¹¹⁴ *Eritrea v. Yemen*, First Stage, Territorial Sovereignty and Scope of the Dispute, 114 ILR 2 (Perm. Ct. Arb. Oct. 9, 1998).

¹¹⁵ This is the first type of historic title, based on common knowledge of the world. *Id.*, para. 106.

¹¹⁶ OSCAR CHAPUIS, A HISTORY OF VIETNAM (FROM HONG BANG TO TU DUC) 182 (in 1803, the Qing emperor decreed Gia Long as king of Vietnam against a triennial tribute, and this king was the one who allegedly occupied some of the Xisha Islands in 1816), 195 (in 1849, the Qing emperor "enthroned" Tu Duc as emperor of Vietnam) (1995); *see also* Fu, *supra* note 77, at 152–58.

¹¹⁷ *See materials cited supra* note 116.

¹¹⁸ Indeed, there was no unified government to represent Vietnam as a whole between 1954 and 1976: *see* STEFAN TALMON, RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW 98–99 (1998).

¹¹⁹ COLLECTION OF HISTORICAL MATERIALS, *supra* note 12, at 450–51 (reproducing the protest as published in the REN MIN RI BAO (PEOPLE'S DAILY), July 17, 1971, at 5); SAMUELS, *supra* note 5, at 90.

competing claims for at least another sixty years. Additionally, in terms of acquiring territorial title, a lack of competing claims from interested parties at the time when the original claimant asserted its own claim would give the latter "a valid claim to sovereignty."¹²⁰

By way of historic title,¹²¹ for instance, the Bohai Sea is considered Chinese internal waters on the strength of past practice,¹²² including the 1958 Declaration on the Territorial Sea.¹²³ In support of the nine-dash line, Chinese lawyers have also considered the relevance of the doctrine of historic title.¹²⁴ But given what has been stated above about discovery and about peaceful and continuous display of sovereignty by China, the doctrine of historic title is mentioned here for its *supplementary* role in support of the long possession that is manifest in China's practice and that has matured into a title by discovery and occupation.

The Chinese claim to historic title to the islands of the South China Sea and other historic rights within the dashed lines is further strengthened through the doctrine of *historical consolidation*. Relevant evidence includes China's discovery and occupation of the islands, as already discussed in the preceding section, and the acquiescence by other states (to be shown in the next section). In this context, consolidation relies on peaceful holding of territory and the showing of toleration or acquiescence by other states.¹²⁵ It is not itself a mode of acquiring title as such; rather, it goes to the maintenance of a title publicly. The notion of consolidation has never itself been used in territorial disputes except in the *Fisheries* case.¹²⁶ In *Land and Maritime Boundary Between Cameroon v. Nigeria*,¹²⁷ the ICJ stated that

the theory of historical consolidation is highly controversial and cannot replace the established modes of acquisition of title under international law, which take into account many other important variables of fact and law. It further observes that nothing in the *Fisheries* Judgment suggests that the 'historical consolidation' referred to, in connection with the external boundaries of the territorial sea, allows land occupation to prevail over an established treaty title.

The supplementary nature of the doctrine, in comparison with established modes of acquiring territory, is plain to see.

The preceding discussion is not meant to say that international law knows not of a title which may be acquired by prescription, which is closely linked to the notion of historic title.¹²⁸ Prescription might, indeed, be relevant to the South China Sea dispute, as it seems to be all that is left for the Philippines and Vietnam to count on, given the preceding discussion on discovery, occupation, and historic title. Using force to take possession of another state's territory, however, is no longer acceptable in the era of the UN Charter;¹²⁹ "No territorial acquisition

¹²⁰ Legal Status of Eastern Greenland, *supra* note 85, para. 115.

¹²¹ JEANNETT GREENFIELD, CHINA AND THE LAW OF THE SEA 30-34 (1979).

¹²² Wang Tieya, *International Law in China: Historical and Contemporary Perspectives*, 221 RECUEIL DES COURS 195, 232-34 (1990-II).

¹²³ *Supra* note 38 and the accompanying text.

¹²⁴ MARK VALENCIA, JON VAN DYKE & NOEL LUDWIG, SHARING THE RESOURCES OF THE SOUTH CHINA SEA 24-28 (1997).

¹²⁵ BROWNLIE, *supra* note 81, at 157.

¹²⁶ *Fisheries (UK v. Nor.)*, 1951 ICJ REP. 116, 137 (Dec.18).

¹²⁷ *Land and Maritime Boundary Between Cameroon and Nigeria*, *supra* note 89, para. 65.

¹²⁸ *Eritrea v. Yemen*, *supra* note 114, para. 106.

¹²⁹ UN Charter, Art. 2(4). ("All Members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state . . .").

resulting from the threat or use of force shall be recognized as legal.”¹³⁰ This prohibition applies especially in respect of the South China Sea situation, where Vietnam in about 1970 and the Philippines in about 1971 occupied some of the Nansha Islands.¹³¹ In any event, acquisitive prescription, applied in a legitimate manner, requires (as in the case of occupation) peaceful and continuous possession *à titre de souverain*, uninterrupted by actions that dispute the legality of a prescriptive claim, and also requires “both a stricter proof of possession and a longer period of possession.”¹³² Based on the history of the dispute over the islands in the South China Sea, prescription is simply not helpful as ground for a Philippine or Vietnamese title; a claim based on prescription cannot succeed in the face of prompt, consistent protests, such as those of China in the instant case,¹³³ from which no acquiescence or recognition can be inferred.

Acquiescence, Recognition, and Estoppel

In the preceding sections, the role of recognition and acquiescence in the acquisition of territory has been shown to be significant for the perfection of a title, occupational or historic, through peaceful, effective, and continuous exercise of sovereignty. Likewise, when a claim to title concerns the possession of parts of a *res communis*, such as maritime spaces, acquiescence or recognition by other states must also be demonstrated.

As above—in the discussion of discovery, occupation, and prescription—the initial state act of taking possession of a territory is not sufficient to settle the matter of ownership. The right to possess the territory depends, in modern times, on the reaction of other states; the possession must be continuous, peaceful, and unopposed—the common requirements for claims by occupation, prescription and historic title. The two notions, recognition and acquiescence, do not create title, but they perpetuate actual control of territory and acts of state authority, so that the latter become the basis of a title *erga omnes*.

Recognition may take the form of a unilateral, express declaration or may occur in treaty provisions that one state was ceding to the other its control or authority over the territory. Thus, in *Legal Status of Eastern Greenland*, the Permanent Court of International Justice considered that Denmark could rely on other states’ recognition of its title to Greenland in the form of treaties concluded between them.¹³⁴ Those treaties showed a willingness on the part of those other states to admit Denmark’s right to Greenland. Even Norway was a party to some of those treaties. The Court then considered that Norway was, by its conduct, debarred or estopped from challenging Danish sovereignty over the disputed territory.¹³⁵

A parallel case may be found in the French and Vietnamese recognition of China’s claim of sovereignty over the islands in the South China Sea between 1887 and 1959—in particular, by the 1887 Sino-French boundary treaty and the Vietnamese recognition of the 1958 Chinese

¹³⁰ GA Res. 2625 (XXV) (Oct. 24, 1970), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.

¹³¹ DZUREK, *supra* note 33, at 46–47; Gao, *supra* note 48, at 348.

¹³² D. H. N. Johnson, *Acquisitive Prescription in International Law*, 1950 BRIT. Y.B. INT’L L. 332, 345–46, 349.

¹³³ For example, the Chinese protest on February 18, 2009, over the archipelagic baselines adopted by the Philippine Parliament that included Huang Yan Island. See Ministry of Foreign Affairs of the People’s Republic of China, Press Release (Feb. 19, 2009), at <http://www.fmprc.gov.cn/chn/gxh/wzb/wjbxw/t537943.htm>.

¹³⁴ *Legal Status of Eastern Greenland*, *supra* note 85, at 51–52, 68.

¹³⁵ *Id.* at 68.

Declaration on the Territorial Sea.¹³⁶ It is illuminating that Vietnam has failed to provide any convincing explanation of that fact,¹³⁷ even though it began to lay claims to the Xisha and Nansha Islands after unification in 1975.¹³⁸ Also worth noting is that the Chinese ownership of the island groups in the South China Sea has been commonly indicated in maps produced worldwide,¹³⁹ including China Sea Pilot, produced by the British admiralty in 1912.¹⁴⁰ Apart from these obvious supporting materials, writers also seem to be in agreement to a view favorable to China.¹⁴¹

Although *acquiescence* has the same effect as recognition, it arises from conduct. It can be understood as tacit or implied consent. It exists when, despite the duty or expectation that the other state concerned should react, there is only silence,¹⁴² thus implying either agreement or a waiver of rights.

It is clear that neither the Philippines nor Vietnam protested against the nine-dash line from 1948 to 2009—which was promulgated and maintained *à titre de souverain*. Other states concerned have also failed to protest or to register any interest in the line.¹⁴³ What results is a strong presumption that the states concerned have tolerated or acquiesced in the situation in the South China Sea, leading to a historical consolidation of the nine-dash line at the location and with the function that we know.¹⁴⁴ Similarly, the 1898 Treaty of Paris between Spain and the United States confined Philippine territory to an area defined by geographical coordinates—as recognized in Philippine law and other treaties until 2009. Taken together, the above could be taken to indicate the Philippines' acquiescence in its lack of ownership of Huang Yan Island.

Either of the two acts—recognition and acquiescence—may have the legal effect of estopping a state from denying its prior statement or action—one that recognizes or acquiesces in some fact or acts—on which other states rely for their action. In *Territorial Dispute*, estoppel

¹³⁶ *Supra* note 47; see also SAMUELS, *supra* note 5, at 53.

¹³⁷ See MINISTRY OF FOREIGN AFFAIRS OF THE SOCIALIST REPUBLIC OF VIETNAM, THE HOANG SA (PARACEL) AND TRUONG SA (SPRATLY) ARCHIPELAGOES AND INTERNATIONAL LAW 5 (1988). The evidence presented by Vietnam in this document followed up on what had been produced in a 1979 white paper, both of which documents have been translated into Chinese: CHINESE SOCIETY OF INTERNATIONAL LAW & THE INTERNATIONAL LAW INSTITUTE, COLLEGE OF FOREIGN AFFAIRS, 5 GUO JI FA ZI LIAO [INTERNATIONAL LEGAL MATERIALS], at 95–107, 121–44 (1990). The problem with the documents' evidence, however, is that it is geographically incorrect or from unproven origin. See COLLECTION OF DOCUMENTS ON THE ISSUE OF THE SOUTH CHINA SEA, *supra* note 12, at 107, 116–17 (reproducing a published statement, from January 30, 1980, by the Ministry of Foreign Affairs of the People's Republic of China).

¹³⁸ Zou Keyuan, *The Chinese Traditional Maritime Boundary Line in the South China Sea and Its Legal Consequences for the Resolution of the Dispute over the Spratly Islands*, 14 INT'L J. MARINE & C. L. 27, 37 (1999); CHIU, *supra* note 59, at 563–64.

¹³⁹ To give but a few examples: WELTATLAS: DIE STAATEN DER ERDE UND IHRE WIRTSCHAFT 71 (Enzyklopädie Leipzig 1957); *Map No. 5*, in STATE SURVEYING AGENCY (VIETNAM), *Tập Bản Đồ Viet Nam [Vietnam Atlases]* 3375 (1964); *Southeast Asia, No. 13B*, in ATLAS INTERNATIONAL LAROUSSE: POLITIQUE ET ECONOMIQUE (1965); REPUBLIC OF THE PHILIPPINES: POLITICAL MAP (Book House, 1970).

¹⁴⁰ UNITED KINGDOM, HYDROGRAPHIC DEPARTMENT, THE CHINA SEA PILOT 106 (1912) (where it was mentioned that the Paracel (Xisha) Islands and reefs were annexed by China in 1909). Subsequent editions of this publication in 1923 (2d ed., vol. 3, at 89) and 1937 (1st ed., vol. 1, at 107) repeated what had been stated at page 106 of the 1912 edition.

¹⁴¹ Chiu & Park, *supra* note 26, 19–20; Cheng, *supra* note 8, 277; Drigot, *supra* note 46, at 45.

¹⁴² Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, *supra* note 67, para. 121.

¹⁴³ Zou, *supra* note 138, at 38 (on the reaction of Indonesia and Malaysia).

¹⁴⁴ Cf. Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, *supra* note 67, para. 276.

was, in that context, considered of central importance.¹⁴⁵ The constituent elements of estoppel include (1) a clear and unambiguous statement of fact, which must be voluntary, unconditional, and legal, and (2) reliance in good faith upon the statement either to the detriment of the party relying on the statement or to the advantage of the party making the statement.¹⁴⁶ It is a rule that excludes a denial that a particular assertion might be correct and true; that is, the party concerned may not have accepted the relevant undertaking or obligation, or it may be uncertain whether it has done so, but in view of the party's actual conduct, it cannot be allowed to deny that undertaking or obligation.¹⁴⁷ In *Temple of Preah Vihear*, the ICJ recognized this effect against Thailand, whose conduct precluded it from contesting the validity of a frontier that was known to it, and whose representatives had affirmed and reaffirmed the frontier through their own actions.¹⁴⁸

Title by Treaty

The argument in the section above is that China's title is based on discovery and occupation, and, alternatively, on historic title. It is also suggested here that title may arise in yet another way in international law. In particular, title to territory may accrue through boundary treaties. In the context of this article, the 1887 Sino-French boundary treaty may be of significance. The treaty was concluded in 1887 between two states in actual and effective control of the respective areas subject to delimitation. It not only recognized China's sovereignty over the islands east of the relevant demarcation line but, more importantly, conferred a title by that recognition, in case any doubt remained as to the locus of sovereignty at the time that the treaty was concluded.

The Issue of Intertemporal Law

As a rule of international law, a situation or an act must be appraised, and a treaty interpreted, in the light of the rules of international law as they were at the time when the situation or act materialized or the treaty was concluded.

In *Island of Palmas*, the sole arbitrator, Max Huber, stated that the "effect of discovery by Spain is therefore to be determined by the rules of international law in force in the first half of the 16th century."¹⁴⁹ On the question of whether Spanish sovereignty subsisted at the critical date in 1898, he stated:

As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called intertemporal law), a distinction must be made between the creation of rights and existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law.¹⁵⁰

¹⁴⁵ *Territorial Dispute (Libya v. Chad)*, 1994 ICJ REP. 6, 49, paras. 103–09 (sep. op. Ajibola, J.) (Feb. 3).

¹⁴⁶ BROWNIE, *supra* note 81, at 153.

¹⁴⁷ *Temple of Preah Vihear (Cam. v. Thail.)*, 1962 ICJ REP. 6, 52, 63 (sep. op. Fitzmaurice, J.) (June 15).

¹⁴⁸ *Temple of Preah Vihear* at 32–33.

¹⁴⁹ *Island of Palmas*, *supra* note 83, at 845.

¹⁵⁰ *Id.*

The doctrine is one part of an inquiry into a situation that arose potentially long ago and that continues into the present, albeit in changed circumstances as to time and space.

In *Aegean Sea Continental Shelf*,¹⁵¹ Turkey invoked Greek reservation (b), which excluded all disputes relating to the territorial status of Greece from the dispute settlement procedures of the General Act for the Pacific Settlement of International Disputes.¹⁵² Greece argued that the reservation was inapplicable to the present dispute, which was concerned with a conception of the continental shelf that was wholly unknown in 1931, when the reservation was made. The Court concluded that the reservation

must be interpreted in accordance with the rules of international law as they exist today, and not as they existed in 1931. It follows that in interpreting and applying reservation (b) with respect to the present dispute the Court has to take account of the evolution which has occurred in the rules of international law concerning a coastal State's rights of exploration and exploitation over the continental shelf.¹⁵³

The concept of intertemporal law is relevant for our purposes here. China is fully aware that the question of sovereignty over the islands in the South China Sea must be assessed in the light of the rules of international law prevailing at the time that China initially asserted its sovereignty, and that the maintenance of that title is a continuing process.¹⁵⁴ That understanding fits squarely with the requirements of the doctrine of intertemporal law as it has developed since 1928. This doctrine may explain, in part, why the initial meaning of the nine-dash line has evolved to take on the meaning that China gives it today. When the eleven-dash-line map was promulgated in 1948, it might have been intended to be comprehensive in nature—in view of the extended claims that many states were making both to areas of the high seas and to the continental shelf. But the practice in the South China Sea has since demonstrated that China has never enforced a historic title to the sea itself, as opposed to the four island groups. While the geographical scope of the lines has been almost unchanged over the years, the content of the rights embraced by them may have evolved, with Chinese practice being informed by developments in the law of the sea, including its own ratification of UNCLOS.

It is important to remember, however, that a prerequisite for applying the doctrine of intertemporal law—insofar as it is relevant to disputes over territorial sovereignty—is that the present claimant state has, at an earlier time, asserted a claim of sovereignty. Evenhandedness is required in assessing the two elements suggested by Huber in *Island of Palmas* and then taken up by the ICJ in *Aegean Sea Continental Shelf*. It cannot be right that in light of the development of international law in the post-1945 era, efforts to *maintain* a claim to title are all that is required of a claimant state. In *Sovereignty over Pedra Branca*, the ICJ began by examining the original title to the islands in question and only then assessed the degree of *effectivités* that the parties exercised over the islands.¹⁵⁵ China's title to the island groups in the South China Sea, together with historic rights accruing to the Chinese nation, arose long ago by virtue of discovery and occupation—and, alternatively, through historic title—and has been maintained ever since in the face of challenges by other states.

¹⁵¹ *Aegean Sea Continental Shelf (Greece v. Turk.)*, 1978 ICJ REP. 103 (Dec. 19).

¹⁵² Sept. 26, 1928, 93 LNTS 343.

¹⁵³ *Id.*, para. 80.

¹⁵⁴ See Note Verbale CML/17/2009, *supra* note 54; Note Verbale CML/8/2011, *supra* note 62.

¹⁵⁵ See *supra* note 67.

The Issue of Two Legal Systems

From the preceding discussion of the applicable law, one central point emerges. Given that the Philippines has tended to rely exclusively on UNCLOS in defining its position in relation to China's claim in the South China Sea,¹⁵⁶ an assessment of that position requires a further examination of the structure of the international legal order.

Neither historic title nor the law of discovery and occupation can be fundamentally understood in terms of treaty law; they are matters of customary international law. No treaty—not even UNCLOS—can exhaust the rules of international law; custom relies, for its existence and development, primarily on evidence of state practice. It is well known that the two types of rules do not necessarily subsume each other but may well exist in parallel.¹⁵⁷ If so, the search for solutions to the disputes in the South China Sea, whether through negotiation or litigation, will require reference both to treaty law and to customary law, beside the general principles of law recognized by civilized nations. Indeed, China has not disregarded the provisions of UNCLOS, to which it is a party.¹⁵⁸ It has relied on historical records only to show that its title to the four island groups in the South China Sea has a basis in law and fact.

UNCLOS does not deal with the acquisition of sovereignty over land territory, including islands and rocks. It creates title in its own way, as in the case of the territorial sea or archipelagic waters, but it does not allocate territorial sovereignty to the land that will generate sovereignty over those waters. The disputes in the South China Sea, however, are chiefly concerned with territorial sovereignty over certain island groups; the legal nature of the waters adjacent to them is mainly to be regulated by UNCLOS—as is important in understanding questions concerning the freedom of navigation in the South China Sea.

Freedom of Navigation in the South China Sea

The concern of nonlittoral states in respect of the South China Sea relates primarily to freedom of navigation and overflight.¹⁵⁹ China has never impeded that freedom in the past, with or without the nine- or eleven-dash lines, and will not interfere with such freedom in the future.¹⁶⁰ China recognizes and is committed to maintaining the international sea lanes of the South China Sea.¹⁶¹ Article 11 of the 1998 Chinese law on the EEZ and the continental shelf states clearly that

¹⁵⁶ See Note Verbale No. 000228, *supra* note 63.

¹⁵⁷ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 ICJ REP. 14, para. 177 (June 27); see also Bing Bing Jia, *The Relations Between Treaties and Custom*, 9 CHINESE J. INT'L L. 81, 92 (2010).

¹⁵⁸ See Note Verbale CML/17/2009, *supra* note 54; Note Verbale CML/8/2011, *supra* note 62.

¹⁵⁹ Hillary Rodham Clinton, Remarks at the ASEAN Ministerial Meeting, New York (Sept. 27, 2012), at <http://www.state.gov/secretary/rm/2012/09/198343.htm> ("As I have said many times, the United States does not take a position on competing territorial claim over land features, but we do have a national interest in the maintenance of peace and stability, respect for international law, freedom of navigation, and unimpeded lawful commerce in the South China Sea.").

¹⁶⁰ *The Issue of the South China Sea*, *supra* note 15, pt. IV.

¹⁶¹ REN MIN RI BAO [PEOPLE'S DAILY], May 18, 1995, at 1 (reporting the Chinese Foreign Ministry spokesperson's statement); see also ZHONG GUO GUO JI FA SHI JIAN YU AN LI [PRACTICE AND CASES OF CHINA IN INTERNATIONAL LAW] 122–23 (Duan Jielong & the Treaty and Law Department, Ministry of Foreign Affairs of the People's Republic of China, eds., 2011) (on the protest of China against the USS *Impeccable's* conduct of a marine survey in the Chinese EEZ in the South China Sea in March 2009, a protest that included an explicit recognition of the freedom of navigation in the EEZ in accordance with UNCLOS); see also Kamlesh Kumar Agnihotri

[a]ll states shall, on the premise that they comply with international law and the laws and regulations of the People's Republic of China, enjoy the freedom of navigation in and flight over its exclusive economic zone, the freedom to lay submarine cables and pipelines and the convenience of other lawful uses of the sea related to the freedoms mentioned above

in the Chinese EEZ and continental shelf. Chinese Note II, issued in 2011, implicitly confirms this position. The current Chinese position is well summed up by the recent statement by the Chinese Foreign Ministry spokesperson that,

[a]s for China, the essence of the South China Sea issue is the territorial sovereignty dispute caused by others' invasion of some islands of China's Nansha Islands and overlapping claims to maritime rights and interests in relevant waters. China has the right to defend its territorial and maritime rights and interests as other countries do.¹⁶²

The issue for the United States, for instance, is not so much one of taking sides in the region's sovereignty disputes as it is of determining what rights are included in the freedom of navigation in the waters of the South China Sea that are part of China's EEZ. The quarrel between the United States and China over this latter issue has been well known and ongoing with regard to the scope of Chinese competences in its EEZ over the surveys conducted by U.S. naval vessels.¹⁶³ But that legal dispute is no obstacle to China adhering to the regime of the EEZ as enshrined in UNCLOS; indeed, China's 1998 law and UNCLOS are fully consistent with one another.¹⁶⁴ In any case, that particular dispute is of a wider scope than the territorial disputes in the South China Sea addressed in this article.¹⁶⁵

V. POLICY CONSIDERATIONS AND FUTURE PROSPECTS

A Framework for Progress

While the territorial disputes in the South China Sea are unresolved, certain common understandings are emerging among the states of the region, as recorded in the 2002 Declaration on the Conduct of Parties in the South China Sea.¹⁶⁶ The parties reaffirmed their commitment to, among others, the UN Charter, UNCLOS, and "other universally recognized principles of international law" (point 1), as well as freedom of navigation and overflight in the South China Sea area, as provided by universally recognized principles of international law, including UNCLOS (point 3). They "undertake to exercise self-restraint in the conduct of

& Sunil Kumar Agarwal, *Legal Aspects of Marine Scientific Research in Exclusive Economic Zones: Implications of the Impeccable Incident*, 5 MAR. AFF. 135, 135–36 (2009).

¹⁶² Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on September 4, 2012 (Sept. 5, 2012), at <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t966813.htm>.

¹⁶³ Raul (Pete) Pedrozo, *Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone*, 9 CHINESE J. INT'L. L. 9, 12–18 (2010); Zhang Haiwen, *Is It Safeguarding the Freedom of Navigation or Maritime Hegemony of the United States? Comments on the Raul (Pete) Pedrozo's Article on Military Activities in the EEZ*, 9 CHINESE J. INT'L. L. 31, 37–42 (2010).

¹⁶⁴ PRACTICE AND CASES OF CHINA IN INTERNATIONAL LAW, *supra* note 161, at 120.

¹⁶⁵ See, e.g., EEZ Group 21, *Guidelines of Navigation and Overflight in the Exclusive Economic Zone* (2005), at <http://www.sof.or.jp/en/report/index.php>.

¹⁶⁶ Ministry of Foreign Affairs of the People's Republic of China, *Declaration on the Conduct of Parties in the South China Sea*, Nov. 4, 2002, at <http://www.fmprc.gov.cn/eng/wjlb/zjzg/gjs/gjzzyhy/2608/2610/t15311.htm>.

activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays and other features and to handle their differences in a constructive manner” (point 5). Diplomatic negotiation is understood to be the most desirable means of finding a solution (point 4). The declaration was adopted as a political undertaking, but the clarity of the wording and of the undertakings it contains leaves little doubt that the declaration would be the framework for all actions undertaken from that moment onward.

Since the littoral states are all parties to UNCLOS, the Convention itself provides for potentially other venues. That said, the system for the arbitrating or adjudicating disputes is optional in significant respects, and China has itself made a relevant declaration under Article 298.¹⁶⁷ Moreover, although states are obligated to settle disputes concerning “the interpretation or application” of UNCLOS by peaceful means (Article 279), this obligation does not extend to all of the issues addressed in this analysis, such as the question of sovereignty over land territory. Separately from UNCLOS, however, all littoral states of the South China Sea have an independent obligation under Article 33(1) of the UN Charter to pursue the peaceful settlement of “any dispute, the continuance of which is likely to endanger the maintenance of international peace and security.”

The Validity of, and Respect for, Historic Rights

In the search for solutions that may commend themselves to the littoral states of the South China Sea, China makes a basic underlying point that calls for respect. The Chinese people have, without challenge, enjoyed and exercised certain rights in the South China Sea throughout recorded history. Those rights do not derive from UNCLOS.¹⁶⁸ The nine-dash line reflects that long attachment of the Chinese nation to the South China Sea. The preceding section has demonstrated China’s historic title to the island groups, but the same historic title provides the foundation for an additional claim—namely, to the amenities of the sea in the area—on behalf of Chinese citizens who have, generation after generation, eked out a living from the waters of the South China Sea. The model that the tribunal embraced in the *Eritrea/Yemen* arbitration has much to recommend itself:

[T]he conditions that prevailed during many centuries with regard to the traditional openness of southern Red Sea marine resources for fishing, its role as means for unrestricted traffic from one side to the other, together with the common use of the islands by the populations of both coasts, are all important elements capable of creating certain “historic rights” which accrued in favour of both Parties through a process of historical consolidation as a sort of “*servitude internationale*” falling short of territorial sovereignty.¹⁶⁹

¹⁶⁷ The declaration, of August 25, 2006, asserted that the “Government of the People’s Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the Convention.” See United Nations, Division for Ocean Affairs and Law of the Sea, Declarations and Statements, at http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm.

¹⁶⁸ See, e.g., LORD COMMISSIONER FOR THE ADMIRALTY, 2 THE CHINA SEA DIRECTORY 113–14, 116 (5th ed. 1906) (mentioning Hainan fishermen as conducting various activities on certain islands, with no mention of fishermen from any other states).

¹⁶⁹ *Eritrea v. Yemen*, First Stage, Territorial Sovereignty and Scope of the Dispute, *supra* note 114, para. 126.

In the tribunal's view, such rights would provide "a sufficient legal basis for maintaining certain aspects of a *res communis* that has existed centuries" for populations on both sides of the Red Sea.¹⁷⁰ In finding that each party to the arbitration had sovereignty over certain islands in question, the tribunal stressed that the finding included "the perpetuation of the traditional fishing regime in the region" and that, around the islands that the award assigned to Yemen, Yemen was expected to ensure the preservation of the existing regime of "free access and enjoyment for the fishermen of both Eritrea and Yemen" for the benefit of "this poor and industrious order of men."¹⁷¹ The rationale was that the parties, as expressed through their agreement to arbitrate, sought to promote "the establishment and the development of a trustful and lasting cooperation between the two countries."¹⁷²

The tribunal did not distinguish "historic rights" from "historic title," but as indicated by its statement quoted above, it accepted the notion of historic rights as something falling short of territorial sovereignty.¹⁷³ In *Continental Shelf* the ICJ stated that "[h]istoric titles must enjoy respect and be preserved as they have always been by long usage."¹⁷⁴ Such rights or titles were concerned with swimming species and sedentary species in the Mediterranean.¹⁷⁵ The issue of historic fishing rights, raised by Tunisia in the instant case, did not affect the delimitation of the continental shelf claimed by it and Libya,¹⁷⁶ but it did show the significance of historic fishing rights in the context of maritime claims in which access to resources is a central issue. The disputes in the South China Sea are obviously of such a kind.

In order to reach a viable solution here and in similar situations, a balance needs to be struck between history and reality. The historical argument is of particular relevance in this area of Asia, where civilizations have flourished since time immemorial. Respect for history is integral to the way of life for the peoples of this area—which is one of the deep realities that need to be incorporated into a comprehensive solution to the current impasse over the islands in the South China Sea.

Joint Development as a Provisional Arrangement

Pending a solution acceptable to the littoral states concerned, the parties would do well to shelve the disputes and to work toward a temporary solution involving joint development. This suggestion is particularly relevant to resource exploitation, maritime safety, and security enhancement, in which not only the littoral states, but also the nonlittoral states, have an ongoing stake. This kind of temporary or provisional solution is encouraged by UNCLOS in the context of maritime delimitation.¹⁷⁷ Whether it could be applied successfully in the case of sovereignty disputes over islands remains to be seen. If it could, separate agreements for this

¹⁷⁰ *Id.*

¹⁷¹ *Id.*, para. 526.

¹⁷² *Id.*, para. 525.

¹⁷³ Yehuda Z. Blum, *Historic Rights*, in 2 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 710 (1995).

¹⁷⁴ *Continental Shelf (Tunis. v. Libya)*, 1982 ICJ REP. 18, para. 100 (Feb. 24).

¹⁷⁵ *Id.*, para. 98.

¹⁷⁶ *Id.*, para. 105.

¹⁷⁷ UNCLOS, *supra* note 1. Article 74(3), identical to Article 83(3), provides:

Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

purpose would need be concluded between the states concerned, but that may itself bring other issues to the fore. In the end, while affording a meaningful way forward for the time being, such an approach would still leave the disputes in the South China Sea unresolved.

VI. CONCLUSION

The last few decades saw the emergence of overlapping national claims in the South China Sea to territorial sovereignty over islands and to jurisdiction over maritime space, despite China's long-standing and dominant history of fishing, navigation, and other activities in this semi-enclosed sea. It is evident from the preceding discussion, however, that the nine-dash line in the South China Sea cannot be relegated to the status of historical relic and that it has continued to evolve progressively from its initial appearance in the early twentieth century. In the wake of the Second World War, it was the subject of a Chinese governmental proclamation, and over the course of the next sixty years, it came to be consolidated as a statement combining title and rights. Most importantly, this consolidation was met, generally speaking—and until 2009—with both regional and international recognition or acquiescence during that entire period. Indeed, during the six decades in question, the nine-dash line, which defined and preserved China's territorial title and historic rights of various kinds, had never been protested by any state, either within and outside the region.

The nine-dash line always had a foundation in international law. With regard to the islands that the line encloses, the customary law of discovery, occupation, and historic title provides that foundation. With regard to the maritime space that the line surrounds, relevant provisions of UNCLOS in conjunction with historic rights provide the foundation. As elaborated in this article, the nine-dash line does not contradict the obligations undertaken by China under UNCLOS; rather, it supplements what is provided for in the Convention. While UNCLOS is a comprehensive instrument of law, it was never intended, even at the time of its adoption, to exhaust international law. On the contrary, it has provided ample room for customary law to develop and to fill in the gaps that the Convention itself was unable to fill in 1982—due to the inherent limitations of a multilateral process of drawn-out negotiations. This view has been confirmed in the UNCLOS preamble, which states that “matters not regulated by this Convention continue to be governed by the rules and principles of general international law.”¹⁷⁸

The notions of historic title and, to a lesser extent, of historic rights are occasionally mentioned but not developed in UNCLOS.¹⁷⁹ In the case of the South China Sea as enclosed by the nine-dash line, China's historic title and rights, which preceded the advent of UNCLOS by many years, have a continuing role to play. This role has been ignored by the many governments and commentators whose legal positions are based almost entirely on UNCLOS.

The study carried out here reveals that, though termed differently, the nine-dash line can be best defined, in view of China's long-standing practice, as a line to preserve both its title to territory and its historic rights. It has three meanings. First, it represents the title to the island groups that it encloses. In other words, within the nine-dash line in the South China Sea, China has sovereignty over the islands and other insular features, and has sovereignty, sovereign rights, and jurisdiction—in accordance with UNCLOS—over the waters and seabed and

¹⁷⁸ UNCLOS, *supra* note 1, pmb., para. 9.

¹⁷⁹ *Id.*, Arts. 10, 15, 149, 298. There are also references to minimizing economic dislocation with regard to fishing. *Id.*, Arts. 61, 66, 69, 70.

subsoil adjacent to those islands and insular features. Second, it preserves Chinese historic rights in fishing, navigation, and such other marine activities as oil and gas development in the waters and on the continental shelf surrounded by the line. Third, it is likely to allow for such residual functionality as to serve as potential maritime delimitation lines.

The legal debate arising from the nine-dash line in the South China Sea represents perhaps a classic case of conflict between history and present reality. As exemplified in this article, while China relies heavily on its long and overwhelming history to justify its title to territorial sovereignty and maritime jurisdiction in the South China Sea, other claimant states repeatedly stress the imperative of their rights under UNCLOS. Nonetheless, the solution perhaps lies somewhere in the middle of these arguments. In the final analysis, it needs to be borne in mind that it is legally incorrect and politically unfeasible to deny and deprive a state of its historic title and rights—if they are rooted deeply in history and culture, acquired under customary international law, and based on consistent state practice. Nevertheless, the significance of UNCLOS in introducing new maritime zones such as the EEZ and the continental shelf should also be appreciated and embraced. Thus, in their search for a solution, the claimant states cannot escape the need to strike a careful balance between history and present reality in reaching an accommodation in the South China Sea.

A LEGAL ANALYSIS OF CHINA'S HISTORIC RIGHTS CLAIM IN THE SOUTH CHINA SEA

*By Florian Dupuy and Pierre-Marie Dupuy**

The recent turmoil created by the competing sovereignty claims of several countries over islands and waters in the South China Sea has caused the resurgence of the concept of “historic rights.”¹ Although the term *historic rights* (sometimes confusingly used in this context in combination with other germane notions, such as *historic waters* and *historic title*) has often been imbued with a certain degree of confusion and controversy in international law, it seems bound to play an important part in the arguments brought by states claiming sovereignty in this region and, in particular, by the People’s Republic of China (China).² The vagueness of the legal terminology used by China raises the issue of whether that very vagueness is being used as an element of political strategy.

On May 7, 2009, China submitted two *notes verbales* to the UN secretary-general, in which it declared that “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters

* Florian Dupuy is an Associate at LALIVE. Pierre-Marie Dupuy is Professor of Public International Law at the University of Paris (Panthéon-Assas) and the Graduate Institute of International and Development Studies—Geneva, and an Associate Member of the Institut de droit international. The authors wish to thank Veijo Heiskanen and Michael Schneider, Partners at LALIVE, for their comments and suggestions. This essay draws on a prior study commissioned from the authors as independent experts. The views expressed are their own.

¹ For a general overview of the dispute, see, for example, *Full Unclosure? As Oil-and-Gas Exploration Intensifies, So Does the Bickering*, ECONOMIST, Mar. 24, 2012, at 41, available at <http://www.economist.com/node/21551113>.

² We will generally use the term *China* to refer to the state we now know as the People’s Republic of China. It will occasionally be useful to refer separately to Taiwan, either as a political entity that makes a claim to certain territory, see *infra* text accompanying note 5, or as a physical feature, an island off the coast of mainland China. It will always be clear from the context which of these two alternatives is intended.

Annex 308

Laura Hostetler, “Early Modern Mapping at the Qing Court: Survey Maps from the Kangxi, Yongzheng, and Qianlong Reign Periods” in *Chinese History in Geographical Perspective* (Y. Du & J. Kyong-McClain, eds., 2013)

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Chapter 1

Early Modern Mapping at the Qing Court: Survey Maps from the Kangxi, Yongzheng, and Qianlong Reign Periods

Laura Hostetler

Conceptualization of the earth as a sphere with a finite amount of surface area changed the way that major Eurasian powers thought of their frontier areas and their territorial relationships to neighboring powers during the early modern period. With the advent of coordinate mapping based on measurements of latitude and longitude, international borders began to be marked out and understood in new ways. Transformations in mapping, well understood in the context of early modern Europe, were not limited to the Western world. This chapter introduces and explores a series of three maps made under the Qing dynasty, during the Kangxi (1662-1722), Yongzheng (1723-35), and Qianlong (1736-1796) reigns respectively. These eighteenth-century maps all depart from what might be called “traditional Chinese cartography” in that they used the emerging international early modern system of coordinate mapping to various degrees. As such, they demonstrate the emergence of a new perspective in the visualization of Qing empire and in its relationship to surrounding lands.

Exploration of these maps commissioned by three Qing emperors shows evidence of early modern scientific and technical expertise at the Qing court and attests to the fact that Qing China was—at least for a time—integrally connected to an international scientific community. Utilizing the language of scientific mapping—even as it continued to patronize traditional forms of cartography in many contexts¹—may also have been one way that the Qing distinguished itself from earlier imperial formations that ruled China. Qing patronage of various forms of mapping can be understood in the broader context of the court’s patronage of different constituencies with their various languages, cultures, and religions.² In any case, in this collection of maps we see the Qing court exploring freedoms from the constraints posed by traditional Chinese mapping conven-

tions. The Kangxi map, for example, adopts a coordinate system based on measurements of latitude and longitude. In the Yongzheng map, which eschews this projection, we see the limits of how far the court could, or would, go at different times in embracing European mapping conventions, even while greatly expanding its cartographic record of Asia. The Qianlong map returns to the projection used in the earlier Kangxi era maps, but while several Jesuit fathers played key roles in the production of the map, their names and contributions were elided from the Chinese historical record.³ All three projects reflect the imperial court's centrality by locating the central meridian in a position that passed through Beijing.

Only the earliest of these three maps has received a significant amount of scholarly attention in Western languages.⁴ The Kangxi emperor (r. 1662-1722) commissioned the first Qing maps made according to early modern survey techniques beginning in 1708. Scholars have interpreted the source of his motivation in various ways. At the time, French Jesuits took credit for instilling in the emperor a desire to see his empire mapped.⁵ Chinese sources tell us that after the negotiations for the 1689 Treaty of Nerchinsk, at which the Kangxi emperor saw a poorly conceived Western map of Asia, he realized a more accurate map was needed.⁶ In any case, in the following years the Kangxi emperor decided to employ cutting edge international technology to survey and map his empire as accurately as possible. The resulting Kangxi Atlas, *Huangyu quanlan tu* 皇輿全覽圖, was completed by 1717⁷ before similar survey maps of both France and Czarist Russia.⁸ Continuing reference to the map in Western language sources as the Kangxi *Jesuit* Atlas betrays a bias that the project was really a "Western" endeavor.

We know more about the Kangxi era survey maps than we do about their later counterparts. European involvement in their production, and in the dissemination of their contents abroad sparked scholarly interest in the West. Furthermore, the Kangxi era surveys would form the basis of the European image of China for over a century. Although not reproduced or disseminated in the same way in Europe, the Kangxi emperor's successors produced additional maps in the following decades that far surpassed the Kangxi Atlas in scope and level of detail. Some of the information collected for these maps would also make its way to Europe through various channels. However, unlike the Kangxi surveys that were transmitted directly to Europe, and also formed the basis for maps in a Qing encyclopedia known as the *Gujin tushu jicheng* 古今圖書集成, much greater secrecy surrounded these maps.⁹ The Yongzheng map (c. 1727) was virtually unknown in the West until its publication in 2007.¹⁰ The Qianlong map, commissioned *circa* 1760, has been regarded as relatively insignificant at least in terms of any major scientific innovations. The Western language literature tends to refer to the Qianlong map as a somewhat expanded "revision" of the Kangxi Atlas, whereas the Chinese literature has concentrated primarily on its contributions with regard to the inclusion of Xinjiang and more accurate repre-

sentation of Tibet, made possible by Qing military successes to the west and northwest. But, in fact, the Qianlong map would form the basis for European maps of Central Asia in the nineteenth century.¹¹ Chinese language scholarship mentions but does not fully explore the significance of the extent of the reach of the Qianlong map beyond the borders of what is now the People's Republic of China, and leaves much to be explored in the Yongzheng map.¹²

I demonstrate here that the two later maps differ from the Kangxi Atlas and from each other in significant ways that deserve our scholarly attention. Differences seen in these maps made over the course of circa forty years include shifts in the scope of territory included, choice of map projection, depiction of borders, and even languages used on the maps. When we study only the Kangxi Atlas without the context of the later maps, the work can appear as an oddity, evidence of a single instance in which flirtation with a western technology, overseen by foreigners, produced a unique product that ultimately had limited influence in China.¹³ Looking at the maps from three reign periods together, and drawing comparisons between them allows us to construct a narrative about the history and role of early modern survey mapping during the Qing that was not possible from studying the Kangxi era map alone. This approach allows us to explore Qing interaction with early modern geographical learning over time and to see where points of contact and contention lay as the court both cooperated and competed with other political powers in the mapping of Eurasia and the place of the Qing empire within it.

Scope and Scale

One of the most remarkable features of the three Qing survey maps is their sheer size. They are so large that one cannot possibly take in the whole at once. Overviews of the layout of the maps depict the full outline of each map marked off in a series of horizontal rows further divided into the rectangular blocks in which they were printed and later reproduced. Figures 1.1, 1.2, and 1.3 allow us to see the original number of sheets that composed each map. In addition, these overviews have the advantage of illustrating the number of sheets required to reproduce each map (41, 98, and 103, respectively).¹⁴ Roughly estimated according to their layout, the Qianlong map depicts more than twice the area of that made under his grandfather, the Kangxi emperor, and somewhat more than that made by Kangxi's son, the Yongzheng emperor.

Dealing with such physically large maps in so many sheets presents logistic challenges for simple comparison. One method we can use to determine how the geographical scope of the later maps differed from the earlier map, and from each other, is to locate the same topographically distinct feature on each map, and then to locate that feature in relation to the layout of the whole map. Viewing where a fixed point appears on each of the maps allows us not only to visual-

ize the general increase in area mapped, but also to learn into which directions map coverage was extended. Figures 1.1 to 1.3 highlight on each map the portion showing the geographically distinct and therefore easily identifiable Shandong Peninsula (Figure 1.4).

Knowing that the highlighted areas represent the same distinct region allows one to observe at a glance how the overall extent of the map changed in relation to a fixed point in what we now consider northeast China. As the scope of each overall map expanded, the position of the Shandong peninsula moved from just north of center in the Kangxi map (where it appears in the fourth row of eight), to slightly south of center in the Yongzheng map (where it appears in the sixth of ten rows), to significantly south in the Qianlong map (where it appears in the ninth row of thirteen). Although impressionistic, these overviews give us a clear sense of the general direction(s) in which the content of the maps expanded. As discussed further below, the projection of the Yongzheng map differs from that of the Kangxi and Qianlong maps making precise comparison by this means impossible, but nonetheless we can clearly see that both the Yongzheng and Qianlong maps show increased attention to the north and northwest.

Given Qing territorial expansion over the course of the eighteenth century, it is hardly surprising that the geographical scope of each edition of the survey maps increased. More surprising is that the scope of the latter two maps not only reflects the expansion of empire, but extends well beyond the limits of the Qing. The Kangxi map extends to 55 degrees north, including most of Mongolia and Manchuria, and reflects the Kangxi emperor's concerns in territorial contests with imperial Russia. The later maps roughly double the scope of the Kangxi era map, extending all the way to 80 degrees north, thus including all of Russia and Siberia, and extending to the arctic sea. To the west they extend as far as the Black Sea and the Mediterranean. The Qianlong map also depicts part of the Indian subcontinent as well as the Arabian Peninsula. Figure 1.5 depicts the northern and southernmost geographical reach of the Kangxi and Qianlong maps. The southern reaches of all of the maps extended to eighteen degrees north, to include Hainan Island. Figure 1.6 represents an overview of the area of the Kangxi map in relation to that of the Qianlong map. The fact that these two maps were made on the same scale and projection makes this a meaningful exercise.

How was all of this geographical information obtained? Whereas the Kangxi maps were based on site visits and a process of triangulation,¹⁵ clearly teams of Qing geographers could not have been sent into other lands ranging as far north as the Arctic and as far west as the Black Sea for the later maps. How then was the information for the much-expanded Yongzheng Atlas obtained, and who was responsible for its compilation? The correspondence of Antoine Gaubil, a Jesuit who served at the Qing court from 1722 to 1759 sheds a fair amount of light on these questions. From letters that Gaubil wrote to various scholars in Europe we learn that he and other Jesuits at the court were ques-

tioned regarding their geographical knowledge, and asked to make maps covering these vast expanses represented on the map. We also learn that geographical information for the Yongzheng map was derived from travelers' reports, from other maps—both foreign and Chinese—and of course from the earlier Kangxi maps.

The Qing plan to commission a comprehensive map of all of Eurasia seems to have first been presented to the Jesuits at the court early in 1727. On the 9th of January, a brother of the Yongzheng emperor, referred to by Gaubil as the "13th Regulo," summoned a small group of Jesuits to his quarters to quiz them on their geographical knowledge and map-making skills. Gaubil recounts:

The 13th Regulo, brother of the emperor, sent a letter here requesting Father Parennin come to the palace with several Europeans to speak about a pressing matter, without saying what it was.

At 11:00 in the morning, the Fathers Bouvet, Parennin, Demailla and myself, with Brother Rousset, went to the palace. Father Bouvet and Brother Rousset returned after seeing that it was a question of books and geographical matters.

The Regulo questioned us on many realms within Asia, and several of the responses that I gave, having given him the desire to speak longer on this matter, he commanded us to go to his dwelling, and an official was instructed to follow us and to bring along atlases and maps of Europe, Africa, Asia and America. ... After giving us something to eat, he had us come into a large room, and he wanted to be instructed on the limits of Persia, Turkey, and Russia. He wanted to see the distance between Russia and Portugal.¹⁶ After having satisfied his curiosity, he sent away the officials that had been present, as well as the eunuchs, and wanted to be alone with us.

During the time they were alone the conversation turned to the topic of religion, and what they would be allowed to say on this score to the Russian ambassador. When the conversation returned to geography, the Regulo ordered the Jesuit Fathers De Mailla, Pereyre (Pereira), and Gaubil "to make a geographical map of the lands situated between the *Sahalien oula* [Sakhalin River, or Heilong Jiang 黑龍江], the north sea, and the eastern sea [*mer orientale*]," based on the fact that they had already made a map of the lands between China, the Sahalien and the eastern sea.¹⁷ Further visits between the prince and the Fathers followed in the coming days. On the 11th of January, after having spent the day organizing his notes and making a plan for the map, Gaubil was again contacted by the prince who wanted to be brought up to date on what was known of the lands included in the projected map. Gaubil writes: "After having seen and examined our reports, [the prince] shared some of his own, and told us that based on all of this information we should make the best possible map."¹⁸ The quality and variety of the maps they were shown varied greatly. Gaubil was unimpressed with a map that the prince showed him of "the lands north of the mouth of the Sahalien oula river, up to the arctic sea" that was "made according to the accounts of

people sent to these places.” He described it as made without scale, degrees, or rhumb lines. In short, he concludes, “nothing could have been more poorly made.”¹⁹ Fortunately for Gaubil and his colleagues, they also had access to other sources in which they could place more confidence, as discussed further below.

The month of January 1727 continued to see a flurry of map-making activity and geographical consultation in the palace of the prince as in the following weeks the same group of Jesuits would be asked to make other maps covering additional territory. More specifically, on the 24th of January Gaubil was told that the emperor had approved of the map they had been commissioned to make of the northeast, and he subsequently wanted to see a map “of Siberia and Russia up to St. Petersburg” done, as Gaubil put it, “in our style.” The map took more than twenty-five days to complete and afterwards the emperor then had it engraved.²⁰ These commissions clearly reveal the desire at the Qing court for geographical knowledge beyond Qing borders, and the fact that the Jesuits were seen as a source both for this information and for its compilation.²¹

As time went on, the geographical scope of the Jesuits’ cartographic pursuits continued to widen, as did their contacts with others who also brought geographical information to the court. While working in the palace of the emperor’s brother, Gaubil writes, they came into contact with officials who had “been to Tibet, to the source of the Ganges and in the states of *Tse vang raptan*.” Gaubil describes these officials as “knowing the lands of which they speak fairly well,” and specifically mentions that one of them “learned the theory of geographical maps from the late Pere Jartoux.” Gaubil also placed confidence in the work of Mongols and Manchus charged with making routes for the troops. He describes these men as “perfectly instructed on the roads of the lands of both Tartaries.” It is clear that Jesuits were intimately, although not exclusively, involved in collecting and compiling information for the project.²² Furthermore, Gaubil was sending information to his contacts in Europe so that maps of Asia in preparation there could be as scientifically accurate as possible.

From Gaubil’s correspondence we also learn the flow of geographical information was not unidirectional flowing only from the Qing court to Europe. When the Regulo summoned the European mapmakers to his court on the 19th of January, it was to examine an atlas by Jean Hotman, printed recently [*depuis peu*] at Nuremberg, and that had been “offered by the Russians.” While Gaubil is not explicit on further details of its provenance, the atlas may have been presented by Mr. Sava, who led the Russian embassy that was in Peking at the time.²³ On another occasion Gaubil specifically mentioned the utility of two maps made by M. Delisle, that he received from France, as well as a report by a M. le Brun, and a dictionary by De Baudran, all of which were quite useful in responding to questions put to him and to Father Parennin on Persia and Muscovy, no doubt both in preparation for the Treaty of Kiakhta, as well as for the Yongzheng map of Eurasia.²⁴ Thus, the picture that we find is a complex one full of mutual cooperation in constructing a new and fuller understanding of the geography of Eurasia from a variety of places and perspectives.

From Gaubil's correspondence it becomes quite clear that the Qing court had been collecting maps and geographical reports from various sources and that Jesuit cartographers made use of this collection as well as what they were able to obtain from Europe regarding geographical points north and west, thus allowing them to significantly expand the scope of the Yongzheng map over its predecessor. Of course this was not the only map commissioned during the Yongzheng reign. The court was also working to improve its store of geographical knowledge through the commissioning of maps of river ways, water works, engineering projects, borders, roads, the imperial tombs, and frontier areas, and undoubtedly doing so in a variety of mapping styles.²⁵ But the Yongzheng map discussed here is unique in its international scope, even though it was apparently based on information exclusively acquired through other maps, and travelers' reports, rather than on new surveys initiated at the court.

The Qianlong emperor would also be interested in geography and pursued ever more detailed maps of his own realm and beyond. In 1749 he commissioned Fathers Augustin de Hallerstein and Félix da Rocha to make a map of the imperial hunting grounds at Mulan in Tartary,²⁶ and a decade later sent da Rocha and Father Joseph D'Espinha to the northwest to make observations for an enlarged imperial map. As mentioned above, the scope of this Qianlong map was even greater than that of the Yongzheng period. The refinements on the earlier two maps were based, in this case, both on additional site-visits and, presumably, through reliance on additional maps that had become available. The site visits were made possible through Qianlong's military conquests in Xinjiang, and in Tibet. We know that the Portuguese Jesuit Fathers Felix Da Rocha and Joseph D'Espinha were sent to Zungharia, and specifically visited Hami, Barköl, Turfan, Ili, and other towns where they observed latitudes and deduced longitudes.²⁷ Under the Kangxi emperor only cursory surveys could be carried out in Tibet, and no work had been done in Xinjiang, which was of course not Qing territory at that time. Overall, the role of the Jesuits at the Qing court in making the Qianlong map appears to have been somewhat more limited than that of the Kangxi era, although this might be something of an illusion. Da Rocha and D'Espinha went uncredited for their work in Chinese maps that benefited from their surveys,²⁸ and while several versions of the Qianlong maps were printed in woodblock, the largest was engraved on copper and printed under the direction of Michel Benoist.²⁹ In any case, sensitive geographical information remained tightly guarded; Gaubil was not directly privy to the observations made by D'Espinha and Da Rocha. What he did learn about their observations was through a mandarin employed in the imperial office of maps.³⁰ This may have been as much about European rivalries as about secrecy at the Qing court.

Projection

Although the Chinese had been familiar with a grid system of projection since at least the Song dynasty (960-1279) as seen in the famous *Yu ji tu* 禹迹图, the idea of coordinate mapping with reference to latitude and longitude was first introduced by Matteo Ricci in the late sixteenth century along with the idea of a spherical earth. Ricci's world maps, several versions of which were made with imperial court sponsorship during the late Ming, occasioned much interest as well as debate among Chinese literati. Not everyone was eager to accept the view of China in the world that it portrayed. However, many of the ideas and techniques he introduced gained ground at the court. A number of Ricci's successors in the Jesuit China mission were able to find positions for themselves at the court as well, including for a time the leadership of the Bureau of Astronomy.

The Kangxi emperor, in particular, was eager to host scientists—as well as artists—from Europe at his court, and showed a personal interest in making astronomical calculations. It was he who linked the length of the Chinese *li* (equivalent to .5 km) to latitudinal measurements.³¹ Thus, his decision to take the major step toward using international early modern technologies to accurately map the Qing empire, while significant, is not surprising. In adopting the coordinate system he was opting to use an emergent language of mapping and a view of the globe that was becoming accepted internationally. Furthermore, his adoption of scaled mapping meant that precise distances would no longer need to be described textually, but could be represented directly on the map itself. Thus the Kangxi surveys would be interpretable by mapmakers and map-users beyond the Qing dynasty. The scale employed on the Kangxi survey map was 1:1,400,000. Each sheet of the Kangxi and Qianlong maps contains five horizontal rows, each 2.5 inches apart, representing one degree of latitude.³²

Unlike the Kangxi map, which embraced the coordinate system, the Yongzheng map appears instead to be laid out according to a grid. However, the map actually employed a hybrid system that drew both on longitude and on an established grid system long used in certain genres of Chinese map making. Degrees of longitude are indicated in the margins of the map, but they are shown as running parallel to each other, as in a cylindrical projection, rather than converging toward the poles. Each sheet of the reproduction of the Yongzheng map contains eight horizontal rows, each two inches apart (Figure 1.7). One might be tempted to assume that the parallel lines appearing horizontally on the map each represented a degree of latitude as on the Kangxi and Yongzheng maps. Degrees of latitude are, however, *not* labeled on the Yongzheng map, and in fact the lines do not correspond to degrees of latitude. Having established that the southernmost lines appear in the vicinity of Hainan Island at eighteen degrees north, and the furthest north at eighty degrees north, the eighty parallel rows—if representing equal distances—must together represent sixty-five degrees. In other words,

each one represents significantly less than a degree of latitude (just over .8 degrees). The longitudinal measurements do seem, by contrast, to correspond to the other maps, with the exception that everything is shown approximately one degree further to the west.

The difference in projection used in the Yongzheng map is most radically apparent in the northern reaches. A comparative look at northernmost landmasses depicted on the Yongzheng and Qianlong maps shows this quite vividly. The Qianlong map contains only three sheets at the northernmost latitudes measuring 70 degrees west to 53 degrees east. The Yongzheng map requires eight sheets to depict the same territory. Both maps show landmasses at c. ten degrees east, and twenty-eight degrees west at 78-79 degrees north. See Figures 1.8 and 1.9 to see how radically different the shapes of the landmasses appear on the maps.

From consulting the correspondence of Antoine Gaubil once more we learn that the change in map projection from the Kangxi Atlas was ordered by the prince who oversaw the compilation of the map. On the 8th of October 1727, Gaubil wrote:

I spent all of the 10th of January searching through records for the map that we have orders to make. We organized them on the morning of the 11th, and came up with a plan for the map. In the afternoon, around 3:00 the prince wanted me to inform him of what is known of the countries comprised in the projected map. After having seen and examined our records, he told us about some of his own, and told us that using all of these records we were to make the best map possible. Apart from that, he said, "I absolutely do not want a map that uses curved lines." Knowing that it would be useless, and even dangerous to object, we had to promise him a map like he wanted. He further ordered us to come to his palace on a daily basis in order to work on the map.³³

Jesuit assistance was employed in making the map, but this was clearly a project in which a number of Jesuits participated, not a project they directed. Gaubil's account demonstrates that the Fathers were working under fairly close supervision. They were not given free reign in their design of the map. Their decision-making power was limited. Thus the reason for the map projection becomes clear. We learn that it was the choice of the court, not the missionaries. In later correspondence we learn that the missionaries did not think very highly of the geographical abilities of the prince, or of the quality of some of the maps they were given to examine.³⁴ In a different letter Gaubil confides that "the prince, who is otherwise very bright, has only a mediocre understanding of geography, and what he does know about map theory is only enough to make bad maps according to a style that Europeans don't know how to accommodate."³⁵ Not a ringing endorsement of his talents.

How then are we to understand the choice of projection used in the Yongzheng map? As a step "backward"? As an aberration between two more

“scientific” maps? As a foible of the prince? As a symbolic refusal to accept European ways wholesale? There are several good reasons why we should not dismiss the Yongzheng map out of hand because of its projection. While inaccurate to our eye, we should not assume the commissioners of the map chose this projection out of some perverse traditionalism or ignorance—although there may have been political reasons involved. The cylindrical projection may have had its own uses. By way of comparison, Mercator projections, which also distort the relative shapes of continents by representing lines of longitude as parallel to each other, were quite useful for sailing because straight rhumb lines could be drawn and followed on a nautical course. The Mercator projection, in addition, also requires variation in the distance shown between lines of latitude with the distance increasing toward each pole. This look back to Mercator reminds us that different projections are not simply “right” or “wrong,” but are useful for different purposes.

Furthermore, it is quite clear from Gaubil’s letters, as well as the map itself that the prince preferred, and got, a map “without curved lines,” that we cannot be sure that this was the only projection on which Europeans at the Qing court were permitted to employ during the Yongzheng reign. As alluded to above, Gaubil reports on a meeting later in January of the same year (1727) at which he was told that the emperor “wished to see a map of Siberia and Russia up to St. Petersburg *done in our style*” (emphasis mine). After twenty-five days and much difficulty the map was completed, and “the emperor had it engraved.” While Gaubil does not say explicitly what he means by “our style,” a scaled map on a projection that was standard for the Jesuit map-makers seems to be the implication.³⁶

In any case, the Yongzheng map was a serious work of geographical learning. As we have seen, the scope of the atlas was considerably enlarged over the previous version. The map also includes more detail in terms of place names, even within territory covered by the earlier map. For example, in the environs of Beijing, the Yongzheng map labels ninety places by name whereas the Kangxi map enumerated only sixty.³⁷ Nor can we assume the choice of map projection signaled an eschewing of all things “foreign.” As we have seen, maps made in various contexts and reports from travelers were consulted in the mapmaking process and the skills of European Jesuits were employed. We also know that the missionaries were later handsomely recognized and rewarded by the emperor for their cartographic contributions and other services with an imperial banquet on 26 January 1727,³⁸ even as religious persecution of Catholics continued in the provinces.

Although in terms of scope the Yongzheng and Qianlong maps have more in common with each other than with the earlier Kangxi map, the Qianlong map would return to the same projection and scale used in the Kangxi Atlas.

Depiction of Borders

As we have seen, the eighteenth century was a time when Qing maps of “all surveyed” morphed from maps of the Qing empire into international maps of Eurasia. It was also a time when internationally states began to be preoccupied with establishing and marking out national boundaries. In this context, what can we learn through looking at the portrayal of boundaries in the Qing maps? The maps from all three of the reign periods used dotted lines to indicate provincial boundaries. Provincial boundaries had long been clearly established as part of demarcating the administrative jurisdiction and responsibilities of individual governors and governors-general. More interesting, and less uniform, is the representation of international borders. To the south, where the limits of China’s southernmost provinces also coincided with international borders, the Kangxi and Yongzheng dotted lines demarcate the limits of Qing territorial reach. In fact, this is true even in pockets of the interior where Qing control had not been established such as in the *Sheng Miao* 生苗 areas within Guizhou province. It is in their representation of areas beyond the southern borders where the three maps diverge in their representational practices.

The Kangxi Atlas does not depict and makes no mention of regions beyond the southern scope of the map (or empire). The Yongzheng map, by contrast, indicates the names of countries bordering on Qing territory in Chinese characters written beyond the borders. The map content of the Qianlong version extends beyond the provincial limits depicted by dotted lines to include more about the terrain beyond the southernmost provinces. However, names of countries beyond the Qing—whose lands were presumably being mapped—are not given. Small buildings representing military outposts or customs houses are depicted south of the provincial boundaries. Before the time of Qianlong one could presume that the provincial boundaries also served as international boundaries—especially given the representation on the Yongzheng map. The Qianlong map, with its encroaching reach south, and non-recognition of territorial sovereignty of neighboring countries by failure to name them on the map sends a different message. Examples of the southern reaches of each of the three maps are shown in Figures 1.10, 1.11, and 1.12 respectively.

To the north, the situation is more complicated. With the exception of the Willow Palisade, which served as a “symbolic barrier protecting the Manchus’ homeland,”³⁹ and of course the Great Wall, which no longer actually served as a border, there are no boundaries marked on the Kangxi Atlas. As Peter Perdue describes it, the northern reaches of the map are treated much like the southern reaches—“Regions beyond China’s administrative or cultural influence are marked merely with empty space,” and “areas that could not be surveyed in detail, or for which accurate information was unavailable, had to be left blank.”⁴⁰ The Kangxi map even leaves blank some of the territory that was actually

agreed on as belonging to China according to the 1689 Treaty of Nerchinsk because it had not been adequately surveyed.

Perdue contrasts the Kangxi Atlas with the map made by Philipp Johann von Strahlenberg (1736) that, by contrast, shows all of Central Asia, whether controlled by Russia, the Qing, or tribal peoples living in between these two imperial polities. He attributes the difference partly to Strahlenberg's openness to drawing on and reflecting a wider variety of sources and to local and regional experience, and partly to the Qing state's own objectives in controlling what it mapped and mapping what it controlled. He concludes that the Kangxi Atlas "reinforced the monocentric cultural universe of the Qing and confirmed it with more precise measurements."⁴¹ I take Purdue's statement as a reflection on the degree to which the Kangxi Atlas was able to achieve the kind of domination over the landscape described in James Scott's *Seeing Like a State* in which local variation is sacrificed to a vision of uniformity and regularity of scale that dominates over other potentially competing visions of the landscape.⁴² By this measure the Kangxi era map definitely achieved a measure of modernity. However, in any case, before the end of the Yongzheng reign, the Qing also would be mapping all of Central Asia—and Russia—although in varying degrees of detail, and still without the kind of ethnographic richness that the Strahlenberg map reflected. It is worth noting, however, that attention to ethnographic concerns was expressed through other genres of documents during the Kangxi era.

The Yongzheng map of the same region shows a far greater amount of detail, including dotted lines that would appear to mark supply routes—perhaps derived from the Manchu route maps that Gaubil referred to in his correspondence. These routes also appear on the Qianlong map, which in addition includes representations of buildings to the north of the Great Wall, not indicated on the earlier maps, where garrisons were probably housed.

Language

We have seen that the Kangxi and Qianlong maps share a common projection, and that the Yongzheng and Qianlong both reach to 80 degrees north, and that they all portray borders in their own ways. When it comes to languages used on the map, the Kangxi and Yongzheng maps are similar, and the Qianlong map is the odd one out. In the earlier maps, place names within China Proper, including the Shandong Peninsula, are labeled in Chinese characters, while place names to the north, in Manchuria, are labeled in Manchu script. In the Qianlong map, or at least the editions I have been able to see, the entirety of the map is labeled in Chinese only.⁴³ The Kangxi Atlas appears in both bilingual and Chinese only editions.⁴⁴

The initial impression one receives from looking at the maps notated in two languages is that the Qing empire was distinctly divided into Chinese and non-

Chinese areas. China was part of, but distinct from the larger Manchu empire. Perhaps by the time of the Qianlong maps the larger empire beyond China had become part of the Chinese imperial consciousness? But unless we can be sure that no versions of the Qianlong map were made using Manchu to label regions beyond China proper, too much should not be made of this point for the Qianlong reign. Chinese only maps of the entire empire existed at least as early as the 1721 edition of the Kangxi *Huangyu quanlan tu*. However, the existence of Chinese language maps of culturally and linguistically non-Han areas of the empire would have significant repercussions after the fall of the Manchu dynasty when all of the Qing would be claimed as all of China.⁴⁵

Conclusion

It is clear that the Yongzheng and Qianlong maps represent significant changes from the Kangxi Atlas, which has been the primary focus of western scholarship to date. The most significant differences we see across the three maps relate to the scope of territory covered in the later maps. More to the point, the scope of the Yongzheng and Qianlong maps do not simply reflect the growth of the Qing empire, but rather depict areas significantly beyond its reach. How are we to understand the depiction of all of Central Eurasia on the Yongzheng and Qianlong maps, and the difference in portrayal of borders and frontier areas in the Qianlong map? And how does experimentation with different map projections fit into this same picture?

I would like to suggest that the maps from three reign periods, taken as a set, demonstrate that the Qing court was, for a period of decades, hooked into an international nexus of geographical learning. During the mid to late 1720s after the completion of the Kangxi Atlas, a small group of Europeans at the court continued to receive and transmit geographical information to and from Europe. Excerpts from Gaubil's correspondence demonstrate that he was building a base of geographical knowledge that he could source locally to augment a growing geographical record that he would also transmit to Europe.⁴⁶ In a letter to P. Gaillard written after a meeting with seasoned travelers to Tibet, Mongolia, and Manchuria, he wrote "I profited as well as I could from these lights, and I put down in writing what I was able to remember."⁴⁷ His plan was to record what he had been able to learn about routes through Manchuria in order and communicate it to Father Etienne Souciet.⁴⁸ Souciet was one of Gaubil's primary contacts in Paris, and was in touch with Jean Baptiste Du Halde, who was still at the time in the process of compiling the *Description... of China* that would include maps of both China and Tartary. Souciet also corresponded regularly with Joseph Nicholas Delisle, an astronomer of French origin who served as Professor of Astronomy at the St. Petersburg Academy of Science from 1725-47. Delisle and Gaubil were also in direct contact, and Delisle would at times assist Gaubil in

transmitting correspondence to Paris via Russia. Gaubil, himself, would be named a member of the Imperial Academy of St. Petersburg in 1739.⁴⁹

On another occasion, after a meeting with the prince that was primarily about the representation of Russia and Siberia, Gaubil mentions in a letter receiving permission to take with him “a good map of Tibet and the sources of the Ganges.” After studying it he determined that it turned out to be “pretty much in accord” with the one that Father Régis had sent to Europe the previous year, and that he therefore contented himself “with drawing from it those things that were not on the map of P. Régis” and sending the information on to his European contacts.⁵⁰ Thus, Jesuit labors at the Qing court in the 1720s contributed not only to Qing geographical knowledge, but also to European geographical knowledge, and I would argue, to geographical knowledge generally as different kinds of geographical learning gradually merged into one.

There were, however, limits to the cooperative aspect of the geographical enterprise. Although reports of geographical information continued to be transmitted from China to Europe, by the late 1720s maps sent were sometimes accompanied with notations as to where corrections should be made with regard to the situation of specific localities.⁵¹ The discrepancy between the maps and the notations stemmed from the fact that some locations were deemed too sensitive for even the Jesuit cartographers to be apprised of. With regard to sensitive areas on the Russian Qing border, Gaubil mentions that it would have been “extremely imprudent” of him to actually request a copy of a Manchu itinerary that he was shown and questioned about at a meeting with the prince. In another instance, regarding the placement of key locations on a map they had been asked to produce, the Jesuits had been obliged to let the “competency of the geographer cede to the humility of the missionary.”⁵² In other words, politics was interfering, not only with obtaining and transmitting geographical information, but also with its accurate representation. The Qing court was especially sensitive regarding the representation of Kamtchatka, or Jesso (as the French called it); Gaubil concluded that his contacts in France would need to learn about the potential navigability of the waters in the area from the Russians because the Qing court was being too cagey about it.⁵³ As time went on the role of Jesuits at the court would become increasingly constrained and the Qing court less willing to share geographical knowledge. Nonetheless, even the Qianlong surveys would somehow make their way to Europe where they would be used by Klaproth, Ritter and Alexander von Humboldt as a basis for their work on Central Asia and by geographers in Gotha as late as 1877 for their *Grand Atlas*.⁵⁴ Clearly during the eighteenth century the Qing contributed significantly to what Charles Parker has termed the global integration of space.⁵⁵

This overview of Qing imperial maps from three reign periods provides us with a context from which to understand developments in early modern survey mapping from *within* the context of the Manchu court over a period of half a century. What we see suggests that there was sustained Manchu interest in mapping, and even coordinate mapping, after the Kangxi Atlas was produced, and

even after the Jesuits no longer enjoyed as privileged a position at court. Whereas the Kangxi emperor recognized and put to use the technologies made available through the presence of European Jesuits at his court, apparently allowing them a great deal of freedom and initiative in terms of map design, the court of the Yongzheng emperor continued to prize and to collect geographical knowledge, but pursued it, and represented it, on his own terms. Using other maps and travelers reports the scope of the Yongzheng and Qianlong maps were significantly larger than that of the Kangxi map, extending well beyond the limits of the Qing empire. While undoubtedly a great deal of information for the Yongzheng map derived from the Kangxi *Huangyu quanlan tu*, it used a different projection. Jesuits were employed in making the Yongzheng maps, but had more limited decision-making power in terms of the map design. But in any case, geographers working in China during the Yongzheng reign were well connected in various ways to those working on mapping projects in other parts of Eurasia, allowing them to greatly increase their knowledge of the entire continent. Gaubil not only used the information he was gathering for use in making maps for the Qing emperor, he also made notes of everything and conveyed as much of it as he could to his colleagues in Europe at the various Academies of Science.

When the Qianlong map was made, again the map was enlarged, to include both the results of surveys of Tibet and Xinjiang and the representation of additional territory to the southwest, namely the Arabian Peninsula and part of the Indian subcontinent. In the largest, most complete map made of the Qing empire and Eurasia the projection used in the Kangxi map would be reintroduced. Jesuits participation, although key, would apparently be more limited, at least less openly acknowledged.⁵⁶ Ironically, as the Qing curtailed European access to geographical knowledge and participation in map making, the court simultaneously undercut its own connections to the very international nexus of geographical learning that had allowed it to achieve leadership at the cutting edge.

Notes

1. On the Qing court's simultaneous use of traditional and early modern maps, see Laura Hostetler, "Contending Cartographic Claims? The Qing Empire in Manchu, Chinese, and European Maps," in James R. Akerman, ed., *The Imperial Map: Cartography and the Mastery of Empire* (Chicago: University Of Chicago Press, 2009), 92-132.

2. For more on imperial patronage of various constituencies, see the work of Pamela Kyle Crossley, especially *A Translucent Mirror: History and Identity in Qing Imperial Ideology* (Berkeley: University of California Press, 1999).

3. Aloys Pfister, *Notices biographiques et bibliographiques sur les Jesuits de l'ancienne mission de Chine, 1552-1773* (Nendeln: Kraus Reprint, 1971), 776 and 776n1.

4. The Kangxi atlas appeared in many different editions and different formats. The 1721 book-like compilation, a copy of which is housed in the British Library, is known as the *Huangyu quanlan tu* 皇輿全覽圖, or Imperial Map of All Surveyed. British Library: Maps c. II.d.15. The title of the version of the Kangxi atlas appearing in the 2007 reprint is *Man-Han hebi Qing neifu yitong yudi mi tu* 滿漢合璧清內府一統輿地秘圖, or Secret Manchu-Chinese Map for United Rule from the Palace Treasury.

5. Antoine Gaubil, *Correspondance De Pékin, 1722-1759*, 1st ed. (Genève: Libraire Droz, 1970), 214 (letter to P. Souciet, 1728); Theodore N. Foss, "A Western Interpretation of China: Jesuit Cartography," in Charles E. Ronan and Bonnie B.C. Oh, eds., *East Meets West: The Jesuits in China, 1582-1773* (Chicago: Loyola University Press, 1988), 222-23.

6. Wang Qianjin 汪前進 and Liu Ruofang 劉若芳, eds., *Qingting san da shice quantu ji* 清廷三大實測全圖集 (Beijing: Waiwen chubanshe, 2007), Introduction, 1a.

7. The date varies according to different editions, but 1717 is the earliest, 1721 the latest.

8. For a comparative overview of the Qing, French, and Russian surveys, see Laura Hostetler, *Qing Colonial Enterprise: Ethnography and Cartography in Early Modern China* (Chicago: University of Chicago Press, 2001), 63-74.

9. In fact, the maps published in J.-B. Du Halde, *Description Geographique Historique, Chronologique, Politique, Et Physique De l'Empire De La Chine Et De La Tartarie Chinoise: Enrichie Des Cartes Generales Et Particulieres De Ces Pays, De La Carte Générale & Des Cartes Particulieres Du Thibet, & De La Corée, & Ornée D'un Grand Nombre De Figures & Vignettes Gravees En Taille-Douce* (Paris: Chez P.G. Le Mercier, 1735, and other editions) may have benefitted from additional information collected and transmitted by the China Jesuits during their work on the Yongzheng map. Further research needs to be carried out on this question.

10. *Qingting san da shice quantu ji*. The only Western language allusion I have come across to the Yongzheng maps was in a footnote to James Millward, "Coming onto the Map," *Late Imperial China* 20, no. 2 (Dec. 1999): 61-91, that notes that Yongzheng era maps with titles similar to the Kangxi and Qianlong era survey maps are listed in the card catalog of the Beijing Number One Historical Archives but were, at the time of his writing, not available for viewing by scholars (p. 71).

11. Pfister, *Notices*, 776.

12. For Chinese language scholarship on the Yongzheng and Qianlong maps, see Sun Zhe 孙喆, *Kang Yong Qian shiqi yutu huizhi* 康雍乾时期舆图绘制 (Beijing: Zhongguo renmin daxue chubanshe, 2003).

13. See, for example, Cordell D.K. Yee, "Traditional Chinese Cartography and the Myth of Westernization," in *The History of Cartography*, vol. 2, bk. 2 (Chicago: University of Chicago Press, 1994), 170-202.

14. The original Qianlong map was actually in 104 sheets. This overview collapses the southernmost view of Hainan Island that was produced on two sheets into only one.

15. In a letter to Souciet, dated 28 June 1726, in which he appears to be responding to a request for data from observations, he states: "It would seem natural that the map that our Fathers made of Tartary and of China would have produced a thousand fine observations. Everything can be reduced, however, to the height of several solar meridians. The rest was based on triangles, and I suppose that Father du Halde has communicated everything to you. It is surprising that in a geographical map made by mathematicians one finds no observation of satellites, no stars eclipsed by the moon, no solar or lunar eclipses, and no observed heights of mountains, no surveying (*nivellement*), and no observations on natural history." Gaubil, *Correspondance*, 120. See also Gaubil's letter for Fréret, dated 5 November 1736, p. 471.

16. The prince's question about Russia and Portugal most likely stemmed from the fact that the court was hosting official Embassies from each country at roughly this same period of time.

17. Gaubil, *Correspondance*, 171-72 (letter dated 8 October 1727 to P. Gaillard that takes the form of a journal noting events from January to October of that year). Translation by the author.

18. Gaubil, *Correspondance*, 172-73.

19. Gaubil, *Correspondance*, 175 (letter dated 8 October to P. Gaillard). The original reads "*rien de plus mal fait.*"

20. Gaubil, *Correspondance*, 174-75.

21. For more on these maps, see Pfister, *Notices*, 602, and Joseph Brucker, *La Mission de Chine de 1722 à 1735 . . . par Joseph Brucker, . . .* (Paris: V. Palmé, 1881), 30 and 33.

22. Gaubil's *Histoire de Gentschis-can et de la dynastie des Mongou* (Paris: Briasson, 1739), contains quite a lot of information about the geography of this area as well. See Pfister, *Notices*, 679-680, and Joseph Brucker, S. J., "La Chine et l'Extreme-Orient," *Revue des questions historiques* (April 1885): 485-539, esp. 509-13.

23. I have, to date, not been able to learn anything more about the contents or date of this work.

24. Gaubil, *Correspondance*, 116 (letter dated November 1725 to P. Souciet) and 187 (letter dated 11 October 1727 to P. Gaillard).

25. *Qingting san da shice quantu ji*, Introduction, 3b. Hostetler, *Qing Colonial Enterprise*, 78.

26. Pfister, *Notices*, 756.

27. Gaubil, *Correspondance*, 849 (Letter to Delisle, 14 November 1757).

28. Pfister, *Notices*, 776.

29. Pfister, *Notices*, 821.

30. Pfister, *Notices*, 861 (letter to Delisle, 20 November 1758).

31. According to Antoine Gaubil, the actual scale on the Kangxi surveys, at least those sent to Europe, was closer to 193 *li* per degree of latitude than the accurate 200. Gaubil, *Correspondance*, 734-36.

32. Not shown on the schematic overview is the fact that in both maps Hainan Island appears on a partial sheet that depicts only two degrees of latitude (from eighteen to twenty degrees north).

33. Gaubil, *Correspondance*, 172 (letter dated 8 October 1727 to P. Gaillard).
34. Gaubil, *Correspondance*, 175 & 187 (letter dated 11 October 1727 to P. Gaillard).
35. Gaubil, *Correspondance*, 187. (letter dated 11 October 1727 to P. Gaillard).
36. Gaubil, *Correspondance*, 174-75.
37. *Qingting san da shice quantu ji*, Introduction, 4b.
38. Gaubil, *Correspondance*, 186 (letter dated 18 October 1727 to P. Gaillard).
39. Peter C. Perdue, *China Marches West: The Qing Conquest of Central Eurasia*, Reprint (Cambridge, MA: Belknap, 2010), 452.
40. Perdue, *China Marches West*, 452.
41. Perdue, *China Marches West*, 453.
42. James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1999).
43. This includes the Qianlong map in the British Library: Maps TAB 1b (1-4).
44. Kangxi Atlas, 1721, *Huangyu quanlan tu*, British Library: Maps c. II.d.15, which appears in book format, is in Chinese only. The British Library also houses a large scroll version that employs both Manchu and Chinese, and was engraved by Matteo Ripa in 1719. British Library, Maps K. Top. 116.15,15a,15b.
45. For change on Chinese perceptions in what was included in Qing territory over time, see Emma Teng, *Taiwan's Imagined Geography: Chinese Colonial Travel Writing and Pictures, 1683-1895*, Harvard East Asian Monographs 230 (Cambridge, MA: Harvard University Asia Center, 2004).
46. Gaubil, *Correspondance*, 183 (letter to P. Gaillard, dated 8 October 1727).
47. Gaubil, *Correspondance*, 182.
48. Gaubil, *Correspondance*, 182.
49. He was also "*membre correspondant*," a corresponding member, of the Académie des Sciences in Paris and would be named a foreign associate of the Royal Society in London in 1751. Gaubil, *Correspondance*, Preface, viii.
50. Gaubil, *Correspondance*, 183 (letter dated 8 October 1727 to P. Gaillard).
51. Gaubil, *Correspondance*, 206-7 (letter is missing heading, but was most likely addressed to P. Hervieu. It was received on 25 September 1729. Brotier, 149, 136.).
52. Gaubil, *Correspondance*, 183 (letter to P. Gaillard, dated 8 October 1727).
53. Gaubil, *Correspondance*, 174 and 222-223 (undated letter Brotier 148, folio 67).
54. Pfister, *Notices*, 776.
55. Charles H. Parker, *Global Interactions in the Early Modern Age, 1400-1800*, 1st ed. (Cambridge: Cambridge University Press, 2010).
56. In fact, the introduction to the *Qingting san da shice quantu ji* states that they would serve only in a subsidiary capacity, 6b. This may, however, be overstating the case. More research is definitely called for on this question.

Chapter 2

Kangxi's Auspicious Empire: Rhetorics of Geographic Integration in the Early Qing

Stephen Whiteman

In 1718, European missionaries in service to the Kangxi 康熙 (r. 1661-1722) court presented the *Huangyu quanlan tu* 皇輿全覽圖, or “Map of a Complete Survey of Imperial Territories,” to the throne (Figure 2.1).¹ The product of more than a decade's work, the map, now often known as the Kangxi Atlas, presented an image of the early Qing empire (1644-1911) through the lens of newly imported scientific cartography. Despite its seeming objectivity, however, the imperial territory imagined by the atlas was also a fundamentally rhetorical one, simultaneously presenting a unified empire while also revealing the fractured nature of its once disparate parts.

Details within the Kangxi Atlas suggest the often difficult course of conquest during the first decades of the Qing. As for any dynasty, territorial control remained a significant concern for the Qing for several decades after conquest. The Kangxi emperor continued to fight wars of suppression, expansion and border consolidation on all fronts into the mid-1690s.² Inaccuracies in the delineation of Korea and blank areas in the southern province of Guizhou, eastern Taiwan and along the western frontier, for instance, reveal regions that remained inaccessible to the reach of the state and its surveyors nearly eighty years after the fall of Beijing. The use of Manchu for labeling toponyms in the Northeast and Mongolia, in contrast to Chinese through the remainder of the atlas, similarly speaks to the tension between territory and ethnicity inherent in the creation of the Qing polity.

Territorial consolidation represented only the first phase of establishing Qing rule, however; what followed, the integration of *guannei* 關內 and *guanwai* 關外—“within” and “beyond the passes”—into a single, cohesive empire, was perhaps even more challenging. As seventeenth and eighteenth century emperors sought to shape and define the Qing population and territory, the reconciliation of mutually foreign regions into a coherent polity was a constant pro-

vided shelter to another prominent Ming loyalist, Chen Zilong 陳子龍 (1608-1647). Gu Xianjian's daughter, Gu Hong 顧紘, was betrothed to Ye Shaoyuan's second son, Ye Shicheng (1618-1635). But partly due to his frustration with the civil service examinations, Shicheng died before the marriage. However, Gu Hong still insisted that she be married into the Ye family. Her chastity was later honored by the local government.

30. Ye, *Huyin waishi*, in Ji Qin, *Wumengtang ji*, 1056.

31. See Chapter 4 of my dissertation.

32. Ye, *Jiaying rizhu*, in Ji Qin, *Wumengtang ji*, 967.

33. Zhang Dai, *Zhang Dai shiwen ji* 張岱詩文集 (Shanghai: Shanghai guji chubanshe, 1991), 290.

34. Sometimes it was misquoted as 吾越乃報仇雪恥之國，非藏垢納污之地， in particular by people from Zhejiang to show their heroic sentiment or nationalism.

35. Ye, *Chronological Autobiography*, in *Wumengtang ji*, 822-3.

36. Ye, *Chronological Autobiography*, in *Wumengtang ji*, 822-3.

37. Interestingly, Ye Shaoyuan's reputation as a Ming loyalist from Fenhu was borrowed by a Fenhu native during the late Qing and early Republican period. Liu Yazhi 柳亞子 (1887-1958), a revolutionary poet, tried his best to promote Fenhu nationally. His list of eight former worthies enshrined in the local Shrine of Former Worthies 先哲祠 includes the name of Ye Shaoyuan. Liu tried to promote the "Eight Worthies" from Fenhu in a time when China was in political chaos and was shattered by national crises. They were exemplars of morality and loyalty used by Liu to mobilize his fellow countrymen to rise and fight for their country.

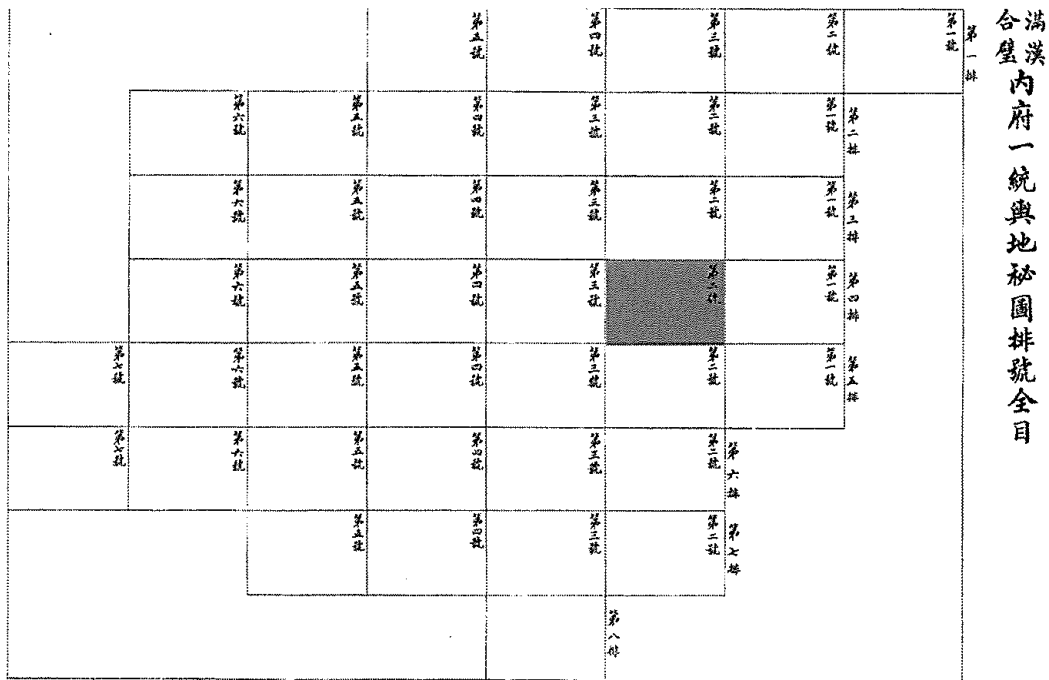


Figure 1.1. Kangxi map overview with portion containing the Shandong Peninsula highlighted. Adapted from “Qingting san da shice quantu ji 清廷三大實測全圖集” (Beijing: Waiwen chubanshe, 2007).

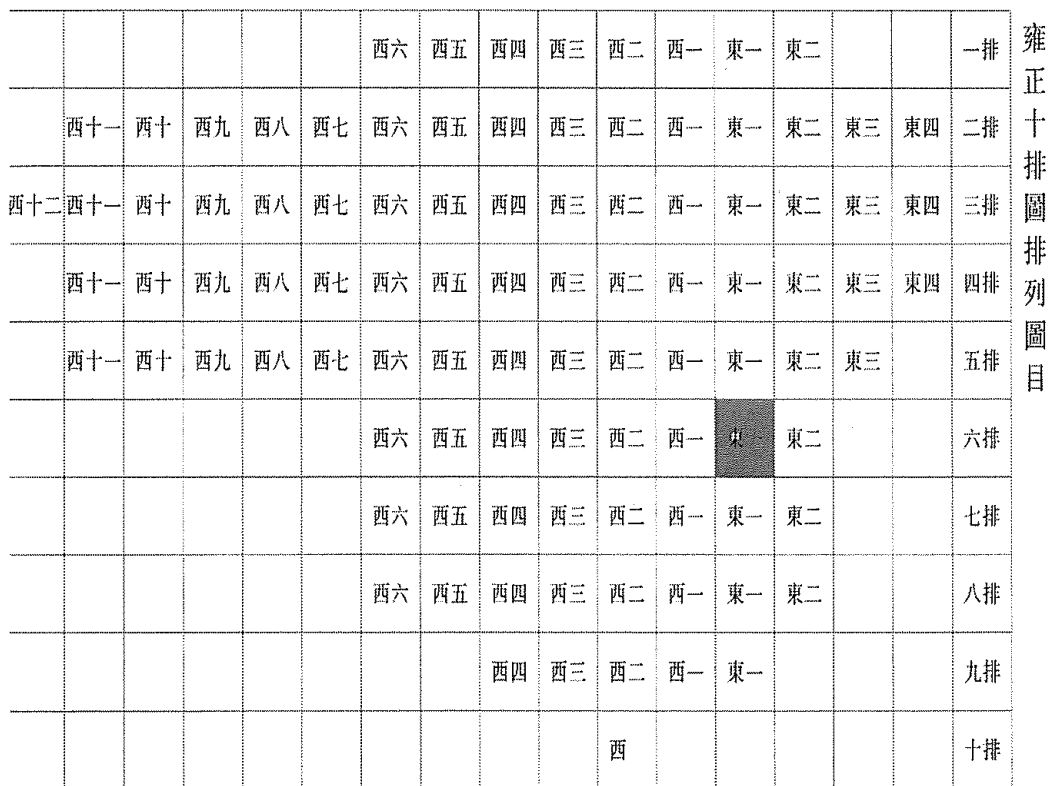


Figure 1.2. Yongzheng map overview with portion containing the Shandong Peninsula highlighted. Adapted from “Qingting san da shice quantu ji 清廷三大實測全圖集” (Beijing: Waiwen chubanshe, 2007).

							西二	西一	東一			一排
							西三	西二	西一	東一		二排
					西四	西三	西二	西一	東一	東二		三排
			西六	西五	西四	西三	西二	西一	東一	東二		四排
			西六	西五	西四	西三	西二	西一	東一	東二		五排
		西七	西六	西五	西四	西三	西二	西一	東一	東二	東三	六排
西八	西七	西六	西五	西四	西三	西二	西一	東一	東二	東三		七排
西八	西七	西六	西五	西四	西三	西二	西一	東一	東二			八排
西八	西七	西六	西五	西四	西三	西二	西一	東一	東二			九排
西八	西七	西六	西五	西四	西三	西二	西一	東一	東二			十排
西九	西八	西七	西六	西五	西四	西三	西二	西一	東一			十一排
西九	西八	西七	西六	西五	西四	西三	西二	西一	東一			十二排
							西二	西一	東一			十三排

乾隆十三排圖排列全目

Figure 1.3. Qianlong map overview with portion containing the Shandong Peninsula highlighted, and range of the Kangxi map outlined in bold. Adapted from “Qingting san da shice quantu ji 清廷三大實測全圖集” (Beijing: Waiwen chubanshe, 2007).

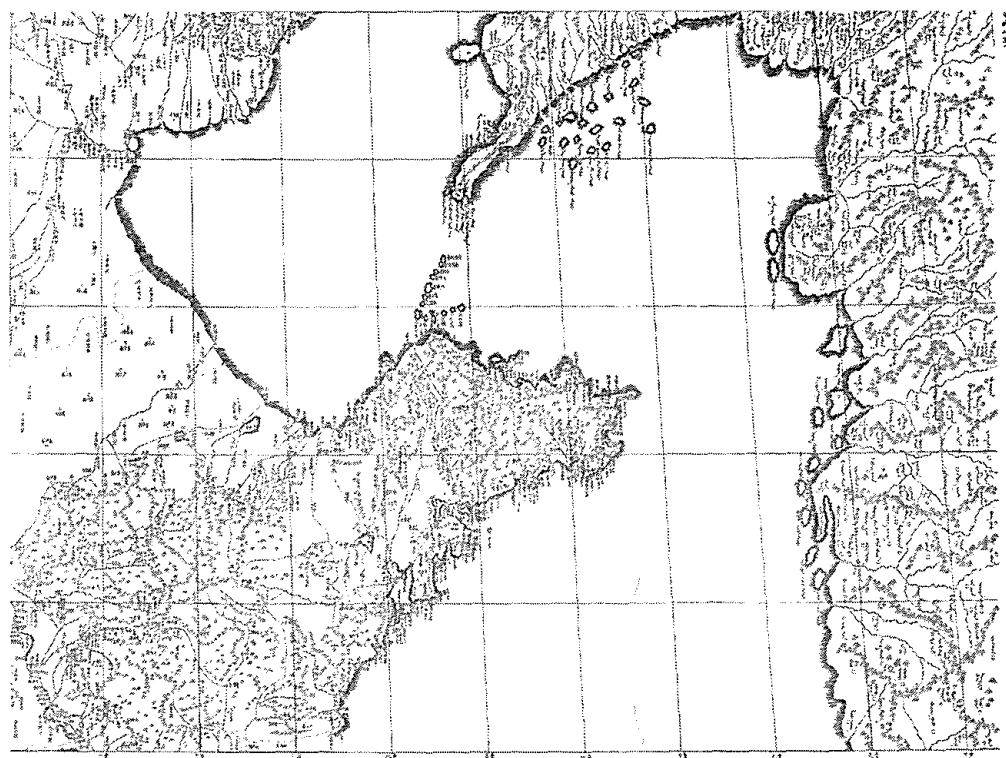


Figure 1.4. Kangxi Map: Shandong Peninsula. Note the shading of the shoreline. Both Chinese and Manchu scripts were used to label different regions of the map.

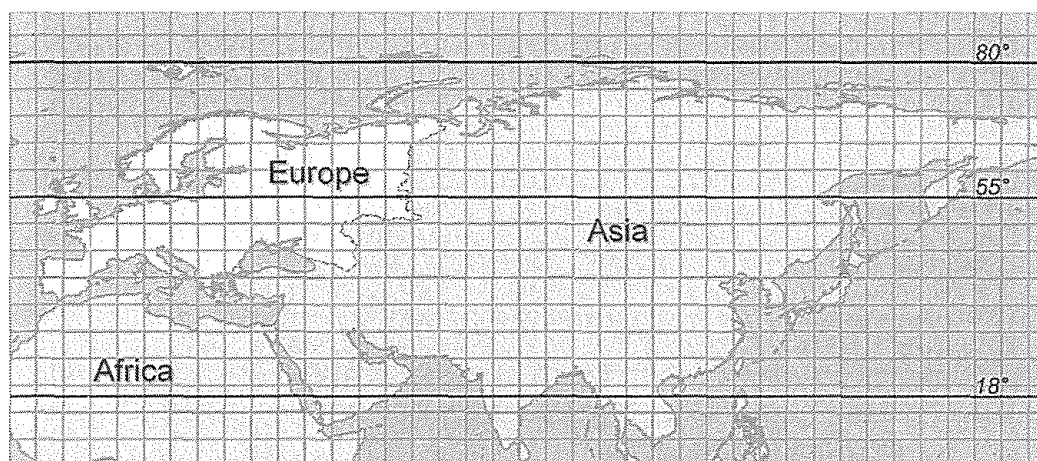


Figure 1.5. Map of Eurasia with 18th, 55th, and 80th parallels indicated in boldface. The line at 18 degrees north indicates the southernmost reach of each map. The line at 55 degrees north shows the northernmost reach of the Kangxi map, and the line at 80 degrees north depicts the northernmost reach of the Yongzheng and Qianlong maps.

							西二	西一	東一			一排
							西三	西二	西一	東一		二排
					西四	西三	西二	西一	東一	東二		三排
			西六	西五	西四	西三	西二	西一	東一	東二		四排
			西六	西五	西四	西三	西二	西一	東一	東二		五排
		西七	西六	西五	西四	西三	西二	西一	東一	東二	東三	六排
西八	西七	西六	西五	西四	西三	西二	西一	東一	東二	東三		七排
西八	西七	西六	西五	西四	西三	西二	西一	東一	東二			八排
西八	西七	西六	西五	西四	西三	西二	西一	東一	東二			九排
西八	西七	西六	西五	西四	西三	西二	西一	東一	東二			十排
西九	西八	西七	西六	西五	西四	西三	西二	西一	東一			十一排
西九	西八	西七	西六	西五	西四	西三	西二	西一	東一			十二排
							西二	西一	東一			十三排

乾隆十三排圖排列全目

Figure 1.6. An overview of the layout of the Kangxi and Qianlong maps superimposed on each other demonstrates the relative scope of each map. The outline of the area encompassed by the Kangxi map scrolls is bolded. The fact that these two maps were made on the same scale and projection makes this a meaningful exercise.

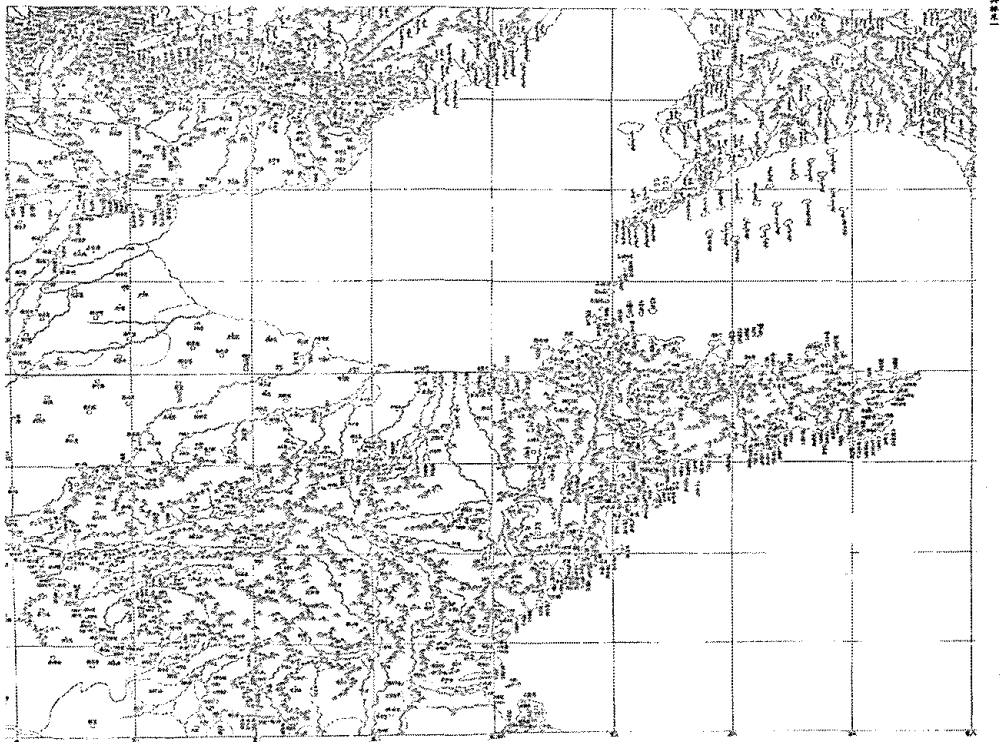


Figure 1.7. Yongzheng Map showing Shandong Peninsula. Note the grid-like appearance of the projection.

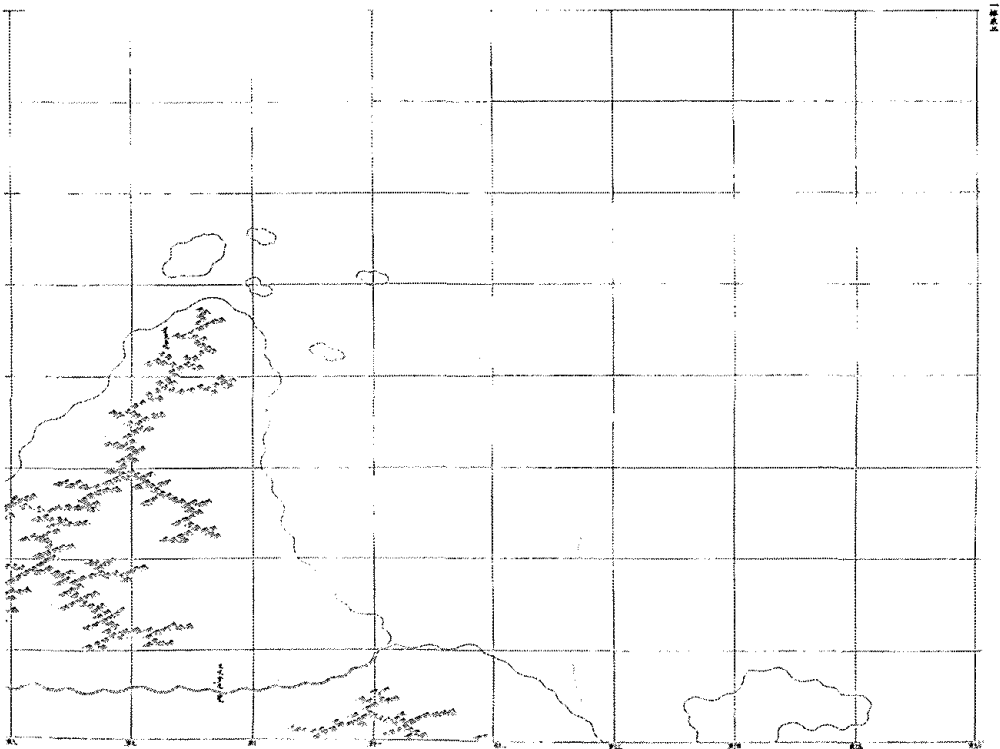


Figure 1.8. Yongzheng Atlas: Far northern reaches. Note how radically the different projections affect the depiction of the same landmass in figures 1.8 and 1.9.

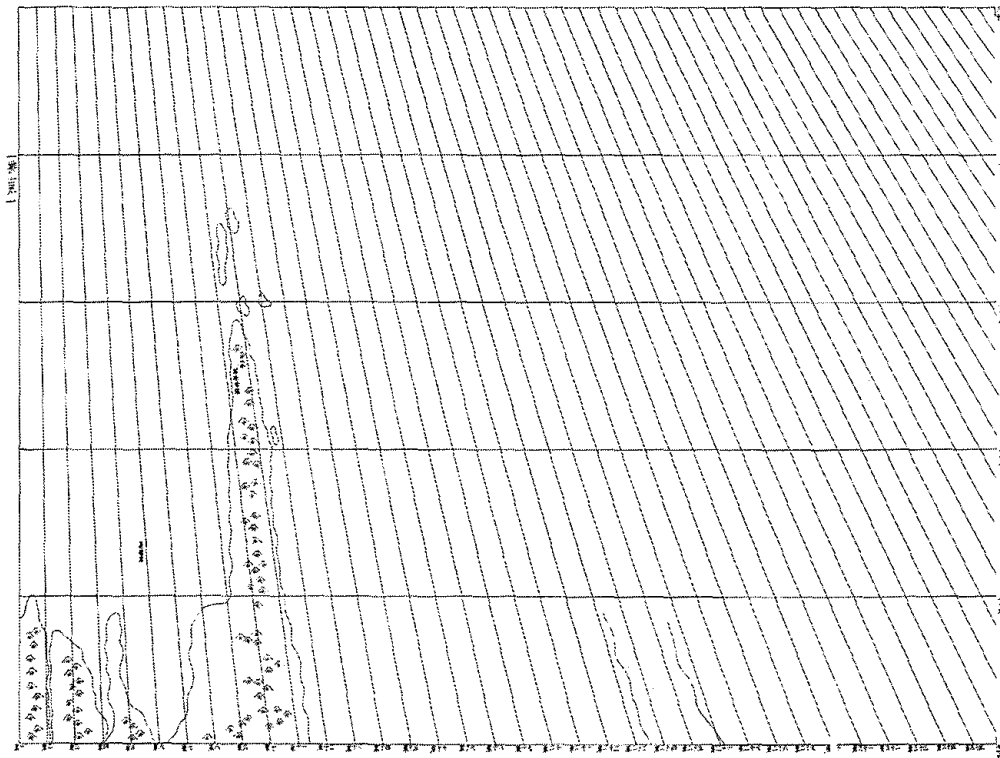


Figure 1.9. Qianlong Atlas: Longitudinal markings slope dramatically in the far northern reaches of the map. Note how radically the different projections affect the depiction of the same landmass in figure 1.8.

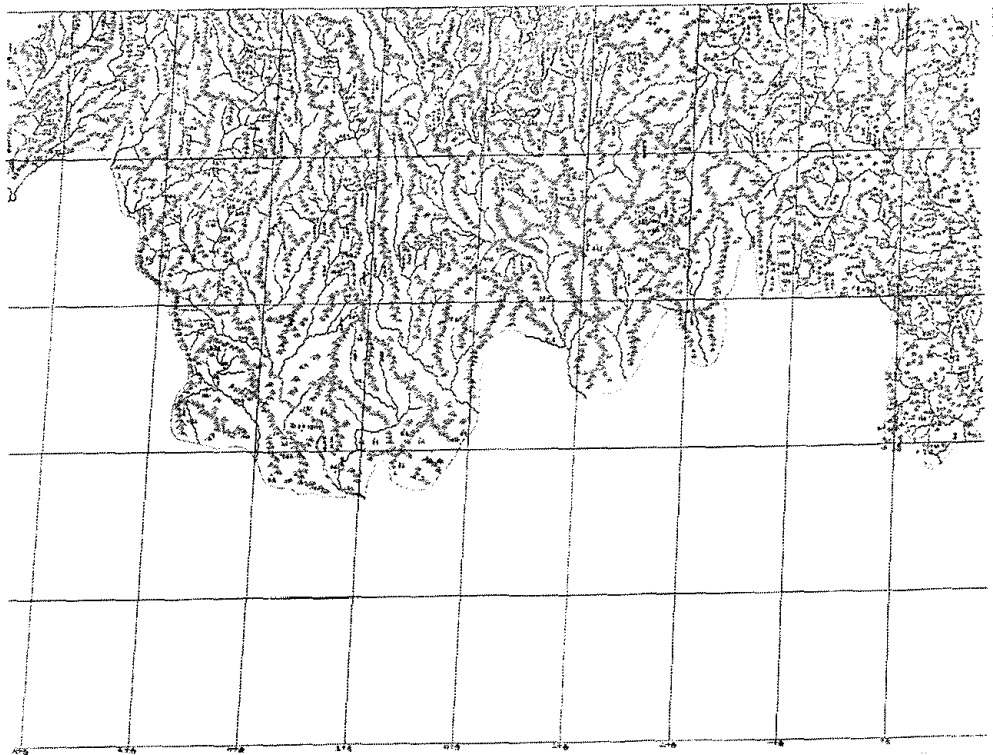


Figure 1.10. View of southern reaches of Kangxi Atlas. Taken from seventh row, fourth column. Note the dotted line that indicates the demarcation of China's provinces from foreign territory not mapped.

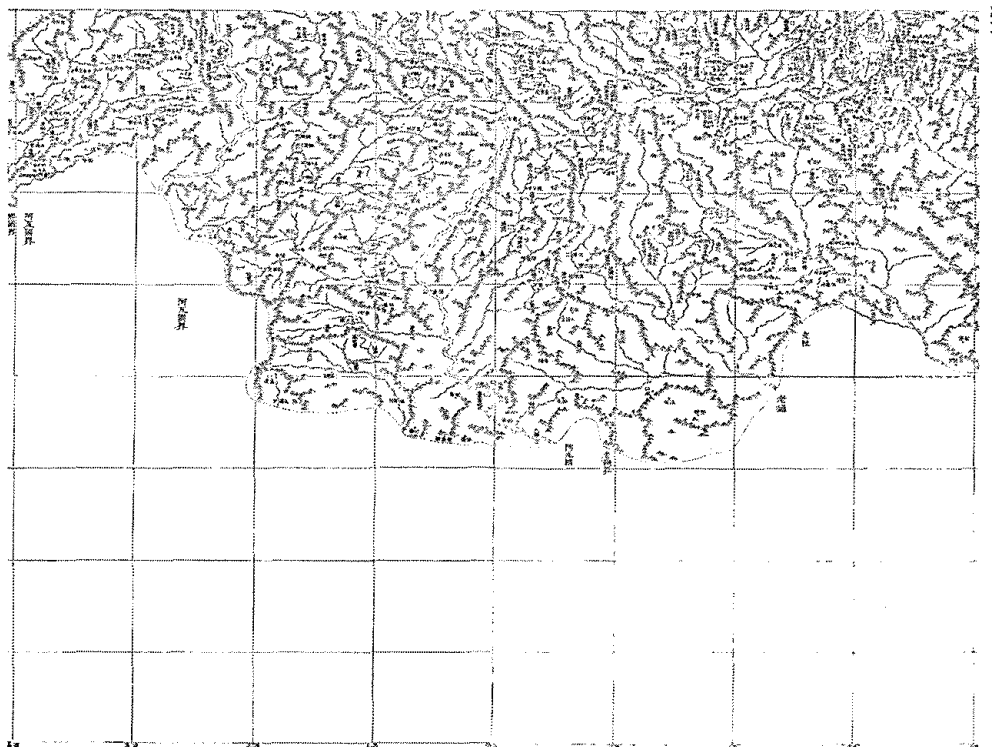


Figure 1.11. View of southern reaches of Yongzheng Atlas. Taken from the ninth row, third column west. Note demarcation of the southern boundary, but also the labeling of regions beyond Qing borders.

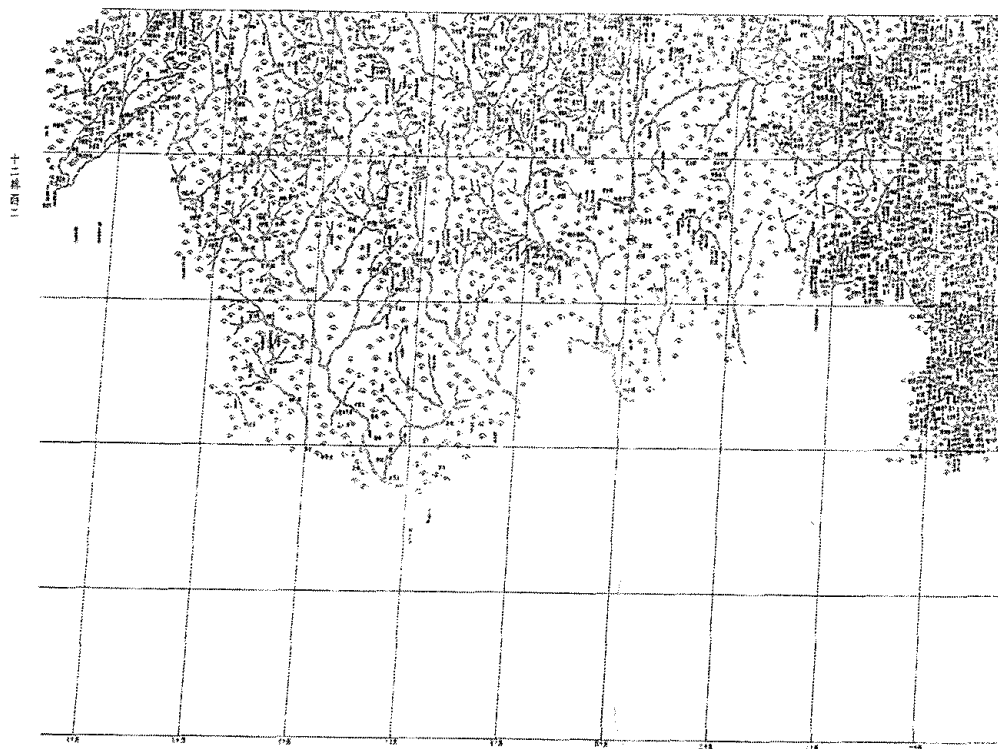


Figure 1.12. View of the southern reaches of the Qianlong Atlas. Note dotted lines in upper left hand corner of the map that may represent provincial boundaries. See also how the map represents area beyond these lines, including what appear to be Qing outposts.

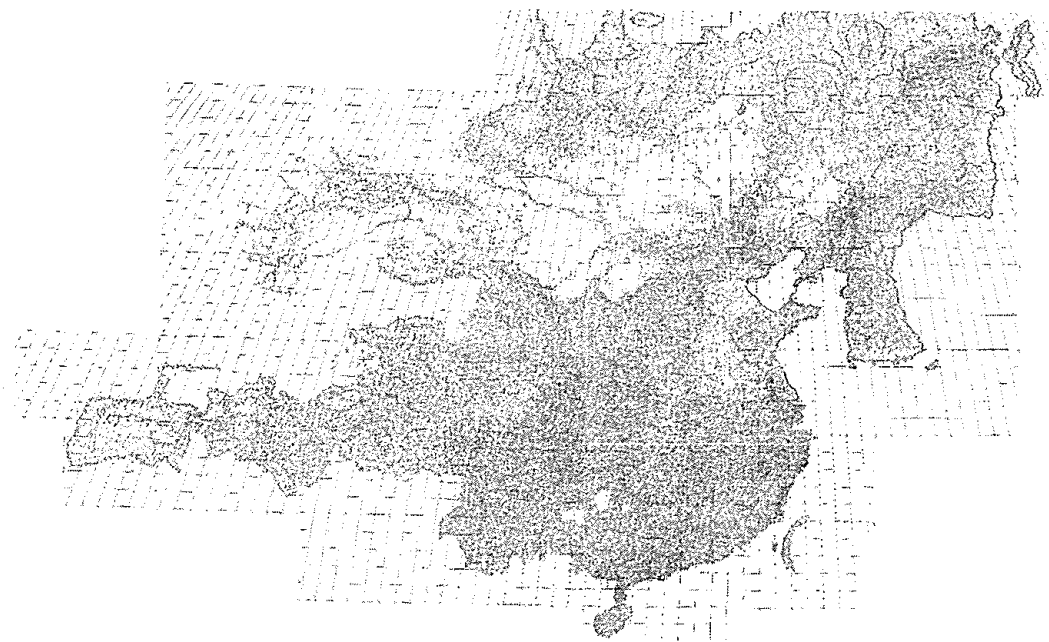


Figure 2.1. *Huangyu quanlan tu*, or “Map of a Complete Survey of Imperial Territories.” Originally prepared in multiple sheets, this illustration shows the forty-one leaves of Matteo Ripa’s 1719 copperplate edition digitally knitted together. After Wang Qianjin and Liu Ruofang, *Qingting san da shice quantu ji*, vol. 1. (Credit: Peter Andersen)

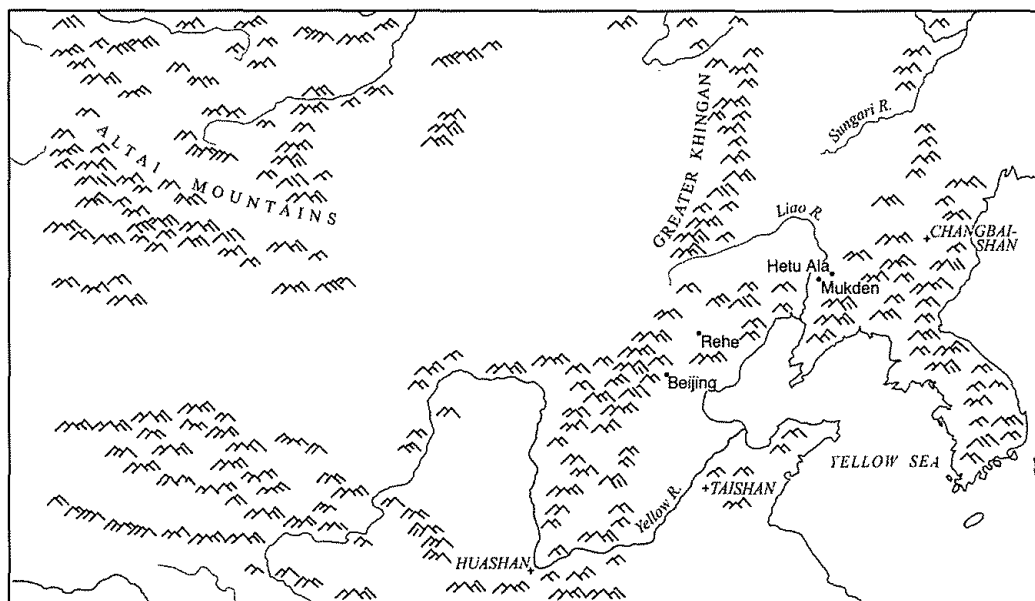


Figure 2.2. (Credit: Benjamin Perry Blackshear and Kate Macfarlane)

Annex 309

Michael Yahuda, "China's New Assertiveness in the South China Sea", *Journal of Contemporary China*, Vol. 22, No. 81 (1 May 2013)

China's New Assertiveness in the South China Sea

MICHAEL YAHUDA*

China's new assertiveness in the South China Sea has arisen from the growth of its military power, its 'triumphalism' in the wake of the Western financial crisis and its heightened nationalism. The other littoral states of the South China Sea have been troubled by the opacity of Chinese politics and of the process of military decision-making amid a proliferation of apparently separately controlled maritime forces. The more active role being played by the United States in the region, in part as a response to Chinese activism, has troubled Beijing. While most of the ASEAN states have welcomed America as a hedge against growing Chinese power, their economies have become increasingly dependent upon China and they don't want to be a party to any potential conflict between these two giants. The problem is that there is no apparent resolution to what the Chinese call, in effect, these 'indisputable disputes'.

China's new assertiveness has arisen primarily from four related developments: its sense of a change of the balance of power in its favor; the expansion of its national interests to include the maritime domain in its nearby seas (*jinhai*) and its trade routes; the growth of its military power to pursue its maritime claims more effectively; and the heightening of nationalist sentiments among officials as well as among the population in general. The reaction of maritime neighbors coupled with a more public display of the American commitment to the region has caused the Chinese to soften aspects of their policy. Nevertheless the growth of China's naval power and its continued insistence that its claims in the South China Sea are indisputable suggest that there is no prospect for a reconciliation with neighbors in the immediate future and that the most that can be attained are measures for conflict avoidance.

*Michael Yahuda is a Professor Emeritus of International Relations at the London School of Economics and Political Science, University of London, where he served from 1973 to 2003. Since then he has been a visiting scholar at the Sigur Center for Asian Studies, the Elliott School, George Washington University. He has been a visiting professor at the Australian National University, Adelaide University (S. Australia), the University of Michigan (Ann Arbor) and the Woodrow Wilson Center, DC, as well as being an affiliate at the Fairbank Center, Harvard. More recently he was a Visiting Senior Fellow at the Singaporean Institute for South East Asian Studies and a Visiting Professor at China's Foreign Affairs University. His main fields of interest are China's politics, foreign policy and the international relations of the Asia Pacific. He has published nine books and more than 200 articles and chapters in books. His latest book is *The International Politics of the Asia-Pacific* (3rd revised edn, 2011). The author can be reached by email at yahuda@gwu.edu

government's offer to facilitate a multilateral agreement on a framework for settling the disputes in the SCS.⁸

The Chinese had long sought to limit American participation in addressing South China Sea issues. From their perspective, one of the attractions of joining up with ASEAN to deal with the SCS, even though at least five of its ten members were not in dispute with China over its claims, was that it tacitly excluded the US. Ten years earlier, in 2002, China signed a Declaration on a Code of Conduct in the South China Sea, by which, together with the ten ASEAN countries, they agreed voluntarily to accept the maritime status quo and to avoid the use of force. Arguably, the Chinese have shown regional good will in reaching agreements in order to address collectively non-sovereignty related issues such as conducting search and rescue exercises, joint scientific efforts and combating non-traditional security threats, etc. However, with regard to sovereignty issues the Chinese all along have insisted that these can be addressed on a bilateral basis only, when conditions were ripe, but meanwhile they offered to enter into joint development arrangements to explore maritime and energy resources. But China became more assertive in advancing its claims as its maritime power increased and as it sensed that the balance of power was beginning to tilt in its favor. At the same time, China's maritime interests grew in response to its emergence as a global economic power.

The expansion of China's national interest

China's emergence as a global and regional player of increasing significance has also had the effect of expanding its interests beyond the narrow confines of the immediate defense of its land mass. For example, the stunning rapidity of the growth of China's trade, which saw it surpass Germany in 2009 as the world's leading exporter, has also brought home to China's leaders the vulnerability of its economy to interruption of its trade routes. Consequently, China's maritime interests are no longer confined to concerns with Taiwan and deterring possible American military intervention, but they have recently been extended to an interest in controlling adjacent seas and to preventing the interdiction at sea of China's supply lines for the energy and raw-material needs of its domestic economy.

These developments need not necessarily lead to conflict with neighbors. In fact, China has become more active in cooperating with neighbors to tackle non-traditional security threats such as piracy, natural disasters, trafficking in peoples and narcotics etc.⁹ Since 2008 China has regularly sent naval patrols to participate in the international piracy patrol off Somalia and in the Gulf of Aden. These have been seen as examples of China's readiness to behave in accordance with multilateral conventions and to conform to international norms.¹⁰

8. Hilary Clinton, 'Remarks at press availability', *US Department of State, Diplomacy in Action*, (23 July 2010), available at: <http://www.state.gov/secretary/2010/07/14505.htm>.

9. David Arase, 'Non-traditional security in China-ASEAN cooperation: the institutionalization of regional security cooperation and the evolution of East Asian regionalism', *Asian Survey* 50(4), (July-August 2010), pp. 805-833.

10. Gaye Christofferson, 'China and maritime cooperation: piracy in the Gulf of Aden', Lecture delivered at the Institut für Strategic-Politik-Sicherheits- und Wirtschaftsberatung, Berlin, 1 December 2009, available at: www.humansecuritygateway.com.

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However, it also possible to see these as exercises which facilitate China's capacity to uphold its expanding national interests. As a great power with a rapidly growing economy, China claims an entitlement to develop naval forces capable of going beyond its immediate coastal confines to patrol the western Pacific, the South China Sea and beyond that to the Indian Ocean and approaches to the Persian Gulf. In the last three years China has conducted combined naval, air and high-tech communication exercises in the Pacific and in the East and SCS. As new developments, they are viewed with varying degrees of alarm and concern by neighboring countries. Some of these exercises have entailed crossing narrow international straits between Japanese islands, which, combined with the growth of Chinese naval power, have triggered concern in Japan that has resulted in an adjustment of its strategy towards 'dynamic defense' and a focus on its southerly islands. Chinese naval exercises in the SCS, through which much of China's trade is conducted, can be seen as a form of deterrence, but they can also be seen as displays of force to underline China's heightened disputes with neighboring countries over maritime claims.¹¹

It is important to recognize that the expansion of Chinese interests does not necessarily entail the expansion of China's claims to sovereignty over new territories and maritime areas. China's claims in principle were made more than 60 years ago. The PRC issued its first formal claim to sovereignty over islands in the SCS in 1951 in response to the peace treaty negotiations with Japan in San Francisco, from which the PRC was excluded. Chinese maritime rights were claimed in 1958 and again in a more detailed way following the signing and then ratification of UNCLOS (UN Convention of the Law of the Sea) in 1982 and 1994, respectively. In 1992 a domestic law was issued reaffirming its claims and in 1998 another law was promulgated claiming a 200-mile EEZ and rights to continental shelves. These laws were issued in response to extraneous developments and may be seen as adaptations and refinements of China's long-standing claims rather than new ones in themselves.

What is troubling, however, is that with its greater military power China is more actively asserting its claims against weaker neighbors. In the past, China had actually resorted to force in order to occupy some of these islands. In 1974 China ejected the forces of the soon to be defunct South Vietnam from the Paracel Islands group; in 1988 it forcibly occupied some seven rocky islands and reefs in the Spratly group after a naval engagement with Vietnam; and in 1994 it was found to have built military installations on Mischief Reef, part of the Spratlys adjacent to and claimed by the Philippines. Since then, however, China has placed much emphasis on cultivating ASEAN and its members and it has refrained from the use of force to advance its claims. It even went so far as to reach agreement with ASEAN on a voluntary Code of Conduct in the SCS in 2002, despite the fact that at least half of the ASEAN members have no claims there.

The PRC has resisted attempts to upgrade the Code of Conduct into a more binding arrangement and it has opposed attempts to develop a regional mechanism for addressing competing claims and suggestions that these claims be made subject to

11. M. Taylor Fravel argues the former. See his 'Prepared Statement' to the Hearing on 'Investigating the China Threat, Part One: Military and Economic Aggression', House Committee on Foreign Affairs, 28 March 2012.

international arbitration or to adjudication by the International Court of Justice in the Hague.¹² Instead China has insisted that competing claims should be settled on a bilateral basis and meanwhile the respective sides should seek to explore and develop jointly such resources as may exist in the disputed areas. The trouble is that Beijing cannot point to any example of this having been done successfully. An agreement in principle was reached with Japan in 2008, but it has yet to be agreed in practice; meanwhile China has continued its production of gas in the relevant field in East China and has piped the gas to China. A potential deal with the Philippines, which Vietnam joined, came to an end in 2008 as the legislature in Manila objected on the grounds that the deal was based on corruption and it included areas that were not even claimed by China.¹³

Another problem is that Chinese claims in the SCS lack specificity. The Chinese assert that the nine dashes on their maps that cover 80–90% of the expanse of the SCS in the shape of a cow tongue refer to sovereign claims to the islands within the dashes and not to the sea as a whole.¹⁴ But the Chinese regularly add to their claims to the islands a claim to ‘adjacent seas’ and they have yet to clarify the basis for that, which could be construed as asserting to a claim for an EEZ. Thus it is not known from which base lines such an EEZ would be drawn. Nearly all the rocks, reefs and cays which make up the Spratlys cannot sustain human life and would not qualify for jurisdictional claims to EEZ beyond the sovereign territorial water of 12 nm. Nevertheless the Chinese have tried to stop the exploration for oil in areas claimed by Vietnam and the Philippines that are within 200 miles of their coasts and far from any inhabitable islands claimed by China.¹⁵ Another example of the extension of China’s maritime claims to waters normally considered to be under Vietnamese jurisdiction was the demand by a Chinese vessel that an Indian ship located 45 miles off the Vietnamese coast should identify itself and explain its presence.¹⁶ Moreover while arrogating itself the right to conduct oil exploration and drilling within its own EEZ in the SCS, China has demanded that other claimants must first seek Chinese permission before doing so within their own EEZs.¹⁷

The impact of China’s growing military power

There is no clear evidence that China’s leaders have issued specific instructions to China’s coast guards and naval forces to pursue the country’s maritime claims more

12. It is worth noting that in 2008 Singapore and Malaysia settled their dispute over islands in the Strait between them by recourse to the International Court of Justice. See, Yoshifumi Tanaka, ‘Passing of sovereignty: the Malaysia Singapore dispute before the ICJ’, *The Hague Justice Portal*, (25 August 2008), available at: www.haguejusticeportal.net/index.php?id=9665.

13. Barry Wain, ‘Manila bungle in the South China Sea’, *Far Eastern Economic Review* 171(1), (January–February 2008), pp. 45–48.

14. This was made clear by the Spokesman of the Ministry of Foreign Affairs, Hong Lei, at his Regular Press Conference on 29 February 2012 (see the MOFA website).

15. See for example, ‘Manila rejects new Chinese claim just 50 nm from the Philippine’s province of Palwan’, *AP*, (14 November 2011); and ‘China scolds the Philippines over the South China Sea’, *Reuters*, (9 June 2011), which notes that ‘Vietnam complained of Chinese patrol boats harassing an oil exploration ship 80 miles off the Vietnamese coast’.

16. Ben Bland and Girija Shivakumar, ‘China confronts Indian naval vessel’, *Financial Times*, (1 September 2011).

17. Mark J. Valencia, ‘Realpolitik drama unfolds in South China Sea’, *Japan Times Online*, (30 November 2011).

Annex 310

Carlyle Thayer, *ASEAN and China Consultations on a Code of Conduct in the South China Sea: Prospects and Obstacles*, presented to the International Conference on Security and Cooperation in the South China Sea, Russian Academy of Sciences (18 Oct. 2013)

ASEAN and China Consultations on a Code of Conduct in the South China Sea: Prospects and Obstacles

Carlyle Thayer



Paper presented to
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Institute of Oriental Studies, Russian Academy of Sciences,
Radisson SAS Slavyanskaya Hotel
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October 18, 2013

ASEAN and China Consultations on a Code of Conduct in the South China Sea: Prospects and Obstacles

Carlyle A. Thayer*

Abstract

This paper provides an overview of diplomatic efforts by the Association of South East Asian Nations (ASEAN) and China to reach a binding agreement on a Code of Conduct in the South China Sea (COC). The paper covers the period from 1992 to the present. The article is divided into four parts. Part one reviews the period from 1992, when ASEAN first expressed concern about maintaining stability in the South China Sea, to 2011 when ASEAN and China finally reached agreement on Guidelines to Implement the 2002 Declaration on Conduct of Parties in the South China Sea (DOC). Part two reviews the extraordinary developments in 2012 when ASEAN-China unity was dealt a blow by Cambodia's opposition to the wording of the joint statement following the 45th ASEAN Ministerial Meeting in July. ASEAN unity was successfully revived by deft Indonesian diplomacy. Part three discusses current developments, the Philippines' legal action in lodging a claim for an Arbitral Tribunal and China's agreement to begin consultations with ASEAN on a Code of Conduct. Part four considers the prospects and obstacles that confront ASEAN and China in reaching agreement on a binding Code of Conduct in the South China Sea.

Part 1. ASEAN and the South China Sea, 1992-2011

The Association of South East Asian Nations (ASEAN) first became involved in South China Sea issues in July 1992 when China and Vietnam (not yet a member of ASEAN) became embroiled in a dispute over oil exploration activities in a disputed area. ASEAN issued a declaration that urged unnamed parties "to exercise restraint."¹ This call went unheeded and both Vietnam and China proceeded to take control of unoccupied islets and reefs comprising the Spratly archipelago.

In late 1994/early 1995 China occupied Mischief Reef a feature in the South China Sea claimed by the Philippines. This incident marked a turning point. ASEAN foreign ministers issued their second statement on the South China Sea in which they expressed their "serious concern" and urged the concerned parties "to refrain from taking actions

* Emeritus Professor, The University of New South Wales at the Australian Defence Force Academy, Canberra. This paper was completed on September 11, 2013 and revised on September 27, 2013.

¹ "ASEAN Declaration On The South China Sea, Manila, Philippines, 22 July 1992," <http://www.aseansec.org/1196.htm>.

that de-stabilize the situation.”² The Philippines lobbied its fellow members to adopt a Code of Conduct (COC) that would constrain China from further encroachment. It took ASEAN officials until late 1999 to agree on an ASEAN draft COC. By that time China had drawn up its own draft COC.

In March 2000, ASEAN and China agreed to exchange their respective drafts and to consolidate them into a final agreed text.³ Four major areas of disagreement emerged: the geographic scope, restrictions on construction on occupied and unoccupied features, military activities in waters adjacent to the Spratly islands, and whether or not fishermen found in disputed waters could be detained and arrested. After two years of negotiations it became evident that no agreement was possible.

In November 2002, as a compromise, ASEAN member states and China signed a non-binding political statement known as the Declaration on Conduct of Parties in the South China Sea (DOC). This document set out four trust and confidence building measures and five voluntary cooperative activities. Significantly, the parties reaffirmed “that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.”⁴

It took another twenty-five months before ASEAN and Chinese senior officials reached agreement on the terms of reference for a Joint ASEAN-China Working Group (JWG) to implement the DOC.⁵ At the first meeting of the JWG in August 2005, ASEAN tabled draft Guidelines to Implement the DOC. Point two of the ASEAN draft, which called for

² “Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China,” Sea 18 March 1995,” <http://www.aseansec.org/2089.htm>.

³ Association of Southeast Asian Nations, “Regional Code of Conduct in the South China Sea (Draft),” March 2000 and People’s Republic of China, “Code of Conduct on the South China Sea (Draft of the Chinese Side),” March 2000. Copies of these documents are in the author’s possession.

⁴ Point 10, “Declaration on Conduct of Parties in the South China Sea, November 4, 2002,” <http://www.aseansec.org/13163.htm>.

⁵ “ASEAN-China Senior Officials Meeting on the Implementation of the Declaration on the Conduct of Parties in the South China Sea, Kuala Lumpur, 7 December 2004” and “Terms of Reference of the ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the South China Sea,” <http://www.aseansec.org/16888.htm> and <http://www.aseansec.org/16885.htm>.

ASEAN consultations prior to meeting with China, proved such as sticking point that it took six years of intermittent discussions and the exchange of twenty-one successive drafts before final agreement could be reached.⁶ China insisted then, as it does now, that the parties directly concerned could only resolve sovereignty and jurisdictional disputes bilaterally.

In July 2011, the Guidelines to Implement the DOC were finally adopted after ASEAN dropped its insistence on prior consultations. ASEAN amended Point 2 to read: “to promote dialogue and consultation among the parties.” A new point was added to the original ASEAN draft specifying that activities and projects carried out under the DOC should be reported to the ASEAN-China Ministerial Meeting.⁷ In all other respects the final guidelines were word for word the same as the original ASEAN draft tabled in 2005.

In January 2012, ASEAN and Chinese senior officials commenced discussions in Beijing on the implementing of the guidelines. This meeting agreed to set up four expert committees on maritime scientific research, environmental protection, search and rescue, and transnational crime. These committees were based on four of the five cooperative activities included in the 2002 DOC. Significantly no expert committee on safety of navigation and communication at sea was established due to its contentious nature. Not one single cooperative project has been undertaken although China has offered to fund them. The sticking point appears to be China’s insistence that ASEAN states first recognize its sovereignty over the South China Sea after which China would shelve the sovereignty issue in favour of joint development.⁸

Part 2. From ASEAN Disunity to ASEAN Unity, 2012

The adoption of the DOC Guidelines led ASEAN officials to consider how to implement a clause in the 2002 DOC to adopt “a code of conduct in the South China Sea... on the

⁶ Tran Truong Thuy, “Recent Developments in the South China Sea: From Declaration to Code of Conduct,” in *The South China Sea: Towards a Region of Peace, Security and Cooperation*, ed. Tran Truong Thuy (Hanoi: The Gioi Publishers, 2011), 104.

⁷ “Guidelines to Implement the DOC,” <http://www.aseansec.org/documents/20185-DOC.pdf>.

⁸ Off-the-record discussion with an ASEAN Ambassador, Canberra, August 28, 2013.

Annex 311

J. S. Wang, et al., "Safety assessment of shipping routes in the South China Sea based on the fuzzy analytic hierarchy process", *Safety Science*, Vol. 62 (Feb. 2014)



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Safety assessment of shipping routes in the South China Sea based on the fuzzy analytic hierarchy process



Jiasheng Wang^a, Manchun Li^{a,b}, Yongxue Liu^{c,*}, Hexia Zhang^a, Wei Zou^a, Liang Cheng^{a,b}

^a Department of Geographic Information Science, Nanjing University, Nanjing, Jiangsu Province 210023, PR China

^b Jiangsu Provincial Key Laboratory of Geographic Information Science and Technology, Nanjing University, Nanjing, Jiangsu Province 210023, PR China

^c Collaborative Innovation Center for the South China Sea Studies, Nanjing University, Nanjing, Jiangsu Province 210023, PR China

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ABSTRACT

The shipping routes of the South China Sea (SCS) are of major significance in global trade and global economy. However, the shipping routes of the SCS are frequently threatened by both natural and manmade factors, such as complex submarine topography, extreme weather, and piracy. Previous studies of shipping safety in the SCS mainly focused on the individual ship safety and broader political policies. For this study, we applied spatial analysis to assess shipping safety along shipping routes. First, we extracted the main shipping routes from spatial analysis of the Voluntary Observing Ships data. Then, we used a qualitative review to choose influencing factors on ship safety in the SCS, for which data were available over a comparable time period. Further, annual and four seasonal criteria systems were developed. After factor normalization and mapping, the annual and seasonal navigation environment risk was evaluated along the shipping routes using the fuzzy analytic hierarchy process and geographic information science, and validated by comparison to actual incident reports. Our study shows that (1) the proposed method is a reasonable method of evaluation of navigation environment risk, at least in the SCS; (2) the majority of the shipping routes run from southwest to northeast, reflecting a linear-direction trend; (3) the risk of navigation environment in the SCS gradually decreases from the north to the south with a V-shape spatial distribution, and varies seasonally; and (4) in terms of shipping risk the four seasons are sorted in an ascending order: spring, winter, summer, and autumn.

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1. Introduction

The South China Sea (SCS) is a major thoroughfare for world-wide trade. More than half of the world's oil tankers and merchant ships sails through the SCS every year (Rosenberg and Chung, 2008), ranks second only to the Mediterranean Sea in terms of maritime transportation.

Though the safety of shipping in the SCS impacts the global economy, the shipping routes of the SCS are frequently threatened by both natural and human agents. Extreme weather, piracy and armed robbery, and various navigational hazards have resulted in some serious SCS maritime casualties including loss of life and property, and in some cases contributed to environmental disaster (Tsou, 2010).

Recent researches on the shipping safety assessment and risk control have addressed various facets of, and approaches to, the

problems. Most notably, accident statistics have been used to present collision models (Kujala et al., 2009), ship security monitoring systems have been designed through simulations (Lee et al., 2004), and human factors including supervision and ship safety culture have been investigated (Heij et al., 2011; Hetherington et al., 2006; Lu and Tsai, 2008). Modeling methods for the assessment of safety and risk at sea for individual ships have been developed (Balmat et al., 2009; Wang, 2002). Specific to the SCS, antipiracy and anti-maritime terrorism policies have been examined from the perspective of geopolitics and international relations (Huang, 2008; Rosenberg, 2009; Rosenberg and Chung, 2008).

The recent work cited above focused on individual ship assessments and broad security policies. However, the ship safety was most significantly correlated to shipping route safety, which is spatially related to geographical position and factors such as wind speed, wave height, and water depth. In this study, we set out to analyze the spatial variation of safety for SCS shipping routes. The three main components of this first spatial analysis of SCS shipping route safety are: (1) to identify the main shipping routes in use in the SCS; (2) to identify and evaluate the specific natural and manmade risks existing in the navigation environment of these shipping routes; and (3) to assess the safety of these shipping

* Corresponding author. Address: Department of Geographic Information Science, Nanjing University, Nanjing, Jiangsu Province 210023, PR China. Tel./fax: +86 025 89681181.

E-mail addresses: wjerson@gmail.com (J. Wang), manchun306@gmail.com (M. Li), yongxue@nju.edu.cn (Y. Liu), heskia416@gmail.com (H. Zhang), njuzouwei416@gmail.com (W. Zou), lcheng.geo@gmail.com (L. Cheng).

routes based on the integration of risk data using Geographic Information System (GIS) and Fuzzy Analytic Hierarchy Process (FAHP) calculations.

2. Data and methods

2.1. Study area location, characteristics, and environment

The South China Sea is a marginal sea of Asia bordered by the Chinese mainland and Taiwan to the north, the Philippines to the east, Vietnam to the west, and Brunei, Singapore, and Malaysia to the south (Fig. 1). The SCS connects the Pacific Ocean with the Indian Ocean between these landmasses and island chains, its waters commingling with the Pacific Ocean via the Luzon Strait and Taiwan Strait in the northeast, and with the Indian Ocean through the Malacca Strait in the southwest. The SCS has an area of 3.3 million km² excluding the gulfs of Thailand and Tonkin, and up to 3.8 million km² if these gulfs are included (Morton and Blackmore, 2001). The SCS is a huge sea basin with great slope decreasing from the margin to the center. The average depth of the water is 1212 m, and the maximum depth is 5559 m (Wang and Li, 2009). Many intrabasinal islands dot the SCS, the largest being Hainan in the northwest and Palawan in the southeast, with hundreds of smaller islands, atolls, submerged reefs and banks notably including the Pratas Islands, Paracel Islands and Spratly Islands.

Because the SCS extends southward from the Tropic of Cancer, it experiences a monsoonal climate created by the influences of the Southwest Monsoon in summer and the Northeast Monsoon in winter. The Southwest Monsoon is rain bearing, but the Northeast Monsoon is stronger and characterized by a more constant dry wind that builds greater wave heights during its occurrence in autumn and winter. Typically, the wind and waves in the northeastern part of the SCS basin are more extreme than in the other basinal areas regardless of season, and in summer and autumn

the SCS suffers from frequent tropical cyclones. Although most tropical cyclones are formed in the Western Pacific Ocean to the east of the Philippines, some tropical cyclones build up in the SCS near the Paracel Islands.

2.2. Data and preprocessing

The data involved in this study were organized into the following eight categories:

- (1) *Sea surface wind speed data.* A total of 3288 phases of Quik-Scat daily wind speed grid data from 2000 to 2008 were collected to determine the wind speed at the height of 10 m above sea level. The data were produced by the Remote Sensing Systems (<http://www.remss.com>, accessed: November 24, 2012) and sponsored by the NASA Ocean Vector Winds Science Team. The grid size of the data is 900 arc second.
- (2) *Significant wave height data.* Jason-1 Geophysical Data Record (GDR) data recorded from 2002 to 2011 were collected to acquire significant wave height. The altimeter products were produced and distributed by AVISO (<http://www.aviso.oceanobs.com>, accessed: October 10, 2012).
- (3) *Gridded bathymetric data.* Bathymetric data of the SCS (grid size: 30 arc-second) was collected from the British Oceanographic Data Centre (BODC, http://www.bodc.ac.uk/data/online_delivery/gebco/, accessed: October 11, 2012).
- (4) *Tropical cyclone data.* Tropical cyclone tracking information data for events in the SCS from 2002 to 2011 were collected from Unisys Weather (http://weather.unisys.com/hurricane/w_pacific/index.php, accessed: October 12, 2012).
- (5) *Piracy and armed robbery (PAR) data.* Piracy and armed robbery incident data for events in the SCS from 2002 to 2011 were collected from the Global Integrated Shipping

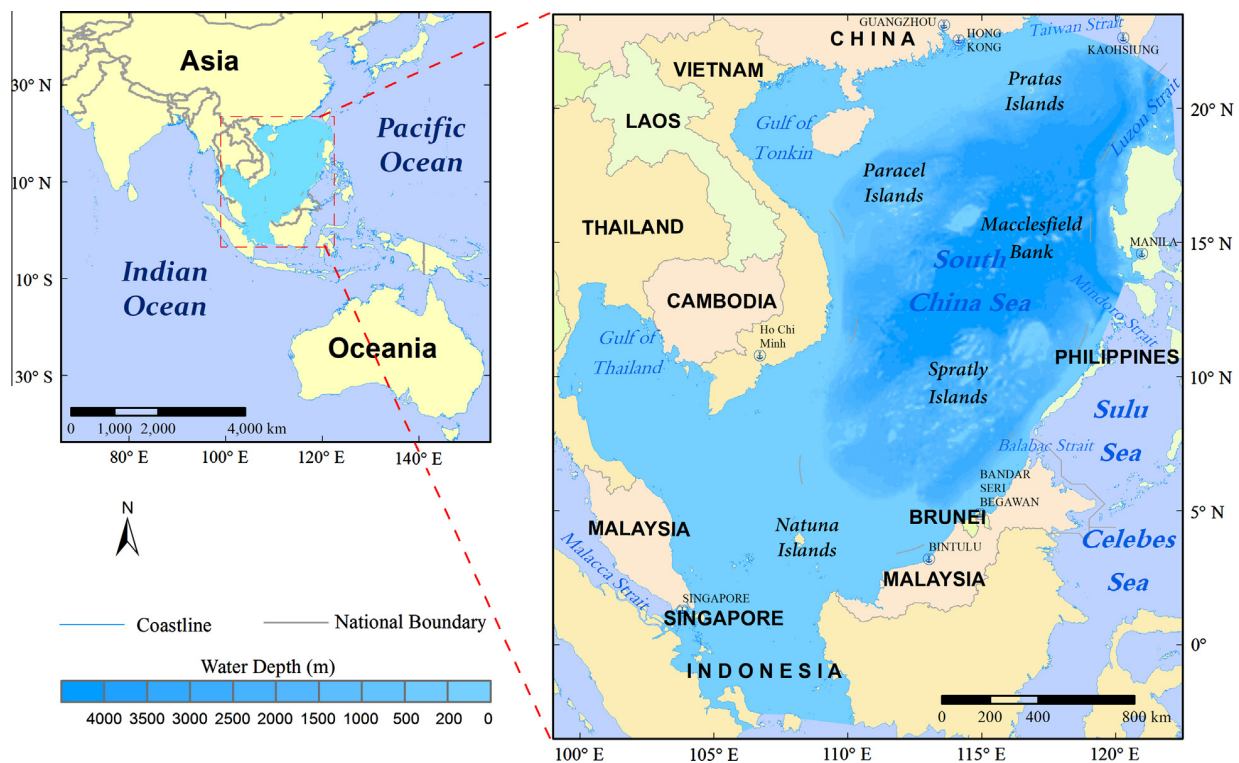


Fig. 1. The location of the South China Sea.

Annex 312

Nicholas D. Kristof, "China Signs U.S. Oil Deal for Disputed Waters", *New York Times* (18 June 1992)

The New York Times

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June 18, 1992

China Signs U.S. Oil Deal for Disputed Waters

By NICHOLAS D. KRISTOF,

BEIJING, June 17— In an aggressive move to take control of disputed territory in the South China Sea, the Chinese Government has signed an oil exploration contract with an American company for a stretch of the sea that is also claimed by Vietnam.

The contract marks the first time in many years that any country has acted unilaterally to develop the rich mineral resources in the southern part of the sea, which is the subject of overlapping claims by China, Vietnam, the Philippines, Malaysia, Indonesia, Taiwan and Brunei.

The last time such a contract was awarded was apparently 1973, when the collapsing Government of South Vietnam gave Western companies oil concessions that included disputed territory. That led to a battle in January 1974 between Chinese and Vietnamese naval forces.

China has pledged that it will use its navy to back the American oil company, and the move seems certain to raise tensions in the area. Vietnam has protested strongly, the Philippines has described the award of the contract as "unhelpful," and other nations are concerned that Beijing now intends to use force to assert its claims.

"There are some indications that China is changing its policy toward disputed areas and taking a more aggressive stance," an Asian diplomat in Beijing said. "But it's still too early to say if this is a turning point."

Randall C. Thompson, chairman of the Crestone Energy Corporation, the Denver-based company that won the contract, said he knew that the area was disputed but had strong backing from China.

"I was assured by top Chinese officials that they will protect me with their full naval might," Mr. Thompson said by telephone. "That's what they told me in negotiations -- that they'll have the entire full naval fleet out there backing me up, if necessary."

Giving the contract to an American company was a canny move by China, because it means that any forceful intervention by Vietnam might harm relations with Washington as well as Beijing. Vietnam has made great efforts in recent years to improve ties with China, and it particularly wants to establish diplomatic and economic relations with the United States.

China claims a huge swath of the South China Sea, extending more than 1,000 miles south of the nearest populated Chinese island. The waters it claims virtually lap against Vietnam, Malaysia and the Philippines. In 1988, China and Vietnam fought a brief naval battle over the disputed waters.

Annex 313

S. Yang and Z. He, "Inauguration of South China Sea Corps of China Fisheries and Law Enforcement Command and the Delivery Ceremony of 'FLEC Vessel 303' Held in Guangzhou", *China Fisheries*, No. 1 (2001)

Inauguration of South China Sea Corps of China Fisheries and Law Enforcement Command and the Delivery Ceremony of "FLEC Vessel 303" Held in Guangzhou

Source: China Fisheries (2001), No. 01
Authors: Yang Shaosong & He Zhicheng

In the morning of 18 December 2000, the Fishery and Fishing Harbor Supervision Bureau, South Sea District of the Ministry of Agriculture ("MOA") held a grand ceremony at Guangzhou Port for the inauguration of the South China Sea Corps of China Fisheries and Law Enforcement Command ("SCS Corps") and the delivery of China Fisheries and Law Enforcement Command ("FLEC") Vessel 303. The following leaders attended the ceremony: Li Jianhua - deputy director of MOA, Peng Xiaohua - deputy director of the China Fishery Law Enforcement Command, responsible comrades from the Ministry of Foreign Affairs and the Ministry of Finance, representatives from both local-stationed military and the central government agency located in Guangzhou, leaders in charge of the fisheries law enforcement of Guangdong, Guangxi and Hainan Province or region. Last July, MOA set up the China Fishery Law Enforcement Command upon the approval of the State Council and State Commission Office for Public Sector Reform. The three subordinate supervisory brigades in the three sea areas were renamed as Yellow and Bohai Sea Corps, East China Sea Corps and SCS Corps of Fisheries and Law Enforcement Command. The three corps are all under the unified leadership of the China Fisheries and Law Enforcement Command of MOA. FLEC Vessel 303 was invested in by the State for an amount of 40 million Yuan. It was designed by China Shipbuilding and the Marine Engineering Design Institute and built by Wuchang Shipyard. The ship is a thousand-ton vessel with length of 70.1 meters, type of competition 10.0 m, depth 4.6 m, displacement of 1106 tons, capacity of 35 people. Vessel 303 was put into production in August 1999, and completed and delivered last November. The vessel is equipped with a dual-drive single propeller and boat-rack remote control system, navigation system for observation, communication and collision avoidance, satellite C, B station communication system, and satellite TV reception system, TV monitoring system and other advanced equipment.

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Annex 314

Ishaan Tharoor, "China and Vietnam: Clashing Over an Island Archipelago", *Time* (14 Jan. 2010)

China and Vietnam: Clashing Over an Island Archipelago

By Ishaan Tharoor Thursday, Jan. 14, 2010



Frank Zeller / AFP / Getty Images

Protesters shout slogans during a 2007 rally in Hanoi against Beijing's claims to two disputed South China Sea island chains, the Spratlys and the Paracels

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In the realm of geopolitical disputes, the barren Paracel Islands are a far cry from the mountains of Kashmir or the alleys of [Gaza](#). Claimed by both China and Vietnam, the archipelago comprises some 30 tiny spits of land in the middle of the South China Sea with innocuous names like Woody Island and Antelope Reef. No one lives there, nor has there been any evidence that lucrative natural resources lie beneath its lagoons and reefs. But, experts say, at a time when regional economies are booming — and nationalist sentiments swelling — the Paracels and the heavily contested Spratly islands further south remain a flashpoint in this part of the world, where the traditional balance of power is tilting further toward China.

Tensions flared most recently last week when the Chinese government announced it would begin developing high-end tourism on a few of the Paracels as part of an ambitious new plan to draw tourists from around the world to Hainan, a Chinese island province off the mainland's southern coast. But while planners dream of creating a Chinese Hawaii — with the Paracels' clear waters a potential luxury destination for divers — the leaked proposal made Hanoi bristle almost instantly. China has retained de facto control over the archipelago since seizing it in its entirety with gunboats in 1974, but Vietnam has stubbornly clung to its long-standing territorial claims over the archipelago. On Jan. 4, a Vietnamese Foreign Ministry spokesman said the possibility of Chinese tourists snorkeling around a Paracel cove "seriously violates Vietnam's sovereignty." Chinese officials dismissed the Vietnamese protests, saying the matter was purely one of China's own economic development.

The spat may be a minor compared to incidents in the past — the two countries fought a bloody border war in 1979, and in 1988 a naval battle near the Spratlys left 70 Vietnamese sailors dead. But it comes amid a steady buildup of Chinese might in the region. Ralf Emmers, an expert on the South China Sea and associate professor at the S. Rajaratnam School of International Studies in Singapore, says the Chinese tourism gambit is a move "to make its

sovereignty claims over these islands a fait accompli." Vietnam watchers point to an escalation of tensions since the 2007 completion of a strategic Chinese submarine base on Hainan Island, just over 124 miles (200 km) from Vietnam's eastern shore. The base has enabled Beijing to project its power not only in its own backyard, [but further into the Pacific and Indian oceans as well](#). Last year, China detained 25 Vietnamese fishermen found near the Paracels, who were released only after weeks of demonstrations in Vietnam. Chinese officials also allegedly pressured multinational oil companies to eschew tying up deals with Hanoi to explore for resources in the South China Sea, or, as Vietnam calls it, Bien Dong (East Sea).

[\(See pictures of the China-Vietnam border war.\)](#)

Vietnamese prickliness at what many see as Chinese encroachment has led to Hanoi beefing up its own naval capabilities. Last month, it penned a landmark \$2 billion deal with Moscow to acquire six Kilo-class Russian submarines. The government is also formulating plans to improve its coastal-defense operations and to better protect Vietnamese fishing fleets. Still, considering China's size and wealth, there's little talk of an arms race in the region. "Vietnam is subject to the tyranny of geography. It's like a mid-sized Chinese province," says Carl Thayer, an authority on the Vietnamese military at the Australian Defence Force Academy. "If the elephant really decides to move, the Vietnamese will be squashed."

Open conflict, of course, is unlikely given the scale of economic integration in Southeast Asia. Sino-Vietnamese relations in most arenas are as robust as they've ever been. But observers are concerned that governments have yet to come up with an effective way to arbitrate this maritime dispute. In 2002, China signed a code of conduct with the Association of Southeast Asian Nations (ASEAN), of which Vietnam is a member, pledging to refrain from activities that would destabilize the fragile status quo in the South China Sea. Few parties have kept to the spirit of the agreement. The Spratlys, an island chain far larger than the Paracels, are claimed by China, Vietnam, the Philippines, Malaysia, Brunei and nominally by Taiwan, and resemble a Risk game board with territories grabbed pell-mell over the years in a scramble for land and influence. Malaysia has set up a diving resort on one of its own reefs, while most other nations have military posts on their islands. "The ASEAN model has been more or less useless," says Simon Shen, a professor of international relations at the Chinese University of Hong Kong. "The official discourse is [for claimant nations] to co-develop [the islands], but this is almost impossible given the nationalism the dispute inspires."

In China and Vietnam, in particular, nationalist netizens have pressured their governments to remain firm on issues of sovereignty. Both sides have dredged up archival evidence supposedly linking these clusters of uninhabited rocks in the sea to the glories of ancient dynasties and Emperors. For Hanoi, the matter has become especially sensitive as an array of dissidents — from Buddhist monks to activists protesting bauxite-mining — have taken up the cause of the archipelagoes, accusing the ruling Communist Party of selling out to China with every act of acquiescence. "The Vietnamese leadership is burning a candle on both ends," says Thayer. "They have to balance the reality of the situation against rising national sentiment and hope they don't get burned."

Walking such a precarious tightrope means Hanoi — as well as other governments claiming the Spratlys and the Paracels — have to measure their actions carefully. "The real risk in the South China Sea," says Emmers, "is that of a miscalculation that could lead to skirmishes and a clash of arms." As signs of meaningful cooperation are few, most expect this tacit consolidation of interests — including China's economic expansion into the Paracels — to continue. How this chess game plays out may have broader ramifications as the Chinese military extends its clout and influence in the coming decades. "It's an interesting showcase for what the future of Chinese naval power may look like," says Emmers. "And not just in the South China Sea."

Annex 315

“China Marine Surveillance 84 Boat Out into the South China Sea”, *Xinhua* (8 May 2011)

**“China Marine Surveillance 84” Vessel Joins
the South China Sea Branch of the China Marine Surveillance**
Copyright by Xinhua Net

[image]

This is a photo of “China Marine Surveillance 84” vessel docked at Changzhou Dock of Guangzhou on 8 May. On the same day, the 1,500 ton new administrative vessel “China Marine Surveillance 84” officially became a part of the South China Sea Branch of the China Marine Surveillance at Changzhou Dock in Guangzhou. According to reports, “China Marine Surveillance 84” is one of the seven administrative vessels in phase two construction of administrative vessel and aircraft by the State Oceanic Administration. Its incorporation marks the completion of all 1,500-ton vessels in this phase of construction. “China Marine Surveillance 84” is 88 meters long, 12 meters wide, with molded depth of 5.6 meters, draft of 3.581 meters, displacement of 1,740 tons, 50-person crew and cruising endurance of 5,000 nautical miles. After the vessel is incorporated, it will conduct tasks such as patrol and law enforcement in the territorial sea under China’s jurisdiction, protection of the marine environment, and the administrative legal enforcement for use of waters; and it may also take on tasks for survey and exploration in modern marine sciences. Photography by Xinhua News Agency reporter Lu Hanxin

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Annex 316

Jim Gomez, "On Disputed Spratly Isle, Boredom is Main Concern", *Yahoo! News* (21 Jul. 2011)

On disputed Spratly isle, boredom is main concern

By JIM GOMEZ - Associated Press July 21, 2011 9:25 AM



Click image to view more photos. (AP/Rolex Dela Pena, Pool)

PAG-ASA ISLAND, South China Sea (AP) — On this speck of a sun-splashed island in the turquoise South China Sea, there is little sign of the tensions that have consumed politicians and diplomats in distant Asian capitals.

Six different nations are pressing their stake to all or part of these potentially oil- and gas-rich waters teeming with fish. Most recently, the Philippines and Vietnam have been wrangling with China in a noisy territorial dispute that is dominating this week's Asian security forum in Bali.

And yet, here on Pag-asa, the only sounds are the waves slapping the shore and the wind whistling in the ears. At high noon, fighting off sleep is a struggle.

There are no cars, newspapers, Internet connections or shopping malls on an island that mostly consists of a single gravel airstrip and some structures. This, one of the nine islands, reefs and shoals occupied by Philippine troops, is also claimed by China, whose looming presence and rising military power is a worry for outgunned neighbors.

Two Filipino police officers, looking bored, say there hasn't been a single crime for years.

"One big problem really is how to kill time," said Mayor Eugenio Bito-onon Jr. of Kalayaan town, which includes far-flung Pag-asa.

"After fishing, walking around, playing billiards and cards, what else can one do next?" wondered the bespectacled mayor.

The tadpole-shaped, 91-acre (37-hectare) Pag-asa, or 'hope' in the Tagalog language, is the biggest of the Philippine-held islands in the South China Sea's Spratlys archipelago. Taiwan, Brunei, Malaysia and Vietnam also claim the islands.

The battle for ownership has settled into an uneasy standoff since the last fighting, involving China and Vietnam, killed more than 70 Vietnamese sailors in 1988.

Tensions flared again this year after the Philippines and Vietnam separately accused China of encroaching into their territorial waters, sabotaging oil exploration and harassing fishermen. China, which claims the entire South China Sea on historical grounds, acknowledges some of the incidents in what it says are its waters, and Beijing has warned other claimants to stop exploring for oil and gas without its permission.

The incidents, accusations and feelings of hurt national pride carried over to Bali and this week's meeting of the 10-member Association of Southeast Asian Nations. On Wednesday, China announced it was ready to firm up existing nonbinding guidelines for behavior in the contested waters.

Philippine Foreign Secretary Albert del Rosario balked, saying the guidelines have no teeth and that his country plans to take China to a U.N. tribunal that handles maritime border disputes.

And at the opening of Vietnam's National Assembly on Thursday, Deputy Prime Minister Nguyen Sinh Hung talked tough too, saying Hanoi will "resolutely and comprehensively ... implement measures to defend the country's sovereignty, protect fishermen, economic and trade activities and protect oil and gas exploration and exploitation activities under its sovereign seas."

Washington says it is ready to play a role to peacefully resolve the row, but China has warned the U.S. to stay away.

On Pag-asa, where about few dozen people live since the Philippine government lured civilians starting in 1978 with free food and other incentives, the worrisome rhetoric has reached through news from satellite TV or by cellphones — although the signal is often cut by bad weather, poor infrastructure or unpaid bills.

It takes days to reach Pag-asa by boat across often-turbulent waters from the nearest Philippine municipality in Palawan province, about 300 miles (480 kilometers) to the east.

One family fled in fear last month but the rest stayed on.

A longtime resident, Obnor Lenasic, said the news does not bother villagers. He said nationals from rival claimants have learned to live together in the disputed region. They wave at each other when their fishing boats cross at sea. Filipinos sometimes barter coconut for Chinese cigarettes, he said.

In the past, Chinese and Vietnamese forces would fire warning shots in the air when others get near their islands. Filipinos would raise fish on skewers to signal that they were just fishing. The soldiers would smile and spread their palm to beg for some of the catch, Bito-onon said.

Another resident, Aisa Bilidan, said she named her baby daughter born on Pag-asa last March China-lyn, after the Philippines accused Beijing of being a bully.

Except for a few rusting anti-aircraft guns, their turrets capped by plastic to avoid damage from the salty air, and the presence of troops, Pag-asa resembles a typical Philippine rural village — serene and backward.

Four Filipino lawmakers Wednesday defied protests from the Chinese Embassy in Manila and flew to the island, carrying with them two new Philippine flags to replace a tattered one flapping in the breeze.

The lawmakers asked the villagers about their concerns but nobody mentioned the Spratlys dispute. One wanted a better grass-cutter to clear a nearby airstrip of weeds. Another sought a Jeep to move things around the community and a soldier appealed for help in repairing a desalinating machine for drinking water.

Bito-onon told the lawmakers that turning Pag-asa into a bustling civilian community, with sustainable livelihood in fishing and tourism, would be the strongest argument for the Philippine territorial claim.

He told The Associated Press on Thursday that he was working on a solution to lure more people and tourists to the remote island: an Internet connection, which he hopes to set up with government help in the near future.

"I think it will help if people know that after a nice swim on the island, they can take a break and connect to their Facebook accounts," Bito-onon said. "I have a feeling that that will work."

Associated Press writers Tran Van Minh in Hanoi, Vietnam, and Niniek Karmini in Bali, Indonesia contributed to this report.

Annex 317

Liang Ganghua, "China's First Large Fishery Law Enforcement Vessel Permanently Stationed at the Xisha Islands Is Officially Placed Into Service", *Xinhua* (2 Sept. 2011)

China's First Large Fishery Law Enforcement Vessel Permanently Stationed at the Xisha Islands Is Officially Placed into Service

[image]

Published by the China Fishery Administration Website

[Source: Xinhuanet.com]

Xinhuanet.com, Guangzhou, 2 September [2011], by telecommunication (reporter - Liang Ganghua.): The reporter learned on 2 September from the Fishery Bureau of Nanhai District under the Ministry of Agriculture that the China Fisheries Law Enforcement Vessel 306, China's first 400-tonne-class large fishery law enforcement vessel to be permanently stationed at Xisha Islands and their sea areas, recently departed from its base port in Guangzhou and formally headed toward the Xisha Islands to conduct its official duties. This indicates that China has achieved all-condition fishery law enforcement powers in the Xisha Islands and their sea areas.

[...]

The China Fisheries Law Enforcement Vessel 306 is reported to be 56 meters long, 7.8 meters wide, and 3.85 meters high, with a maximum speed of 18 knots and a range of 2,000 nautical miles. It is one of China's relatively advanced fishery law enforcement vessels that have been built up until now. This vessel was designed by the Guangzhou Shipping and Maritime Engineering and Design Institute and constructed by the Guangzhou Southern Shipbuilding Co., Ltd.

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新华网广州9月2日电（记者梁钢华）记者2日从农业部南海区渔政局获悉，中国第一艘常驻西沙群岛及其海域的4000吨级大型渔政执法船——中国渔政306船，近日已驶离广州的基地码头，正式开赴西沙群岛执行公务。这标志着中国在西沙群岛及其海域已形成全天候的渔政执法力量。

西沙群岛是中国南海四大群岛之一，也是著名的传统渔场，海域宽阔，岛礁星罗棋布，海产十分丰富，珍贵品种较多，每年吸引大批各地渔民来此捕捞作业。

农业部南海区渔政局副局长郭锦富介绍，之前中国在西沙群岛仅部署有中国渔政308船、中国渔政309船这两艘1000吨级以下的渔政执法船，与当前西沙海域日益繁重的渔业管理和维权任务不相适应。去年9月份，由国家批准投资、农业部南海区渔政局承建的4000吨级渔政船——中国渔政306船，开始在广州建造。

郭锦富表示，中国渔政306船后近日正式投入使用后，将常驻西沙渔政码头，与原有的中国渔政308船、中国渔政309船一起，担负起对西沙海域的日常有效管理。“这进一步加强西沙群岛渔业执法管理力度，保障西沙海域渔业生产秩序和渔民安全，切实维护中国海洋主权和渔业权益。”

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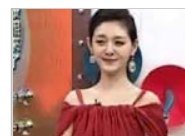
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据悉，中国渔政306船长56米、宽7.8米、高3.85米，最高航速18节，续航力2000海里，是中国目前已建成的较为先进的海洋渔业执法公务船之一。该船由广州市船舶及海洋工程设计研究所设计，广州市南方造船有限公司承建。

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Annex 318

“Fishing ban starts in South China Sea”, *Xinhua* (17 May 2012)

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18th CPC Central Committee****Fishing ban starts in South China Sea**

GOV.cn Thursday, May 17, 2012

A two-and-a half month fishing ban began at noon Wednesday in most parts of the South China Sea as part of ongoing efforts to rehabilitate the area's marine resources, according to fishery authorities.

The [Hainan](#) provincial marine and fishing department said all 8,994 of the area's locally-registered fishing vessels have been moored.

The annual fishing ban, which has been in place since 1999, will last from May 16 to August 1 this year, covering areas north of the 12th parallel, including Huangyan Island but excluding most of the Nansha Islands.

The fishing ban was adopted to promote the sustainable development of the fishing industry in the South China Sea and protect the fundamental interests of fishermen, said officials from the South China Fishery Administration Bureau under the [Ministry of Agriculture](#) (MOA).

Violators will face punishments such as fines, license revocations, confiscations and possible criminal charges, according to a statement issued by the fishery bureau under the MOA.

The provincial fishing authority said fishing vessels with fishing permits for the Nansha Islands are required to install and activate positioning equipment so they will not accidentally enter banned areas.

"Imposing the fishing ban is conducive to protecting fish during their egg-laying season, increasing fish stocks and improving the biological environment," said Tang Jianye, a professor specializing in maritime policy and law at [Shanghai](#) Ocean University.

The fishing ban is also applicable to foreign ships.

A spokesman from the fishery bureau under the MOA said earlier this week that fishing activity conducted by foreign ships in banned areas will be seen as a "blatant encroachment on China's fishery resources."

The Yuzheng-310 and Yuzheng-303 law enforcement vessels were sent to the region by the MOA on Tuesday to conduct patrols.

After the ban was issued, the Philippines said it will ignore the ban, but may issue a fishing ban of its own. "Our position is that we do not recognize China's fishing ban, as portions of the ban encompass our Exclusive Economic Zone (EEZ)," according to a statement posted on the website of the Philippines' Department of Foreign Affairs on May 14.

"However, the president has decided that, in view of the accelerated depletion of our marine resources, it would be advisable for us to issue our own fishing ban for a period of time to replenish our fish stock," it said.

[Foreign Ministry](#) spokesman Hong Lei said on Monday during a regular press conference that the fishing ban "is not related to the ongoing Huangyan Island incident."

Tong Xiaoling, China's ambassador to the Association of Southeast Asian Nations (ASEAN), said Wednesday that China has every right to defend its sovereignty and protect its fishery resources.

The ban comes amid an escalating sovereignty dispute between China and the Philippines over Huangyan Island. Tensions started on April 10, when a Philippine warship harassed 12 Chinese fishing vessels that had sailed near the island to seek shelter from inclement weather.

China has repeatedly stated that Huangyan Island is an inherent part of its territory and that the surrounding waters are historic fishing areas for Chinese fishermen.

Annex 319

“PH to offer oil contracts despite China warnings”, *ABS-CBN News* (15 July 2012)

PH to offer oil contracts despite China warnings

ABS-CBNnews.com

MANILA, Philippines - The Philippines will continue with plans to offer oil exploration contracts in the West Philippine Sea amid warnings from China.

In an interview with radio dzRB, deputy presidential spokesperson Abigail Valte said, "We have been offering exploration contracts in Recto Bank since the 1970s."

Still, the Philippines has not received a single complaint, she said.

She said the government will ensure that the contracts will be offered to investors sans legal questions.

In an article posted Friday on the Chinese government website, Chinese Foreign Ministry spokesman Liu Weimin said oil exploration activities in waters under its jurisdiction will be illegal without its permission.

He said China has already made representations with the Philippines in the past vis-à-vis the oil exploration offers.

Communique

The Philippines recently asked its neighbors in the Association of Southeast Asian Nations (ASEAN) to make a common stand in connection with the maritime dispute, most especially in the Scarborough Shoal.

Still, the ASEAN has not issued one. The chairman of the ASEAN Foreign Ministers' Meeting said this is "the first time that ASEAN is not able to issue the joint communique due to bilateral conflict between some ASEAN member states and a neighboring country."

The Philippines deplored the non-issuance of a joint communiqué.

Despite this, Valte said the Philippines will continue to work with the ASEAN, specifically on the formulation of a Code of Conduct in the West Philippine Sea.

Annex 320

Jane Perlez, "China Asserts Sea Claim with Politics and Ships", *New York Times* (11 Aug. 2012)



August 11, 2012

China Asserts Sea Claim With Politics and Ships

By JANE PERLEZ

HAIKOU, China — China does not want to control all of the South China Sea, says Wu Shicun, the president of a government-sponsored research institute here devoted to that strategic waterway, whose seabed is believed to be rich in oil and natural gas. It wants only 80 percent.

Mr. Wu is a silver-haired politician with a taste for European oil paintings and fine furniture. He is also an effective, aggressive advocate for Beijing's longstanding claim over much of the South China Sea in an increasingly fractious dispute with several other countries in the region that is drawing the United States deeper into the conflict.

China recently established a larger army garrison and expanded the size of an ostensible legislature to govern a speck of land, known as Yongxing Island, more than 200 miles southeast of Hainan. The goal of that move, Mr. Wu said, is to allow Beijing to "exercise sovereignty over all land features inside the South China Sea," including more than 40 islands "now occupied illegally" by Vietnam, the Philippines and Malaysia.

In the past several weeks, China has steadily increased its pressure, sending patrols with bigger ships and issuing persistent warnings in government-controlled newspapers for Washington to stop supporting its Asian friends against China.

The leadership in Beijing appears to have fastened on to the South China Sea as a way of showing its domestic audience that China is now a regional power, able to get its way in an area it has long considered rightfully its own. Some analysts view the stepped-up actions as a diversion from the coming once-a-decade leadership transition, letting the government show strength at a potentially vulnerable moment.

"They have to be seen domestically as strong and tough in the next few months," Kishore Mahbubani, the dean of the Lee Kuan Yew School of Public Policy at the National University of Singapore, said of the senior leadership. "They have to make sure they are not seen as weak."

The Obama administration, alarmed at Beijing's push, contends that the disputes should be settled by negotiation, and that as one of the most important trade corridors in the world, the South China Sea must enjoy freedom of navigation. The State Department, in an unusually strong statement issued this month intended to warn China that it should moderate its behavior, said that Washington believed the claims should be settled "without coercion, without intimidation, without threats and without the use of force."

Washington was reacting to what it saw as a continuing campaign on the South China Sea after Beijing prevented the Association of Southeast Asian Nations, at its summit meeting in Cambodia in July, from releasing a communiqué outlining a common approach to the South China Sea.

The dispute keeps escalating. On July 31, the 85th anniversary of the founding of the People's Liberation Army, the Chinese Defense Ministry heralded the occasion by announcing "a regular combat-readiness patrol system" for the waters in the sea under China's jurisdiction.

The government then said it had launched its newest patrol vessel: a 5,400-ton ship. It was specifically designed to maintain "marine sovereignty," said People's Daily, the Communist Party's leading newspaper.

Adding to the anxiety among China's neighbors, a Chinese Navy frigate ran aground in July near a rocky formation known as Half Moon Shoal, in waters claimed by the Philippines. The accident raised questions about the competence of the Chinese Navy and suspicions about what the boat was doing there.

Mr. Wu, who is the president of the [National Institute for South China Sea Studies](#) as well as the director general of the Hainan provincial government's Ministry of Foreign Affairs, said that none of China's actions were untoward.

Interviewed in his spacious office decorated with landscape paintings from Italy and Russia, he had recently returned from a day of festivities for the expanded legislature and garrison on Yongxing Island.

Yongxing, a sand-fringed island of less than a square mile dominated by an airstrip that can handle midsize passenger jetliners, is part of what China calls the Xisha Islands. They are known as the Paracels in Vietnam, which also claims the territory.

A Boeing 737 flew special guests to the party, including the Communist Party chief for Hainan Province, to celebrate the newly inducted legislators, and the garrison, Mr. Wu said.

The increased military presence on the island makes the Philippines especially nervous because it thrusts China's presence closer to the islands in the South China Sea that the Philippines claims as its own.

Since the 1990s, the approximately 620 Yongxing Island residents have enjoyed drinking water, electricity and air-conditioning, Mr. Wu said. The new 45-member legislature, which sits in a two-story brick building with pillars and a dome draped with blue and red bunting for the celebrations, is intended to issue laws on maritime issues, he said.

At Mr. Wu's institute, here on Hainan Island in a handsome new building, visitors are invited into a modern screening room where they are greeted with a video that is a policy sales pitch. The video says that China enjoys maritime rights over "a vast area" of the South China Sea, though it does not specify how much. The 1.4 million square miles of the sea are "crucial to the future of China as a growing maritime nation," since the sea is a trade conduit between China and the United States, Africa and Europe, the video says.

The deputy director of the institute, Liu Feng, said that China not only claimed sovereignty over most of the islands in the South China Sea, but also transportation, fishing and mineral extraction rights over “all waters within the nine-dash line.”

The [nine-dash map](#), which appears in government documents and even in Air China’s in-flight magazine, is one of the central points of conflict in the South China Sea dispute. The U-shaped line south of China passes close to Vietnam, then around Malaysia and north to the Philippines. It was drawn by China before the Communist takeover but is not recognized by any other country.

On how long it would take China to win back the islands that it claims sovereignty over, Mr. Wu said he could not estimate. The other claimant countries were standing firm, he said. Moreover, the re-engagement of the United States in the Asia-Pacific region “means we will have obstacles in solving the South China Sea questions between China and the relevant claimant states.”

The sustained attention to the South China Sea has been almost certainly coordinated from the senior ranks of the central government, Chinese analysts and Asian diplomats said. “Suddenly, the top leaders have taken a more hard-line policy,” said Shi Yinhong, a foreign policy adviser to the State Council, China’s equivalent to the cabinet.

After the State Department criticized China’s actions, Beijing immediately accused Washington of taking sides with smaller Asian nations against China. On Aug. 4, the Foreign Ministry summoned Robert S. Wang, the deputy chief of mission at the American Embassy in Beijing, and in an accompanying statement said the State Department had shown “total disregard of facts, confounded right and wrong, and sent a seriously wrong message.”

Bree Feng contributed research.

Annex 321

Michael Moore, "China's Neighbors Protest its Passport Map Grab", *The Telegraph* (22 Nov. 2012)

China's neighbours protest its passport map grab

China has redrawn the map printed in its passports to lay claim to almost all of the South China Sea, infuriating its southeast Asian neighbours.



The disputed island of Diaoyu which China includes in its map on the new Chinese passports Photo: AP

By Malcolm Moore, Beijing

12:09PM GMT 22 Nov 2012

In the new passports, a nine-dash line has been printed that hugs the coast of the Philippines, Brunei, Malaysia, Vietnam and some of Indonesia, scooping up several islands that are claimed both by China and by its neighbours.

China has printed nearly six million of the new passports since it quietly introduced them in April, judging by the average monthly application rate.

On Thursday, the Philippines joined Vietnam in voicing its anger at the new map.

"The Philippines strongly protests the inclusion of the nine-dash lines in the e-passport as such image covers an area that is clearly part of the Philippines' territory and maritime domain," said Albert del

Rosario, a foreign affairs spokesman.

Immigration officials in other countries worry that they will implicitly recognise China's territorial claims simply by stamping the new passports.

The issue was brought to light by keen-eyed Vietnamese officials who are in the process of renewing six-month visas for Chinese businessmen.

"I think it is one very poisonous step by Beijing among their thousands of malevolent actions," said Nguyen Quang, a former adviser to the Vietnamese government, to the Financial Times.

In response, Vietnamese immigration is refusing to paste visas inside the new passports, instead putting the visa on a separate, detached, page.

"When I tried to cross the border, the officials refused to stamp my visa," said David Li, 19, from Guangdong province, who ran into problems getting into Vietnam on Nov 19.

"They claimed my visa was invalid. They said it was because on the new passport's map, the South China Sea part of China's marine border crossed Vietnam's territory, so if they stamped on it, it means they acknowledge China's claim," he added.

Mr Li said two other passengers on his flight also had problems with their new passports, and that he was forced to buy a new visa for 50,000 Vietnamese dong (£1.50).

Kien Deng, a Chinese travel agent who has worked in Vietnam for three years, said the Vietnamese officials had used the map for their financial advantage, charging a fee of 30 yuan (£3) to holders of the offending passport in order to insert a new visa.

"They are playing a cheeky trick which makes foreigners like us suffer," he said. "There are 20,000 students who visit Vietnam from China every year, and 70,000 businessmen in Hanoi and at least as many again in Saigon. So it adds up to a huge amount," he said.

The new passport also stakes a claim to the Diaoyu or Senkaku islands, which have been a great source of friction between China and Japan.

However, the scale of the islands is so small as to be invisible, and Japan has not yet lodged a complaint, according to the Financial Times.

Additional reporting by Valentina Luo

Annex 322

Peter Ford, "China's Passport Propaganda Baffles Experts", *Christian Science Monitor* (27 Nov. 2012)

China's passport propaganda baffles experts

Peter Ford

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A woman holds a Chinese passport, displaying a Chinese map which includes an area in the South China Sea inside a line of dashes representing maritime territory claimed by China (l., top) and a picture of Beijing's Tiananmen Square (bottom), at an office in Wuhan airport, Hubei province, November 23. China's neighbors condemned Chinese passports containing a map of the disputed territories across the South China Sea.

Reuters

[Enlarge](#)

China's neighbors are seething with anger over new [Beijing](#)-issued passports that they see as the latest, underhand, Chinese jab in an ongoing regional row about maritime territory.

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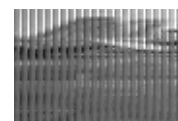
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Beijing has infuriated [India](#), too, with its e-passports, decorated with a map of China that shows disputed territories across the [South China Sea](#) – and Himalayan land that [New Delhi](#) claims – as belonging to China.

[Vietnam](#) is refusing to stamp the new passports with visas, for fear that to do so would imply acceptance of China's claims. The Indian consulate in Beijing is stamping its own map of the disputed border when it affixes visas to the new passports.



The quiet Chinese move has baffled even some Chinese experts.

“I do not know why they decided to do this,” says Niu Jun, professor of international relations at [Peking University](#). “It cannot resolve any of the disputes with our neighbors and we could expect a response from the other countries.”

At Vietnam’s border with China, Vietnamese officials are not pasting visas into the new passports, but issuing them on separate pieces of paper.

The Vietnamese government says it has sent a diplomatic note to Beijing asking the Chinese government to remove “erroneous content” from the new passports.

The Chinese government began issuing the passports, which contain an electronic chip with the holder’s personal data, last April. It is believed to have handed out more than 5 million of them, but the map began stirring controversy only a few days ago.

The [Philippines](#), engaged in a fierce territorial dispute with China over fishing grounds near the Scarborough Shoal, has protested to Beijing. [Taiwan](#), which Beijing claims as an integral part of its territory but which enjoys de facto independence, has also complained.

“This is total ignorance of reality and only provokes disputes,” said Taiwan’s [Mainland Affairs Council](#), the body responsible for relations with China, in a statement last week.

China's passport propaganda baffles experts

The map of China, on page 8 of the new passports, shows a dotted line to illustrate China's territorial claim to almost the whole of the South China Sea, which puts it in conflict with a number of its neighbors, such as Vietnam, the Philippines, [Malaysia](#), and [Brunei](#).

Washington has dismissed the map as irrelevant.

"Stray maps that they include are not part" of international standards that passports must meet, [US State Department](#) spokeswoman [Victoria Nuland](#) said Monday.

"These issues need to be negotiated among the stakeholders, among [ASEAN](#) and China, and, you know, a picture or a passport does not change that," she added.

China has defended its new travel documents as being in line with international standards.

"China is not targeting a specific country," Foreign Ministry spokeswoman Hua Chunying said on Friday. "China is willing to communicate with relevant countries and continue to promote contacts."

The passport row is the latest flare-up of tensions in the South China Sea that are complicating Beijing's relations with several of its neighbors.

In May, China suspended the import of bananas from the Philippines until [Manila](#) backed down in a dispute over fisheries around the Scarborough Shoal.

In June, the state owned Chinese oil company [CNOOC](#) invited foreign firms to bid for exploration rights in an area close to Vietnam's coast. A month later Beijing announced that it was upgrading the town of Sansha, in the [Paracel Islands](#), which it seized from Vietnam in 1974, to the status of a prefecture-level municipality and would soon station troops there.

China is also embroiled in a territorial dispute with [Japan](#) over three uninhabited islands in the [East China Sea](#) known in Chinese as the [Diaoyu islands](#) and in Japan as the Senkaku. Both sides have sent surveillance and coast guard vessels to patrol the disputed waters, raising fears of a clash.

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Annex 323

“Haixun 21’ Formally Commissioned under Hainan Maritime Bureau Today, Serving Hainan Jurisdiction”,
Maritime News (27 Dec. 2012)

Hainan Maritime Safety Administration of PRC

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“Haixun 21” Formally Commissioned under Hainan Maritime Bureau Today, Serving Hainan Jurisdiction

[. . .]

27 December 2012 13:35:22

On December 27, the pier of Haikou maritime base was crowded with people, over a hundred leaders, guests and maritime staff from governments, armed forces, border defense and Hainan Maritime Bureau gathered together to witness Haixun 21, historically known as “the number one vessel in China’s maritime fleets”, being formally commissioned for active service under the Hainan Maritime Bureau. Haixun 21 will serve in the Hainan provincial jurisdiction, covering two third of the national sea, carrying out its new historical mission. It symbolizes the further improvement of the hardware of maritime law enforcement in the South China Sea. The commissioning ceremony was attended by leaders such as the deputy secretary of Hainan provincial government Ni Jian, deputy director of the Maritime Bureau of the Ministry of Transport Huang He, and Hainan Maritime Bureau director Ruan Ruiwen. Xie Qunwei, deputy director of Hainan Maritime Bureau, presided over the ceremony.

Mr. Ruan said that Haixun 21 came to the South China Sea from the East China Sea for the fulfillment of its new historical mission, which is an important decision made by the State Oceanic Administration to implement the decisions made in the 18th Congress of the Communist Party of serving the strategy of a strong maritime nation, protecting China’s maritime rights and interests, building Hainan as an international tourist attraction and developing the maritime economy in Sansha. Putting Haixun 21 into active service in Hainan has enabled Hainan to have the first open sea patrol vessel, which ends the history of no large-scale patrol vessel in Hainan’s maritime. It also improves greatly Hainan’s supervision, search and rescue capabilities. Haixun 21, along with Hainan’s current patrol ships, will enable the maritime surveillance to fully cover the coastal areas, coastal waters and the South China Sea waters of nearly 2 million square nautical miles within the jurisdiction of Hainan Province.

Mr. Huang He acknowledged the success of Hainan Maritime Bureau’s work; he hoped that the Bureau would seize the opportunity to make good use of the Haixun 21 and make it into an exemplary vessel of the maritime system, a vessel that would afford more effective monitoring and quicker response in Hainan’s maritime, better service to the development of Hainan’s economy, and stronger protection of national sovereignty and maritime rights and interests.

Afterward, Deputy Secretary Ni Jian declared Haixun 21 to be fully commissioned under the Hainan Maritime Bureau.

After the commissioning ceremony, all the guests and media reporters visited Haixun 21. In the conference room of Haixun 21, the Hainan Maritime Bureau and the Shanghai Maritime

Bureau held a hand-over signing ceremony which was attended by Deputy Director Huang He of the Maritime Bureau of the Ministry of Transport, Director Ruan Ruiwen of Hainan Maritime Bureau, and Deputy Director Chang Fuzhi of Shanghai Maritime Bureau.

Haixun 21 measures 93.2 meters in overall length. With a displacement of 1,583 tons of water, it has a maximum endurance of 4,000 nautical miles fully loaded, and maximum sustained speed of 22 knots. It has a helipad with landing grids measuring 21 meters long and 11 meters wide in the stern. Known as the “the number one vessel in China’s maritime fleets”, it is the first kiloton class maritime patrol ship with ship-borne helicopters, and the first large tonnage and most advanced and well-equipped maritime law enforcement patrol vessel in Chinese maritime system. Haixun 21 has sea-air stereoscopic monitoring, maritime search and rescue capabilities under various weather conditions. Once commissioned, it will greatly improve Hainan’s patrolling, searching and rescuing, and monitoring capacities in dealing with oceanic pollution. Under Hainan jurisdiction, the duties of Haixun 21 are to execute maritime law enforcement, supervise transport safety, investigate and manage maritime traffic incidents, monitor pollution, execute search and rescue missions and perform the obligations of international agreements. Haixun 21 will greatly facilitate the strategic development of Hainan maritime, and increase management levels in the maritime affairs of the South China Sea.

[...]

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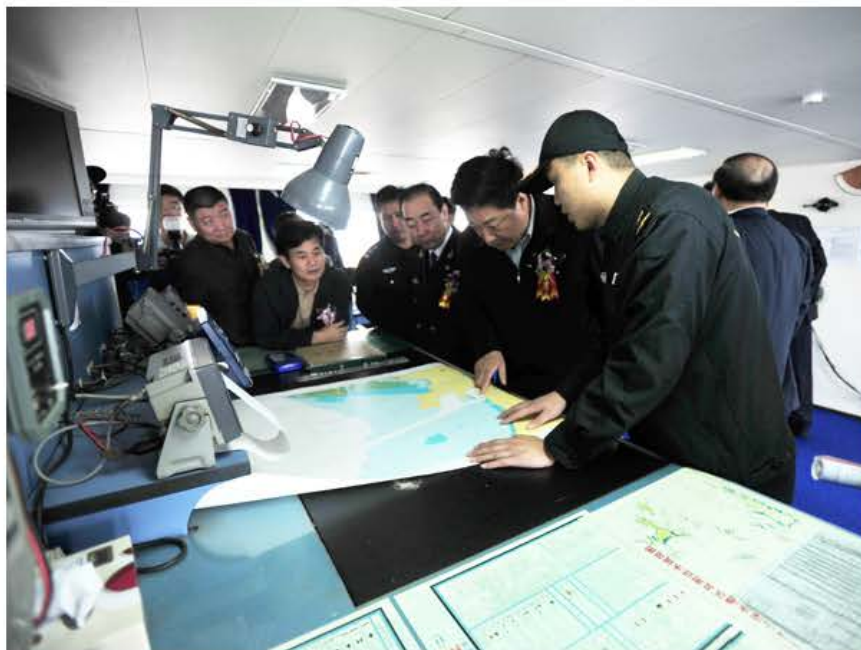
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“海巡21”轮今日列编海南海事局正式服役海南辖区_中华人民共和国海南海事局



12月27日，海口海事基地码头人头攒动，来自政府、军队、边防和海南海事局的百余位领导、嘉宾和海事职工齐聚一起，共同见证有着“中国海事第一船”历史荣誉的“海巡21”轮正式列编海南海事局，服役占全国三分之一海域面积的海南省辖区，履行自己的历史新使命，标志着南中国海的海事执法装备得到进一步加强。海南省政府倪健副秘书长，交通运输部海事局黄何副局长，海南海事局阮瑞文局长等领导出席列编仪式。列编仪式由海南海事局谢群威副局长主持。

阮瑞文局长在致辞中表示，“海巡21”轮从东海来到南海履行新的历史使命，是部海事局落实党的十八大精神，服务国家海洋强国战略，维护国家海洋权益，支持海南国际旅游岛建设和三沙海洋经济发展做出重要决策。“海巡21”轮列编海南，使海南海事拥有了第一艘远洋海区海巡船舶，将结束海南海事无大型海巡船的历史，使海南海事的监管能力和海上搜寻救助能力得到大力提升，将与海南海事现有海巡船艇一道形成对海南辖区沿海、近海和南中国海海域近200多万平方公里海里海事监管的全覆盖。

黄何副局长对海南海事局取得的工作成绩表示肯定，希望海南海事局以“海巡21”轮列编为契机，管好用好“海巡21”轮，努力把“海巡21”轮打造成海事系统的样板船，成为南海海区海事有效监管和快速反应的可靠载体，为海南经济社会发展提供更加优质的服务，为维护国家主权和海洋权益提供更有力的支持保障。

随后，倪健副秘书长宣布“海巡21”轮列编海南海事局。

列编仪式结束后，各位嘉宾代表、媒体记者登船参观了“海巡21”轮。海南海事局、上海海事局在“海巡21”轮会议室举行了船舶交接签字仪式，部海事局黄何副局长、海南海事局阮瑞文局长、上海海事局常富治副局长等领导参加签字仪式。

“海巡21”轮总长93.2米，排水量1583吨，满载时最大续航力为4000海里，最大持续航速达到22节，船尾设有21米长、11米宽的直升机起降平台和直升机舰载专用格栅，素有“中国海事第一船”的美称，是我国历史上第一艘千吨级可装备舰载直升机的海事巡逻船，也是我国海事系统最早装备的大吨位、最先进海上执法巡逻船。“海巡21”轮具备在多种气象条件下实施海空立体监控和搜寻救助能力，列编后将使海南海事的海上巡航、搜救和监测海洋环境污染等各种能力得到显著提高。它加入海南辖区后将主要执行南海海区的巡航执法、海上交通安全监管、海上交通事故调查处理、海上污染监测、海上搜寻救助及履行国际公约等。“海巡21”轮的配备将使海南海事如虎添翼，更好地服务海南海洋强省发展战略，更好地提升南中国海海事管理水平。

编辑：【办公室】

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下一篇：部海事局黄何副局长到三亚开展水上飞机管理工作调研

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Annex 324

“China proposes talks on binding rules of conduct in the South China Sea”, *Global Post* (5 May 2013)

China proposes talks on binding rules of conduct in S. China Sea

China proposed on Thursday to open negotiations with ASEAN to draw up binding rules of conduct in the South China Sea, the scene of territorial disputes between China and some ASEAN member countries, Indonesian Foreign Minister Marty Natalegawa said.

Natalegawa told a news conference after talks with his Chinese counterpart Wang Yi that Wang also proposed to set up a group of eminent persons to complement government-to-government talks on the "code of conduct" issue in the South China Sea.

Wang was visiting Indonesia as part of a four-nation tour of member countries of the Association of Southeast Asian Nations, his first overseas trip after taking office in March.

While in Bangkok on Wednesday, Wang assured ASEAN member countries that China wants to resolve their territorial disputes in the South China Sea through dialogue.

Speaking at the joint news conference with Natalegawa, Wang said China is always open for discussion on the code of conduct in the sea.

"The fact is that we have agreed with ASEAN that both sides will create a COC (code of conduct) based on consensus," Wang said.

Natalegawa said he has endorsed the proposals Wang made on opening working-level "code of conduct" talks and the creation of an Eminent Persons Group.

Wang proposed opening the "code of conduct" talks "at the director-general level in the near future," Natalegawa said.

Commenting on China's position on the South China Sea, Wang said China wants peace and stability and is committed to settle territorial disputes through consensus with the related party in a peaceful manner.

"That is our position and we will never change it," he said.

ASEAN Secretary General Le Luong Minh, who met Wang earlier in the day, stressed the importance of ASEAN and China "moving toward an early conclusion of the code of conduct in the South China Sea" and said ASEAN and Chinese foreign ministers will hold a special meeting in August to discuss the code of conduct issue.

The disputes in the South China Sea have periodically erupted into altercations, with standoffs between vessels of rival claimants, ship collisions and even naval clashes, which have heightened tensions in East Asia.

The Spratly Islands are claimed in whole by China, Taiwan and Vietnam, and in part by the Philippines, Malaysia and Brunei. ASEAN also includes Cambodia, Indonesia, Laos, Myanmar, Singapore and Thailand.

Other contested areas include the Paracel Islands, over which the navies of China and Vietnam have come to blows in the past, and Scarborough Shoal, an outcrop north of the Spratlys that is hotly disputed between China and the Philippines.

The Philippines and Vietnam are the most vocal among ASEAN countries in demanding that China forge a binding code of conduct with ASEAN to prevent clashes in disputed areas.

Wang will head to Singapore and Brunei after his stop in Jakarta.

==Kyodo

<http://www.globalpost.com>

[/dispatch/news/kyodo-news-international/130502/china-proposes-talks-binding-rules-conduct-s-china-sea](http://www.globalpost.com/dispatch/news/kyodo-news-international/130502/china-proposes-talks-binding-rules-conduct-s-china-sea)

Annex 325

“China Boasts of Strategy to ‘Recover’ Islands Occupied by Philippines”, *China Daily Mail* (28 May 2013)

China boasts of strategy to “recover” islands occupied by Philippines

Posted by chankaiyee2

The following is a translation of an interview on Chinese State TV. It does not necessarily represent the views of China Daily Mail, but is provided so readers can form their own views.

Recently, well-known military expert Major General [Zhang Zhaozhong](#) talked in a TV interview in Beijing about the current situation of dispute between [China](#) and [the Philippines](#) in the [South China Sea](#), and analysed China's strategy in the South China Sea region. The following is what was said in the interview:



Zhang Zhaozhong

TV host: “Well, we have watched the footage and now let’s look at the big screen that shows the [Chinese islands](#) and reefs illegally occupied by the Philippines. All of us should remember that counting from the north, there are the Beizi Island, Feixin Island, Zhongye Island, Xiyue Island, Shuanghuangzhou Shoal, Mahuan Island, Nanyue Island and Siling Reef.

“What one has stolen has to be returned. No matter how long the Philippines have illegally occupied those Chinese islands and reefs, I believe that it cannot change the fact that those islands and reefs are inherent Chinese territories. However, what shall we do to counter those rude and barbarian acts of the Philippines?”

Zhang Zhaozhong: What should we do about those islands and reefs? I think that in the main we have done some things relatively successfully in dealing with the Philippines. Since the 1990s, the Philippines has done quite a few illegal and irrational things in its attempt to turn the [Huangyan Island](#) into its territory by means of presidential order, domestic legislation, and so on.

“Each time our Ministry of Foreign Affairs protested, but it refused to listen. In the meantime, it was busy doing this and that, such as sunk a boat there and conducting lots of patrols there. By April, 2012, an incident finally took place that it took initiative to detain Chinese fishermen by force; it sent troops to detain at gun point the Chinese fishermen who entered the lagoon to carry out normal fishing.

“Since then, we have begun to take measures to seal and control the areas around the Huangyan Island, seal and control continuously up till now. In the over one year period since then, there have been fishermen in the inside. Our fishermen are often there because there is lot of fish there. Fishermen go there in large ships and

then sail small boats in the lagoon to fish. They can have shelter in the lagoon when there is a typhoon.

“The fishermen conduct normal production there. In the area around the island, fishing administration ships and marine surveillance ships are conducting normal patrols while in the outer ring there are navy warships. The island is thus wrapped layer by layer like a cabbage. As a result, a cabbage strategy has taken shape.

“If the Philippines wants to go in, in the outermost area, it has first to ask whether our navy will allow it. Then it has to ask whether our fishery administration ships and marine surveillance ships will allow it. Therefore, our fishermen can carry out their production safely while our country’s marine rights and interests as well as sovereignty are safeguarded. Is that not satisfactory?

“We can adopt this method elsewhere. We have not resorted to war and we have not forced the others to do anything, have we? You have invaded and then left. You have violated Chinese law and China’s sovereignty and territorial integrity, haven’t you? Why did you point your guns at our fishermen? As you have first violated the law and pointed your guns at our fishermen, you would never be allowed to enter the area.

“We should do more such things in the future. For those small islands, only a few troopers are able to station on each of them, but there is no food or even drinking water there. If we carry out the “cabbage” strategy, you will not be able to send food and drinking water onto the islands. Without the supply for one or two weeks, the troopers stationed there will leave the islands on their own. Once they have left, they will never be able to come back.

“For many things, we have to grab the right timing to do them. Over the past few years, we have made a series of achievements at the [Nansha Islands](#) (the Spratly Islands), the greatest of which I think have been on the Huangyan Island, Meiji Reef ([Mischief Reef](#)) and Ren’ai Shoal (Second Thomas Shoal).

We have gained quite satisfactory experience about the ways to recover the islands and reefs and defend them. For the Nansha and [Xisha](#) (Paracel) Islands, we have established [Sansha City](#) to administrate them. That was a good step we have taken.

“The next step will be the strengthening of power and authority in implementing our law in conduct our administration. The further next step shall be the vigorous development there, including the development of economy, tourism, marine fishery and marine protection.

“We have to do much more work there, and coordinate various efforts. We should not rely only on military effort. In the military perspective, fighting is the last resort while before it there must be production on a large scale and with high enthusiasm and large-scale production on the sea. That is why I say that we have to create such an environment and atmosphere.”

Source: [mil.huanqiu.com](#) “Zhang Zhaozhong: To recover the islands occupied by the Philippines, the ‘cabbage’ strategy is enough” (translated from Chinese by Chan Kai Yee)

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Annex 326

Tu Chonghang, “China Coast Guard Begins Operations, Bureau Chief Meng Hongwei Will Continue to Serve as Vice Minister of Public Security”, *Beijing News* (23 Jul. 2013)

China Coast Guard Begins Operations, Bureau Chief Meng Hongwei Will Continue to Serve as Vice Minister of Public Security

Source of article: Beijing News
Responsible editor: Su Xiangdong
Reporter: Tu Chonghang

[Image]

Released on: 23 July 2013

[...]

Yesterday around 5 a.m., a new plaque was placed at the restructured State Oceanic Administration. At the same time, the “China Marine Surveillance” plaque with a 14-year history was replaced with “China Coast Guard.” This meant that the restructuring of the State Oceanic Administration was complete. The establishment of the China Coast Guard would end the previous situation with “nine dragons ruling the seas.”

[...]

Some existing vessels have been renovated

Previously, there were five maritime law enforcement authorities in China, divided in five different competent departments. After restructuring, State Oceanic Administration integrated the four forces of China Marine Surveillance, Fisheries Law Enforcement Command, China Coast Guard, and Anti-Smuggling Maritime Police. It will undertake the work of maritime sovereignty protection and law enforcement in the name of the China Coast Guard. The marine patrol force of the China Maritime Safety Administration of the Ministry of Transport was not integrated.

[...]

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中国海警局挂牌 局长孟宏伟仍任公安部副部长(图)

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昨日, 中国海警局挂牌成立。原国家海洋局和中国海监总队的牌匾被摘下, 国家海洋局和中国海警局的新牌匾换上。黄冉 摄

海上执法力量整合示意图



7月22日, 中国海警2350船即将启程执行维权巡航任务。 新华社记者 李涛 摄

昨日凌晨5时许，重组后的国家海洋局挂上新牌匾。与此同时，已悬挂14年的“中国海监总队”牌匾被取下，换成了“中国海警局”。这意味着国家海洋局重组落地，中国海警局成立后将结束“九龙治海”的局面。

海警局长孟宏伟仍任公安部副部长

这次国家海洋局与中国海警局挂牌未举行任何仪式。此前国务院公布《国家海洋局主要职责内设机构和人员编制规定》(以下简称“三定”方案)。

方案规定，重组后的国家海洋局增设一名副局长，这名副局长兼任中国海警局局长。国家海洋局局长，兼任中国海警局政委。

结果，孟宏伟成为中国首任海警局局长，并继续兼任公安部副部长、党委委员(正部长级)。他也是国家海洋局副局长、党组副书记。

国家海洋局局长、党组书记刘赐贵兼任了中国海警局政委。

11个海警总队及其支队

按照国家海洋局“三定”方案，国家海洋局对外以中国海警局名义执法，接受公安部业务指导。

“三定”方案同时规定，国家海洋局北海分局、东海分局、南海分局，对外以中国海警北海分局、东海分局、南海分局名义开展海上维权执法。

据了解，国家海洋局3个海区分局在沿海省(自治区、直辖市)设置11个海警总队及其支队。

重组后的国家海洋局内设机构还将进行调整，其中与中国海警局有关的机构包括“海警司”、“人事司”、“财务装备司”等。

部分原有船舶完成更改

此前，中国有5支海上执法力量，分属5个不同部门。这次重组后的国家海洋局整合了中国海监、中国渔政、边防海警、海上缉私警察4支队伍，以中国海警局的名义开展海上维权执法工作。交通部海事局的海巡队伍未纳入整合范围。

中国海警局将如何整合这四支队伍？比如边防海警原属公安部，原来参照现役军人管理。对此，有接近公安部的人士表示，目前，这一全新课题，仍在制定细化方案。

据新华社报道，目前中国海警局人员调配工作正在进行中，部分原有船舶已经完成舷号、徽章和涂装的更改。中国海警船将统一采用白色船体，船上涂有红蓝相间条纹、新的中国海警徽章和醒目的“中国海警 CHINA COAST GUARD”标志。

国家海洋局重组的举措改变了长期以来职责交叉、权责脱节、争权诿责乱象，是“真正意义上海洋管理的实质性开始”。

——国家海洋局海洋二所副所长李家彪

(记者涂重航)

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Annex 327

“Itu Aba Island Wharf to Bolster Nation’s Defense”, *Taipei Times* (31 Aug. 2013)


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Itu Aba Island wharf to bolster nation's defense

Staff writer, with CNA



A handout photo released by Chinese Nationalist Party (KMT) Legislator Lin Yu-fang yesterday and taken on Sept. 4 shows the remnants of a jetty on Itu Aba Island (Taiping Island). Lin said plans had been submitted to the legislature on Thursday to build a dock on Itu Aba to accommodate large warships and supply ships.

Photo: EPA

A wharf planned to be built on Itu Aba Island (Taiping Island, 太平島), in the South China Sea will help to greatly enhance Taiwan's defensive capability in that area, when the project is completed in 2016, Chinese Nationalist Party (KMT) Legislator Lin Yu-fang (林郁方) said on Thursday.

Lin, a member of the legislature's Foreign and National Defense Committee, said construction of the NT\$3.37 billion (US\$112.5 million) project will begin next year and an initial allocation of NT\$1 billion has been made in the government's fiscal 2014 budget for it.

He estimated that the wharf will be finished by 2016, two to three

years ahead of schedule.

Currently, a broken trestle on Itu Aba Island is being used to dock coast guard cutters with a displacement of 6 tonnes or less, according to a press release issued by Lin's office.

When the new wharf is completed, navy ships will be able to dock and unload heavy equipment and bulk goods, the lawmaker said.

Some large and medium-sized coast guard patrol boats and even some navy combat ships can be based there, he added.

The project means that Taiwan will eventually be able to deploy patrol boats and warships for considerable periods of time in the areas near Itu Aba Island, Lin said.

He said the new wharf will also help facilitate work on a project to extend the island's 1,150m runway, which currently can only accommodate partially loaded C-130H transport aircraft in "extremely good" weather conditions.

The National Expressway Engineering Bureau has been commissioned by the Coast Guard Administration to build the wharf, Lin said.

Itu Aba Island, administered by Taiwan, is the largest of the Spratly Islands (Nansha Islands, 南沙群島) in the much-contested South China Sea. It is also the only island in the archipelago with fresh water.

China, Vietnam and the Philippines also make partial or total claim to the South China Sea area.

The island, which lies about 1,600km from Kaohsiung, is elliptical in shape, 1.4km long and 0.4km wide.

Itu Aba Island now

- Administered by Taiwan.
- The largest of the Spratly Islands (Nansha Islands).
- 1,600km from Kaohsiung.
- Elliptical in shape.
- 1.4km long and 0.4km wide.
- The 1,150m runway can only accommodate partially loaded C-130H transport aircraft on a good day.

Source: Foreign and National Defense Committee

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Annex 328

Shelley Shan, "Itu Aba Reconstruction to Start Next Year: Official", *Taipei Times* (6 Nov. 2013)

Itu Aba reconstruction to start next year: official

The government will start revamping infrastructure on Itu Aba (Taiping Island, 太平島) in the South China Sea next year to protect the safety of Taiwanese fishermen in view of the rising sovereignty disputes over the Spratly Islands, (Nansha Islands, 南沙群島), the National Expressway Engineering Bureau said yesterday.

Itu Aba is under the administration of the Greater Kaohsiung Government, which is about 1,600km away from the island. However, China, the Philippines and Vietnam also claim sovereignty over the small island, which is currently home to about 100 people, a majority of whom are military and coast guard personnel.

The bureau's acting chief engineer, Chen I-piao (陳議標), said the project, approved by the Executive Yuan in July, would involve building a completely new pier for the island and reinforcing its runway, which was built by the Ministry of National Defense.

Construction is scheduled to start at the beginning of next year and should be completed by the end of 2015, with costs estimated at NT\$3.3 billion (US\$111 million), the bureau said.

"About 60 percent of the construction costs would be spent on transportation, because the materials needed for the construction would have to be shipped from Taiwan proper. The transport cost for the materials is about NT\$9,000 per tonne," Chen said.

"Based on our experience on the Dongsha Islands [東沙群島, Pratas Islands], we will have to pay about 1.5 times the average wage to encourage construction workers to come and work on the project," Chen said.

He said the bureau would improve the runway, including building drainage facilities.

"The military needs the runway to land C-130 military transport aircraft," he said. "The runway needs to be able to dry out quickly to facilitate landing for such aircraft."

However, the main focus of the project would be the construction of a new pier to facilitate the shipping of goods and materials, he said, adding that once the pier is completed, 2,000-tonne vessels would be able to dock directly on the island's coast, he said.

He added that the Environmental Protection Administration has said that the construction would be exempt from being reviewed by the Environmental Impact Assessment Committee, per the Environmental Impact Assessment Act (環境影響評估法).

Annex 329

Simon Hall, "Vietnam to Push Ahead With Offshore Exploration", *Wall Street Journal* (4 Apr. 2013)



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Asian Business News

Vietnam to Push Ahead With Offshore Exploration

By SIMON HALL

April 4, 2013 7:35 a.m. ET

HANOI—State-owned Vietnam Oil & Gas Group, or PetroVietnam, plans to keep buying foreign oil-and-gas assets and hopes to be producing close to 100,000 barrels a day of oil overseas by 2020, four times the volume expected this year, the company's chief executive said.

Southeast Asia Real Time

Q&A With PetroVietnam CEO Do Van Hau

Increased overseas oil production, which PetroVietnam says could be sold internationally or brought home for refining, will help Vietnam

cope with rising energy demand, as a territorial dispute with China casts a shadow over its own promising offshore prospects.

Vietnam and its international partners will keep working to develop offshore oil-and-gas reserves within its maritime border, PetroVietnam President and CEO Do Van Hau told *The Wall Street Journal*.

"Recently, although there have been some Chinese claims about the sovereignty of Vietnam's territorial waters in the West Sea, there have still been many investors—domestic and foreign petroleum companies—continuing their research and cooperation and signing contracts to conduct petroleum activities in Vietnam's waters," he said.

The country's oil output has been largely stagnant around 300,000 barrels a day in recent years, and the government is eager to increase output of hydrocarbons to help fuel an economy that has grown by an average of 7% over the past decade. Natural gas output in 2013 is forecast at 9.2 billion cubic meters, down from 9.3 billion in 2012.

PetroVietnam's earnings and taxes account for between 20% and 30% of the national budget.

"So far we have not made commercial discoveries [in disputed areas], but if there are commercial discoveries—and I am optimistic that we will have them—then we will start developing them if they are within our continental shelf," he said, referring to the maritime territory within 200 nautical miles of Vietnam's coast.

Nine months ago, the government in Hanoi protested strongly after China National Offshore Oil Corp. invited bids for a new batch of oil exploration blocks, including some that are within the 200-mile limit that Vietnam claims as its exclusive economic zone, basing its case on the United Nations' Law of the Sea.

At the time, PetroVietnam urged China to cancel bidding for the areas it identified as being in Vietnamese waters, calling on foreign companies not to participate and noting that *Oil & Natural Gas Corp.*, *Gazprom OAO* and *Exxon Mobil Corp.* have been operating under licenses issued by Vietnam in some of those areas for many years.

China's increasingly assertive claims of sovereignty over most of the South China Sea have pitted it against Vietnam, the Philippines, Malaysia and Brunei, with this resulting in military standoffs and claims that Chinese vessels have cut the cables of ships conducting seismic surveys for hydrocarbons.

Any perception that foreign companies with exploration blocks offshore Vietnam are withdrawing or not meeting their commitments due to disputes with China is incorrect, Mr. Hau said, adding that *Exxon Mobil*, *Gazprom* and *Talisman Energy Inc.* are among companies that are active in prospecting offshore.

Gazprom has 49% stakes in two offshore gas blocks, where commercial production is due to start in June, he said.

In March, PetroVietnam said it would continue to invite foreign partners to join its exploration projects, including those in the Red River Delta in northern Vietnam and deep-sea areas. Large amounts of gas lie under the seabed offshore Vietnam, Mr. Hau said, noting that Exxon Mobil had made Vietnam's biggest gas find to date off the country's central coast.

In October 2011, Exxon Mobil announced it had discovered oil and gas offshore Da Nang in central Vietnam, in an area known as Block 119, which isn't in disputed waters, but it didn't say whether commercial quantities had been found.

Mr. Hau said Wednesday that the U.S. oil major is still evaluating the find, and production could potentially start in five to seven years.

To help meet its rising energy needs, Vietnam will in coming months invite bids for its first liquefied natural gas import terminal, which will have a capacity of 1.0 million tons a year, and it is also trying to complete an agreement with Chevron Corp. for a project that would cost more than \$4.3 billion—to develop gas fields offshore southern Vietnam.

PetroVietnam and Chevron didn't meet an end-2012 target to agree on gas prices for the offshore Block B project, and talks on this continue, Mr. Hau said. That project involves building offshore pipelines and floating storage facilities, then piping up to 490 million cubic feet of gas daily ashore for use mostly in electricity generation at power stations that are yet to be constructed.

"Chevron continues to work with PetroVietnam to resolve commercial issues to enable a final investment decision," a Chevron spokesman said.

Vietnam's foreign energy investments are focused mostly on Russia, Latin America and Africa. Initial production from a 50-50 joint venture offshore Peru is due to start by the end of the year, with an eventual target of 60,000 barrels a day, Mr. Hau said.

In Cuba, PetroVietnam is assessing results of seismic surveys it has done at an offshore block after having drilled two dry wells at an onshore concession, which it subsequently abandoned, he said.

Progress in developing heavy-oil reserves in Venezuela is proceeding slowly, he said, adding that the project won't meet a target of reaching output of 50,000 barrels a day by next year, although oil has flowed from some of its pilot wells.

PetroVietnam has spent more than \$1 billion on overseas investments, "and we will keep on spending," he said.

Combined output from domestic and international fields this year will be around 16 million tons, or 321,000 barrels a day, with most of the expected foreign output—totaling between 25,000 and 28,000 barrels a day—coming from a joint venture in Russia, Mr. Hau said.

Plans to expand Vietnam's still-small refining sector could advance as soon as May, when a final investment decision on the country's second refinery is expected, he said.

Japanese refiner Idemitsu Kosan Co. and Kuwait Petroleum International each hold a 35.1% stake in the planned \$9 billion 200,000-barrel-a-day refinery to be built 180 kilometers south of Hanoi. PetroVietnam and Mitsui Chemicals Inc. own 25.1% and 4.7%, respectively. KPI is a unit of state-owned Kuwait Petroleum Corp.

Vietnam has started work to assess shale-gas opportunities in the country after surveys showed that its reserves of coal bed methane aren't commercial, he said. It is too early to provide any forecast on shale gas, he added.

PetroVietnam has an exploration and production contract with Mitra Energy for shale oil and gas in the Red River Delta region and has signed a joint research agreement with ENI SpA to evaluate the overall potential of shale oil and gas onshore Vietnam, Mr. Hau said.

—Vu Trong Khanh and Nguyen Anh Thu contributed to this article.

Write to Simon Hall at simon.hall@dowjones.com

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Annex 330

Jerry E. Esplanada, “No Coast Guard Vessels near Panatag Shoal, Says Spokesman”, *Philippine Daily Inquirer*
(3 Mar. 2014)

No Coast Guard vessels near Panatag Shoal, says spokesman

MANILA, Philippines – Not a single Philippine Coast Guard vessel has been deployed to Panatag Shoal (Scarborough Shoal) since Coast Guard ships and their Chinese counterparts faced off in that part of the West Philippine Sea for two weeks in mid-2012.

This undated handout photo taken by the Philippine Navy and released April 11, 2012, by the Department of Foreign Affairs shows Chinese surveillance ships off Panatag (Scarborough) Shoal. AFP FILE PHOTO

The Inquirer learned this Monday from Cmdr. Armand Balilo, chief of the Coast Guard's public affairs office, who said, however that the search-and-rescue vessel BRP Corregidor (001) and the buoy tender BRP San Juan (AE-391) were "on standby" at the PCG headquarters in Manila and could be sent to the area "if ordered by the higher-ups."

By higher-ups Balilo was referring to "Malacañang through the DOTC," not the Western Command of the Armed Forces of the Philippines, which has been tasked by the government to oversee security in the West Philippine Sea.

The Coast Guard is now under the jurisdiction of the Department of Transport and Communication. It used to be part of the Philippine Navy.

The 540-ton Corregidor is 56 meters long, has a cruising speed of 26 knots and a cruising range of more than 1,000 nautical miles. Built by the Australian shipbuilding firm Tenix, the multirole vessel was commissioned by the PCG in June 2002.

It was one of several PCG vessels that ferried relief goods to Eastern Visayas provinces ravaged by Super typhoon Yolanda in November.

The 730-ton San Juan, nearly 57 meters long, was built by Niigata Engineering, a Japanese shipbuilding company. It runs at a slow 12 knots but has a cruising range of over 2,000 nautical miles. The ship was commissioned in February 1998.

Balilo stressed that "any ship deployment to Panatag Shoal would be done in a less provocative manner."

As top military officials had said earlier, the Coast Guard does not want any confrontation with the Chinese coast guard.

He noted that the government, as a matter of policy, preferred to resolve the dispute over Panatag, which is also sometimes referred to as Bajo de Masinloc, through peaceful means.

Balilo did not comment on reports that the Chinese coast guard had used water cannon to drive Filipino fishermen from Panatag, which is a rich fishing ground off the province of Zambales and within the Philippines' exclusive economic zone.

In mid-2012, the Philippine government broke away from standoff with Chinese ships by calling back its vessels from Panatag Shoal as a storm approached.

China, however, did not recall its ships from the shoal, which it refers to as Huangyan Island. Instead, it cordoned off the area and stationed coast guard vessels there, effectively seizing the shoal after the storm.

With nothing to match Beijing's firepower, the Philippines took the territorial dispute to the United Nations for arbitration in January 2013.

Last week, an undisclosed number of Filipino fishermen reportedly sailed back to the shoal, braving harassment by Chinese coast guard vessels to eke out a living.

The PCG detachment in Masinloc, Zambales, has advised fishermen to steer clear of the shoal to avoid encounters with the Chinese.

Annex 331

“China expels Philippine vessels from Ren'ai Reef”, *Xinhua* (10 Mar. 2014)

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

Annex 332

Record of Proceedings of the Conference for the Conclusion and Signature of the Treaty of Peace With Japan, San Francisco, CA, September 4-8, 1951 (1951)

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path, having illegally, from the very outset, banned both the Soviet Union and the Chinese People's Republic from any participation in the preparation of the Peace Treaty, without the participation of which there can be no question of accomplishing a peace settlement with Japan. The Soviet Government has already drawn the attention of the Government of the United States to this fact in its remarks of May 7 on the American draft peace treaty and also in its note of June 10, 1951. The Chinese nation which was forced to conduct a prolonged and severe war against militarist Japan that invaded its territory has suffered particularly heavy losses in this struggle. Therefore, the Government of the Chinese People's Republic as the sole legitimate representative to express the will of the Chinese people cannot be banned from the preparation of a peace treaty with Japan. The Soviet Government fully shares in this question the point of view expressed in appropriate statements of the Government of the Chinese People's Republic, in particular in its statement of May 22 and in that of August 15, 1951, and insists on a full participation of the Chinese People's Republic in the preparation and discussion of the peace treaty with Japan. Those states which, following in the wake of the United States and Great Britain, are prepared to sign the peace treaty without the participation of the Chinese People's Republic, India, and Burma which are particularly interested in a peace settlement with Japan, take upon themselves a heavy responsibility for the aftermath of such an unjust and illegal act.

What is the situation that the present Conference in San Francisco has to face?

The Governments of the United States of America and of Great Britain have put before the Conference the fact that China has not taken and is not taking part in the preparation and discussion of a peace treaty with Japan. It is clear that in these circumstances no real peace settlement in the Far East will be achieved. Is it possible for peoples which can openly and freely express their feeling of justice and their longing for peace among the nations to reconcile themselves to this position?

India, as well as Burma, has refused to participate in the San Francisco Conference, stating that the American-British draft is unacceptable. It means that not only China, but also India, the principal states of Asia, are banned from the participation in the preparation and discussion of the draft peace treaty with Japan which is being imposed on the participants of the present Conference by the United States of America and Great Britain. Is it not true that such actions discredit the authors of this draft and does it not mean that such a policy is a policy of bankruptcy?

The Soviet Union has not refused to take part in the San Francisco Conference. The reason for this is that it is necessary to voice pub-

licely the truth about the American-British draft and to oppose it with demands for such a peace treaty with Japan that shall in fact meet the interests of a peace settlement in the Far East and serve to strengthen a universal peace.

Whereas, the American-British draft peace treaty with Japan does not answer the requirements necessary for a peace treaty with Japan, the Soviet Delegation proposes the following amendments to be made in the draft of a peace treaty submitted by the Governments of the U. S. A. and Great Britain to the Conference for its consideration.

The Vice President of the Conference—P. C. Spender: Order, order. Do I understand that the representative is proposing to move certain amendments to the draft treaty?

The Delegate of the Union of Soviet Socialist Republics—A. A. Gromyko: I am making a declaration, and I am defending my position. I have the right to speak and I ask, Mr. President, to continue.

The Vice President of the Conference—P. C. Spender: Continue.

The Delegate of the Union of Soviet Socialist Republics—A. A. Gromyko:

1. *To Article 2.*

a) To include, instead of paragraphs "b" and "f", a paragraph reading as follows: "Japan recognizes full sovereignty of the Chinese People's Republic over Manchuria, the Island of Taiwan (Formosa) with all the islands adjacent to it, the Penhuletiao Islands (the Pescadores), the Tunshatsuntao Islands (the Pratas Islands), as well as over the Islands of Sishatsuntao and Chunshatsuntao (the Paracel Islands, the group of Amphitrites, the shoal of Maxfield) and Nanshatsuntao Islands including the Spratly, and renounces all right, title and claim to the territories named herein".

b) Paragraph "c" is to be amended to read as follows: "Japan recognizes full sovereignty of the Union of Soviet Socialist Republics over southern part of the Sakhalin Island, with all the islands adjacent to that part, and over the Kurile Islands and renounces all right, title, and claim to these territories".

2. *To Article 3.*

Article 3 to be amended to read as follows: "The sovereignty of Japan will extend to the territory consisting of the Islands of Honshu, Kishu, Sikoku, Hokkaido, as well as the Islands of Ryukyu, Bonin, Rosario, Volcano, Parece Vela, Marcus, Tsushima and other islands which formed part of Japan prior to December 7, 1941, except those territories and islands which are named in Article 2".

3. *To Article 6.*

Paragraph "a" to be amended to read as follows: "All armed forces of the Allied and Associated Powers shall be withdrawn from Japan, as soon as possible and, in any case, not later than 90 days since the

date of the coming into force of the present treaty, and after that no Allied or Associated Power or any other foreign power shall have its troops or military bases on the territory of Japan”.

4. *To Article 14.*

Paragraph “a” and subparagraph 1 of the same paragraph to be replaced by the following text: “Japan undertakes to compensate the damage caused by military operations against the Allied or Associated Powers, as well as by the occupation of the territories of certain Allied and Associated Powers. The amount and the sources of payment of the reparations to be paid by Japan shall be considered at a conference of the states concerned with the express participation of the nations which were subjected to Japanese occupation, namely, the Chinese People’s Republic, Indonesia, the Philippines, Burma, with Japan being invited to that conference”.

5. *To Article 23.*

To insert, instead of paragraphs “a” and “b”, a paragraph reading as follows: “The present treaty shall be ratified by the states which sign it, including Japan, and will come into force for all the states, which will then ratify it, when the instruments of ratification have been deposited by Japan and by a majority of the following states, including the United States of America, the Soviet Union, the Chinese People’s Republic, and the United Kingdom of Great Britain and Northern Ireland; namely, Australia, Burma, Canada, Ceylon, France, India, Indonesia, the Netherlands, the Mongolian People’s Republic, New Zealand, Pakistan, the Philippines, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Chinese People’s Republic and the United States of America. It shall come into force for each state which subsequently ratifies it, on the date of the deposit of the instrument of ratification”.

6. *A new article* (in Chapter IV).

“Japan undertakes to remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people, to take all measures necessary to secure to all persons under Japanese jurisdiction, without distinction as to race, sex, language, or religion the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion, and of public meetings”.

7. *A new article* (in Chapter IV).

“Japan undertakes not to permit the resurgence on Japanese territory of Fascist and militarist organizations, whether political, military or semi-military, whose purpose it is to deprive the people of their democratic rights”.

8. *A new article* (in Chapter III).

“Japan undertakes not to enter into any coalitions or military alli-

General. If the President is not quite clear regarding that situation, then it is quite possible to clarify it, and after my explanation, this lack of clarity should end. The Soviet amendments and additions are amendments and additions, and the Conference should discuss them and make decisions regarding each of them, decisions mainly of substance. If after that, after this additional explanation of mine, the President refuses to permit discussion of the Soviet amendments and additions, I will have to challenge the ruling of the President.

The President of the Conference—Dean Acheson: The Soviet Delegate has correctly interpreted the position of the Chair which is that at the present time a discussion of any so-called amendments to the treaty is out of order. The business before the Conference is the discussion of the motion made by the Delegate of Ceylon and seconded by the Delegate of Cuba. Therefore, under the present parliamentary situation, and only under that present parliamentary situation, the Chair rules that it is out of order to discuss any amendments by anyone to the treaty. That question cannot be raised at this point.

I understand the Delegate of the Soviet Union says, if that is the situation, he appeals from the ruling of the Chair. He has that right and therefore we will put, without debate, to this Conference, the correctness of the ruling of the Chair. I will ask the tellers to take the vote.

The Delegate of the Union of the Soviet Socialist Republics—A. A. Gromyko: Do not hurry, Mr. President, if you please. May I make a statement as follows: that after a decision is taken on the proposal of the Delegate of Ceylon, I will be in a position to defend my own proposals regarding the necessity of considering the Soviet amendments and proposals.

The President of the Conference—Dean Acheson: The Delegate from the U. S. S. R. is incorrect in his interpretation of my remarks, for this reason: If this Conference adopts the resolution proposed by the Delegate of Ceylon, that resolution provides that further statements may be made until 11:00 o'clock. As I understand that resolution, it means further statements regarding the treaty text of August 13, 1951. It does not provide for amendments to that text. The resolution then provides that at 11:00 o'clock all business is concluded. Therefore, if the Conference adopts that resolution it binds the Chair. I have no further authority under that resolution except to preside over statements until 11:00 o'clock, and then proceed with the matter of the conformation of the language texts. The Chairman has no discretion whatever. If, however, the Conference does not adopt the resolution, then the Delegate of the Soviet Union is quite free to make any further motion he wishes to make. Have I made myself clear, Mr. Gromyko?

The Delegate of the Union of Soviet Socialist Republics—A. A. Gromyko: It is very clear. In this case I will await the decision regarding the proposal of the Delegate of Ceylon and after that I will make the proposal regarding the necessity of discussing the Soviet proposals and of accepting the decision of the Conference regarding those proposals. If, however, the resolution of the representative of Ceylon is not accepted, then I will be in order to proceed as I have stated.

The President of the Conference—Dean Acheson: The Conference has before it the resolution proposed by the Delegate from Ceylon and seconded by the Delegate from Cuba. Is there a discussion of that resolution? Does any delegate wish to discuss that resolution? The floor is open to discussion. This is the opportunity to have it. No delegate rises to be recognized, and therefore the next matter of business. . . . The Delegate of Czechoslovakia.

The Delegate of Czechoslovakia—Gertruda Sekaninova-Cakrtova: Mr. President, we want only to ask you to be so kind as to repeat the last sentence you said. I didn't get it. It was only for this that I asked for the floor.

The President of the Conference—Dean Acheson: I am sorry to say, I don't remember. Which last sentence is it?

The Delegate of Czechoslovakia—Gertruda Sekaninova-Cakrtova: The last one you said, the last before this one.

The President of the Conference—Dean Acheson: The last sentence I said, I believe, was that the question of the motion proposed by the Delegate from Ceylon and seconded by the Delegate from Cuba was now open for debate. If you wish to debate that motion, you have your opportunity to do so.

The Delegate of Czechoslovakia—Gertruda Sekaninova-Cakrtova: Thank you very much.

The President of the Conference—Dean Acheson: The resolution before us is:

"Resolved, that further statements may be made up to 11 o'clock, provided that no statement may exceed 30 minutes in length. 'At 11 o'clock all business of the Conference shall be deemed concluded, with the exception of items 5 and 6 of article 17 of the Rules of Procedure'".

Now, items 5 and 6 of article 17 of the Rules of Procedure are as follows:

5. Report of the Secretary General on conformity of the different language texts of the treaty.

6. Ceremony of signing the Treaty of Peace with Japan.

All those delegations in favor of the motion made and seconded will signify by having their chairman or senior delegate raise his hand. Please keep it raised. (Show of hands.)

All those delegations opposed to the resolution made and seconded, please raise their hands and keep them raised. (Show of hands.)

The resolution read, proposed by the Delegate from Ceylon, is adopted by a vote of 41 to 1.

In proceeding under this resolution, the Chair will find it very confusing to recognize delegates by looking around the room. We therefore would very much appreciate if, in the next two or three moments, or three or four moments, the delegates who wish to speak would indicate by giving the ushers a piece of paper and sending it up to the Chairman, so he may know who wishes to speak.

The Delegate of the Soviet Union wishes to speak. Mr. Gromyko.

The Delegate of the Union of Soviet Socialist Republics—A. A. Gromyko: Mr. President, the situation has not been changed by the acceptance of this resolution, considering your announcement which was made before the resolution was accepted. There is a certain lack of clarity on that matter about which I would like to ask you. Shall we open the discussion now on the question of the Soviet amendments and proposals, or shall we not?

The President of the Conference—Dean Acheson: The understanding of the Chair is that Mr. Gromyko is entitled to make a statement for 30 minutes. I do not know what he proposes to say in that statement. I therefore urge him to proceed with his statement. If he makes a motion in the course of the statement, I will rule on the motion when it is made.

The Delegate of the Union of Soviet Socialist Republics—A. A. Gromyko: The President is free not to answer my question, but I have asked the President the question, Does he intend to put to the vote the Soviet amendments and revisions? Or is my question clear? If he will have to think about an answer to give me, I am ready to wait until the President thinks it over.

The President of the Conference—Dean Acheson: There is no necessity for Mr. Gromyko to wait. The answer to the question which he has just put to me is very clear indeed. If Mr. Gromyko proposes to move, which he has not yet done, in the course of his remarks, that any of his amendments to the Charter should be adopted by this Conference, the Chair will rule, under the order now standing, that such a motion is out of order.

The Delegate of the Union of Soviet Socialist Republics—A. A. Gromyko: The fact that the Soviet Delegation has formally proposed certain amendments to the American-British draft is something which I have stated several times. The President has said if I make such a proposal at the present moment, this proposal will not be in order. The Soviet Delegation protests this decision of the Chair, and challenges the decision. The Delegation of the Soviet Union has shown

previously that the right of a member of an international conference is to make amendments and additions to any proposal being contemplated by the Conference, that this is a right which is based on international practice, whether the President is or is not agreeable to such a manner of proceeding. In spite of that, an illegal position has just now been created in which the President tells us that the Soviet amendments and additions to the Peace Treaty with Japan, proposed formally to the present Conference, should not be discussed and should not be voted upon. Such a position is entirely incorrect, illegal, and has no precedent. The practice of international conferences does not show one single example of a case where a member of the Conference cannot make a proposal regarding amendments or changes to the subject under discussion after having formally offered such amendments. In the sessions of the General Assembly and other conferences, in San Francisco in 1945, where the Charter of the United Nations was adopted, was there one single example of a case where amendments concerning the project were not discussed and where a vote was not taken on the subject? There was never a case, never an example of such a decision. The denial of the right to bring in amendments to any project being discussed is something which is, even in a provisional way, entirely impossible. This Conference is an exception and in spite of the fact that we are in the United States of America and the Delegate of that country is the President, it seems to me that we cannot deprive the other delegations of the right, the basic right, of making amendments and proposals, and for that reason I demand a vote on those proposals and amendments. A decision must be taken regarding those proposals of amendments to the peace treaty with Japan.

I have never made a secret of the fact that I consider that this is simply an act to force people to accept, without any change, the American-British draft of a peace treaty with Japan. But we must discuss it. It is a violation of human rights to force acceptance of something simply because it is convenient to the United States of America.

Is this Conference a meeting of members of sovereign states, trying to reach a just and acceptable peace—or is it simply a formal and empty procedure which has for its purpose the giving of a blind approval to the American-British proposal for a peace treaty with Japan? If this is such a Conference and if there are among the governments here those which are ready to accept such a position, the Soviet Union is not ready to follow the path, and such a situation cannot be explained by anything but a fear of popular disapproval of discussion in public of the amendments to the treaty with Japan proposed by the Soviet Union. Since this draft, as was shown in the previous statement by the Soviet Delegation, does not create peace

in the Far East but on the contrary turns Japan into an American military base, and this was shown even in the speech of the Prime Minister of Japan. This ignores and disparages the rights of the Japanese people and is an example of an imperialistic policy in the Far East which is aimed at starting a new war. For that reason the Soviet Delegation insists on a discussion and consideration of the proposals it has made regarding, in particular, the demilitarization of Japan.

Those who do not wish to speak on the subject of the Soviet proposals and those who do not have anything to say, do not need to take the floor. It is not a question of time but we know there are certain governments which now are thinking about the proposals we have made and are wondering if they will accept the draft, the British-American draft, of the peace treaty.

We are quite certain that the amendments we have made to the draft peace treaty will correspond to the aims of peace-loving peoples and in particular, the peace-loving peoples of Asia and most especially Japan, because they promote peace and security. In addition, they may be contrary to the wishes of certain circles in the United States which are the authors of the so-called American-British Peace Treaty with Japan, which is in fact a draft for the preparation for a new war in the Far East. We must only look and listen to certain speeches—to certain ignoble speeches full of allusions to the United States, such as those of the Delegate of New Zealand, to learn that there are governments represented here which have basic legal rights in the conclusion of the Peace Treaty with Japan. But will they sign this Peace Treaty with Japan or won't they sign? This will not change the situation but there is one fact which cannot be forgotten: this fact is that the great Chinese nation of 400 million people is not represented here simply because it is not convenient to certain circles in the United States, to certain circles which do not wish to see, to even look at the great aspirations of the Chinese people and do not wish to study, to consider such a peace treaty with Japan drafted in a way which would not permit a new aggression by Japan and a rebirth of Japanese militarism, militarism which threatens first of all its neighbors. I repeat, the Soviet Delegation insists on a discussion of the Soviet amendments and proposals and on the fact that a decision should be taken regarding those proposals, and if the President does not permit this, the Soviet Delegation challenges his ruling and wishes to see the Conference take a decision on it. We must take a definite decision regarding the Soviet amendments and proposals. We have no doubt that no matter what may be the vote regarding the Soviet amendments and proposals, the Soviet proposals will find a warm welcome in the hearts of many people and, most of all, among the

nations, the peoples of Asia, who will understand and who will not fail to appreciate the Soviet proposals. We want it to be possible for all the people, wherever people become acquainted with our proposals, to see that our proposals had as their purpose, the peace and security of the Far East.

The President of the Conference—Dean Acheson: The Soviet Delegate has challenged the ruling of the Chair. In order to be clear, I understand the situation now is that the Soviet Delegate now says that he is moving the amendments which were, as he says, the amendments to the treaty; and he challenges the ruling of the Chair that such a motion is out of order. Now, before putting that, the Chair, in consideration of its colleague, the Vice President, who was presiding at the time, wishes to point out that Mr. Gromyko's statement that he has at all times stated that he was proposing these amendments, does not accord with the transcript of the record. In the course of his speech he was asked by the Vice President, who was presiding, whether he was proposing amendments at that time. He said, "I am making a statement." If he wished to raise the issue of making amendments, that certainly was the time to do it; but he did not do it. However, he is doing it now, and he has a right to appeal from the ruling of the Chair. The Chair has ruled that Mr. Gromyko's motion that we now consider his amendments to the treaty is out of order. The Chair rules that it is out of order because it is in conflict with our Rules of Procedure and with the motion recently adopted under those Rules of Procedure. Under my prerogatives I am entitled to allow 5 minutes on either side of this. Mr. Gromyko has debated the matter at some length. Does anyone wish to speak on the other side, or do you wish to proceed to a vote? Is there any speaker on the other side?

(Whereupon a member of the Polish Delegation arose.)

The President of the Conference—Dean Acheson: No one wishes to support the ruling of the Chair?

You may proceed. The Delegate of Poland, I am sure, is not going to support the ruling of the Chair. However, I do not know and I will let him proceed for 5 minutes.

The Delegate of Poland—Manfred Lachs (Director of the Legal Bureau of the Foreign Office): Mr. President, I think you are quite right in anticipating what I have to say. It is difficult . . .

The President of the Conference—Dean Acheson: May I interrupt you Sir. You are entitled to 30 minutes later on but only 5 minutes at this time.

The Delegate of Poland—Manfred Lachs: Yes, I know that, Mr. President.

When you, Mr. President, interrupted me, I was just about to state that your anticipation was correct. I could not possibly support a ruling which is such an absurd ruling as you have made. It is a ruling contrary to all principles of international conferences held in the last 100 years. I am speaking with some knowledge, both in theory and in practice, of international conferences; and I can assure you that at many conferences in the 19th century and over a hundred conferences held in the 20th century, there was no such ruling given. Never was the right of sovereign members of international conferences to propose amendments denied.

After all, are we an international conference or not? Are we entitled to present our views or are we not? And if not, if no vote is taken, if no amendments are allowed, the discussion is of no avail. It is inconclusive. We have been presented with an obvious *fait accompli* with the draft treaty, which some had the courage to challenge. We want to have the right to present whatever amendments we wish, and we want those amendments to be voted upon.

If you decide that the amendments of the Soviet Union are not to be voted upon, then this is not a conference. It is what Mr. Dulles called it on July the 12th—a ceremony. That was an interesting point; there was a conflict between the invitations sent to the various governments and a statement made by Mr. Dulles at a press conference. He said that international conferences were no good these days. We proceed by negotiations. We proceed by diplomatic correspondence, and at the end we shall have a ceremony for signature. It may be that this whole thing is not an international conference, that we have to do here with false pretenses.

I challenge the President to let me search in any dictionary of any language to find out what the word "conference" means. In the dictionary of your language, for instance, in the standard dictionary, we find the following definition: "A conference is a formal, appointed meeting for counsel, deliberation, consultation, and discussion of a specific subject."

Was there real counsel, was there deliberation and consultation or discussion of the specific subject here? Was there counsel at this Conference, was there deliberation, was there a consultation or discussion?

We were not allowed to discuss; and when amendments were presented they were not allowed to be voted on.

Well, Mr. President, I think it is an unusual procedure. It is the first conference of this type that I have attended, and it is the first conference of this type that I have heard of. I can assure you that when I go home to teach my students at the university, I shall tell them of your ruling and how contrary it is to all established principles and practices in international relations.

A great Englishman once said "To preach freedom of discussion is not enough, you have to practice it. If you don't practice it. . . ."

Mr. President, some members of the public are amused; for amusement purposes, this meeting should be transferred elsewhere—but I think the occasion is too serious.

I wanted to say, Mr. President, that a famous Englishman once said that it is not enough to preach freedom of discussion, you have to practice it. If you don't practice it and preach it, it is sheer hypocrisy.

The President of the Conference—Dean Acheson: The Delegate of the United States wishes to talk for 5 minutes on the ruling.

The Delegate of the United States—John Foster Dulles: Mr. President, at this time, as you may surmise, I arise to support the ruling of the Chair, and I do so because I think that the United States Government, which called this Conference, should take the opportunity to explain what the nature of this Conference is and why the ruling of the Chairman is entirely in order.

This Conference is totally unlike the conferences which have been quoted, which were conferences to negotiate a treaty. This Conference followed 11 months of negotiation, and the Honorable Delegate of Poland says there should be an opportunity to talk. He, and the Delegate of the Soviet Union, and the other countries have had 11 months to talk.

They have not only had 11 months to talk, but they have talked for 11 months.

I have a file a foot deep, of notes, memoranda, and memoranda of conversations that have taken place between the United States Government and myself and the Soviet Government and members of the Soviet Government.

The talking has taken place and the talking is about, I hope, to come to an end.

We made all of that clear, beyond the possibility of doubt, at the time of the invitation; and we sent out an invitation which said that this Conference was to be a conference, which, following 11 months of negotiation, and the negotiation of a text of a treaty which we described as a "final text", was called to sign that text; and the Honorable Delegate of Poland said that he came here under false pretenses.

Well, I would like to recall that at the time when this invitation was given, first, the Government of the Soviet Union said that they would propose to come here and make new proposals; and we sent them a note, in which we said, "You have apparently misunderstood the nature of this Conference, and in order that there may be,"—quoting from our formal note in writing to the Soviet Union—"in order that there should be no possibility of subsequent misunderstanding, you will recall that the invitation is to sign a final text of a Japanese

treaty." "The San Francisco conference," we went on to say, "is not a conference to reopen negotiations on the terms of peace. That has been done by 11 months of negotiation." And then when the Polish Government said that it proposed to come here and discuss all sorts of matters, we said to it: "In order that there may be no possibility of future misunderstanding, we point out to you that this is not a conference to negotiate or to make new proposals, but to conclude by signature a text of treaty that has been arrived at."

Now, if the Polish Government has come here under misunderstanding and false pretenses, certainly it is not due to any failure on the part of the Government of United States to make perfectly clear to the Soviet Government and the Polish Government what kind of conference it was. That is it, and they didn't need to come unless they wanted to.

And now they are here, and the Conference has adopted, as number one, of a set of rules that was approved by a vote of 48 to 3, the basic proposition that this Conference is to be held and conducted in accordance with the terms of the invitation. The ruling is precisely in accordance with that decision of this Conference, in accord with what has been made clear repeatedly to the delegates who are here, that this meeting followed 11 months of talk and negotiation and the time is now to bring this to a conclusion.

The President of the Conference—Dean Acheson: Discussion having been concluded concerning the question of supporting or not supporting the ruling of the Chair, I now ask for a show of hands. All those in favor of supporting the ruling of the Chair will indicate by raising your hand. (Show of hands.)

All those opposed to the ruling of the Chair, will you please raise your hand? (Show of hands.)

Order, please. Quiet in the gallery. The gallery will please maintain order.

The ruling of the Chair is supported by a vote of 46 to 3.

We will now revert to the order we were following when the question of the Chair's ruling was adopted. I now see the Delegate from Czechoslovakia raising her hand. Do you rise to a point of order, Madam?

The Delegate of Czechoslovakia—Gertruda Sekaninova-Cakrtova: Just a suggestion: a very brief and simple question, the request to count the abstentions, too, Mr. President. Thank you.

The President of the Conference—Dean Acheson: All right. On that last ruling, may I have the abstentions? (Counting of hands.) There were 46 in support of the ruling, 3 against it. How many abstentions? (Counting of hands.) There appears to be 1 abstention.

Apparently one country is not accounted for. 46 in favor, 3 against, and 1 abstention.

We shall now revert to the order which we were following before the question was raised in regard to the Chair's ruling, and the order of appearances when the 30-minute rule began, with the Delegate of the Soviet Union. Mr. Gromyko had put his name down to speak and is entitled to speak if he wishes to do so. (Mr. Gromyko indicated his wish to speak later.) The next delegation to record itself is the United Kingdom. The United Kingdom passes. The next delegation to record itself is the Polish Delegation.

The Delegate of Poland: Later.

The President of the Conference—Dean Acheson: The next delegation to record itself is that of the United States.

The Delegate of the United States—John Foster Dulles: Later.

The President of the Conference—Dean Acheson: The Chair being in a quandary as to how to proceed, we will begin at the beginning. Each delegation wishes to be later, but the order in which they were recorded is as follows: The Soviet Union, the United Kingdom, Poland and the United States.

Will the Soviet Union speak?

The Delegate of the Soviet Union.

The Delegate of the Soviet Union has the floor.

The Delegate of the Union of Soviet Socialist Republics—A. A. Gromyko: Mr. President, the Soviet Government in its notes, in its memoranda, sent to the Government of the United States of America concerning the first amendment of the project of peace, has put forward a position regarding the basic questions of the Peace Treaty, and at the present Conference the Soviet Delegation has also explained the position of the Soviet Union regarding the questions of the Peace Treaty with Japan. What are the basic questions, the basic questions put forward by the Soviet Government in the note sent to the United States of America and also the present Conference? I will not repeat what has been said before, in particular in the first basic declaration of the Soviet Delegation. That is in the records, including the discussion which took place during the Conference, a discussion which has taken place unfortunately under the pressure on the part of the Delegation of the United States—a frank discussion of the substance of the problem put forward in the American-British draft of the peace treaty and in particular of any question regarding this peace treaty. The Soviet Government has shown that one of the most important questions is the question of preventing the rebirth of Japanese militarism, preventing the use of Japan in a new attack, in a new aggression. For that reason the proposals made by the Soviet Delegation in

connection with the Peace Treaty with Japan are in agreement with the national interests of the countries outside of Asia. You cannot find a man in the entire world who would fight for peace and security who would not agree with the demands of the Soviet Government. The British-American project does not give any guarantees against the rebirth of Japanese militarism, against the use of Japan as an armed force. There are no such guarantees in the American-British project; on the contrary this project opens the way for the rebirth of Japanese militarism. It opens even wider the dams, permits even more, makes it even easier to give Japanese militarism back to the Japanese militarists, and gives back to Japan the policy which has previously put it on the road to catastrophe. The American-British draft treaty not only opens the way to the rebirth of Japanese militarism, it is also a great danger to the peace because it envisages the use of Japan as an American strategic base. The American Government does not even try to dissimulate this position; it is impossible to dissimulate this attempt. This attempt is manifest. The position contained in the American-British draft regarding the fact that the occupation troops should be withdrawn from Japan within 90 days, but that Japan has the right to conclude with the United States or with any other country an agreement, a bilateral agreement or a multilateral agreement, for the return or the retention in her territory of foreign troops, is something which shows the true position, and it shows that the United States of America intends to use Japan as a military base. There can be no denial that the same thing will happen to Japan that happened with the Philippines, the Philippine type of freedom; even today there are American military bases there.

The draft of the peace treaty with Japan is also a danger to peace because it also considers the use of Japan within a coalition, as a member of a coalition obeying the United States of America and helping the United States in aggression. It is impossible to camouflage those purposes. But we might objectively consider the situation in the Far East, and to do so it is enough to consider the situation which exists in Japan following the domination there of American authorities; there can be no doubt that the Government of the United States of America wishes to create a war bloc based on Japan, to start to create a new offensive alliance in the image of the so-called Atlantic Pact; there is nothing in common between such creations and the interests of the defense of peace, and the Soviet Delegation is certain that many countries, many nations, primarily those of Asia, who suffered from Japanese aggression, understand this point of view. I understand it may be difficult for some to speak about this openly, but we do not have any doubt whatsoever that the Soviet position, and the proposals and amendments made at this Conference by the Soviets to

Annex 333

Shorter Oxford English Dictionary, Vol. 2 (5th ed., 2002)

Oxford English Dictionary | The definitive record of the English language

sustain, v.

Pronunciation: Brit. /səˈsteɪn/ , U.S. /səˈsteɪn/

Forms:

α. ME **sosteine**, ME **sosteini** (*south-west midl.*), ME **sostene**, ME **sosteyne**, ME **sostine**, ME **sostyene** (*south-east.*), ME **sostyeni** (*south-east.*), ME **sousteene**, ME **sousteine**, ME **sousteini** (*south-west midl.*), ME **soustene**, ME **sousteyne**, ME **suisteyned** (past participle, perh. transmission error), ME **susteene**, ME **susteini** (*south-west midl.*), ME **susteiny** (*south-west midl.*), ME **susten**, ME **susteni**, ME **susteny** (*south-west.*), ME **susteygne**, ME **susteyni** (*south-west midl.*), ME **susteyny** (*south-west midl.*), ME **susteynye** (*south-west midl.*), ME **sustien**, ME **sustiene**, ME **sustylene**, ME **sustyne**, ME **svnsteyne** (transmission error), ME **yusteyned** (past participle, transmission error), ME 16 **susteen**, ME-15 **substeyne**, ME-15 **susteign**, ME-15 **sustigne**, ME-16 **sustaine**, ME-16 **sustayn**, ME-16 **sustayne**, ME-16 **susteigne**, ME-16 **susteine**, ME-16 **sustene**, ME-16 **susteyn**, ME-16 **susteyne**, ME- **sustain**, lME **stysteneys** (3rd singular present indicative, transmission error), 15-16 **sustein**, 15-16 **swstene**; Sc. pre-17 **sestynnit** (past participle), pre-17 **soustenyt** (past tense), pre-17 **suestnit** (past tense), pre-17 **sustaine**, pre-17 **sustane**, pre-17 **sustayne**, pre-17 **sustean**, pre-17 **susteane**, pre-17 **susteene**, pre-17 **sustein**, pre-17 **susteine**, pre-17 **susten**, pre-17 **sustene**, pre-17 **susteyn**, pre-17 **susteyne**, pre-17 **sustine**, pre-17 **swsteyne**, pre-17 17- **sustain**, pre-17 18- **susteen**.

β. ME **suteigne**, ME **suteynde** (past participle), ME **suteyned** (past participle).

Etymology: < Anglo-Norman *susteiner*, *susteigner*, *sustener*, *sustigner*, *sostener*, Anglo-Norman and Old French *sustenir*, Anglo-Norman and Old French, Middle French *soustenir*, *sostenir*, Old French, Middle French *soutenir* (French *soutenir*) to bear, withstand, endure (c880), to provide food for (c1050), to strengthen (c1100), to bear the weight of, hold up (c1140), (of a person) to stand up, remain standing (c1165), to provide the means of subsistence (for someone) (c1170), to provide moral or psychological support for (someone) (13th cent.), to keep in existence, to perpetuate (early 13th cent.), to continue, to defend, support (an opinion, belief, statement, cause, etc.) (both 1269-78; compare *soutenir un thèse* (1649)), to bear a charge or expense (1297), to uphold (a person's reputation, honour, etc.) (1340) < classical Latin *sustinēre* to hold up, support, to maintain, preserve, to uphold, to keep from failing or giving way, to support with food or resources, to withstand, to bear the weight of, shoulder, to play the part of, to submit to, endure, to tolerate, to hold back, to put off, defer, in post-classical Latin also to wait for (Vetus Latina) < *sus-* SUB- *prefix* + *tenēre* to

- c1400 (►c1378) LANGLAND *Piers Plowman* (Laud 581) (1869) B. xv. l. 275 Þorw þe mylke of þat mylde best þe man was susteyned.
- ?a1425 *Mandeville's Trav.* (Egerton) (1889) 68 Of concubines ilke man takes als many as he may sustene of his gudes.
- c1450 (►c1350) *Alexander & Dindimus* (Bodl.) (1929) l. 797 Alle þe godus þat 3e geten..Serven for to sustaine 3our unsely wombe.
- ?1483 CAXTON tr. *Caton* l. sig. aij, Thou oughtest to loue thy fader and moder nexte after god, and to..susteyne them in theyr necessityes.
- c1500 *Melusine* (1895) 187 They oughte to helpe and susteyne the wydowes an orphenyns.
- 1596 T. NASHE *Haue with you to Saffron-Walden* sig. F2, Not content to..sustaine his hungry bodie with wythred scallions and greene cheese.
- 1653 H. HAMMOND *Paraphr. & Annot. New Test.* 21 Bread or ordinary means of sustaining men.
- 1667 MILTON *Paradise Lost* v. 415 Whatever was created, needs To be sustaind and fed.
- 1685 J. EVELYN *Diary* (1955) IV. 482 The daughter of a poore labouring man who sustain'd her parents..by her labour.
- 1712 J. BOCKETT *Gentle Divinity & Morality* 58 Fathers get Riches with Deceit and Craft to sustain their Children.
- 1777 W. ROBERTSON *Hist. Amer.* I. IV. 322 The difficulty of sustaining their children becomes so great, that it is not uncommon to abandon or destroy them.
- 1828 *New Monthly Mag.* Mar. 272 [He] lost it to the last livre, and had nothing left to retrieve his losses, or to sustain his family.
- 1899 *Gleanings Bee Culture* 1 Apr. 257/1 If I resided outside of a city, I could easily live and sustain my family on the product of the bee business.
- 1922 *Amer. Jrnl. Clin. Med.* July 522/2 Doctor Martin was a son of a farmer—one who toiled and sustained his family from the earth itself.
- 1974 D. DAMAS *Nomads of North* in J. Billard *World of Amer. Indian* 78 (caption) To sustain family and dogs, an inland hunter had to kill 150 or more of these animals a year.

b. Of land, a place, etc.: to provide or be the source of the food, drink, etc., necessary to keep (a person) alive and healthy; (of food, drink, etc.) to give essential nourishment to (a person).

- c1300 *St. Leonard* (Harl.) l. 94 in C. D'Evelyn & A. J. Mill *S. Eng. Legendary* (1956) 479 (*MED*), So moche folc þider gan falle þat þe place nowhar ne3 nemi3te susteny alle.
- c1325 (►c1300) *Chron. Robert of Gloucester* (Calig.) l. 7755 (*MED*), Hom þo3te in engelond so muche folc neuere nas þat it was wonder ware þoru isousteined it was.
- a1500 (►a1415) J. MIRK *Festial* (Gough) 285 (*MED*), Pen ys þer bred þat ys gostly fode and susteynyth þe sowle as oþer bred doþe þe body.
- a1538 T. STARKEY *Dial. Pole & Lupset* (1989) 50 Other cuntreys in lyke space or les dothe susteyn much more pepul then dothe thys ourys.
- a1600 R. LINDSAY *Hist. & Cron. Scotl.* (1899) I. 3 Ane hes that micht ane hundreith weill susteine.
- 1615 G. SANDYS *Relation of Journey* 7 Their territories though large and fruitfull, too narrow to sustaine so populous a State.
- 1697 DRYDEN tr. Virgil *Georgics*II, in tr. Virgil *Wks.* 93 Enough remains..His Wife, and tender Children to sustain.
- 1722 T. SHARP *Charity Serm.* 21 Sustaining them a while with perishable Food..or other such transient Favours, in Administration to their bodily Necessities.
- 1792 *Analyt. Rev.* Jan. 52 Many animals live solely on animal food; but..the animals on whom they live, are sustained by vegetables.
- 1844 *Chemist* 5 217/2 The animal kingdom..being ultimately sustained solely by vegetable substances.
- 1898 *Ann. Rep. Commissioner Indian Affairs* 221 There is sufficient hay land on the reservation to sustain some thousands of cattle.
- 1913 W. THOMPSON *Primary Hist. U.S.* (rev. ed.) xvii. 121 He trudged all the way through the snow, with only parched corn to sustain him.
- 1986 J. COX *Spirit of Gardening* 25 Which species sustained Lewis and Clark when they had no other food..we don't know.
- 2004 G. SEYMOUR *Unknown Soldier* ix. 176 She brought him the water that sustained him.

c. To support or maintain (life) by providing food, drink, and other necessities.

- c1330 (►?c1300) *Reinbrun* (Auch.) in J. Zupitza *Guy of Warwick* (1891) 641 Lite þai ete & dronke..Vnneþe her lif sostened is.

Annex 334

Department of Energy of the Republic of the Philippines and Sterling Energy Ltd., *Geophysical Survey and Exploration Contract and Service Contract* (13 June 2002)

**GEOPHYSICAL SURVEY AND
EXPLORATION CONTRACT**

AND

SERVICE CONTRACT

BETWEEN

**REPUBLIC OF THE PHILIPPINES
(DEPARTMENT OF ENERGY)**

AND

STERLING ENERGY LIMITED

Republic of the Philippines

DEPARTMENT OF ENERGY
Manila

GEOPHYSICAL SURVEY AND EXPLORATION CONTRACT

THIS GEOPHYSICAL SURVEY AND EXPLORATION CONTRACT made and entered into this 13TH day of JUNE, 2002 in the City of Manila by and between the:

The GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, hereinafter referred to as the "GOVERNMENT", represented by the DEPARTMENT OF ENERGY, hereinafter referred to as "DEPARTMENT", established pursuant to Republic Act No. 7638, with principal offices at the Energy Center, Merritt Road, Fort Bonifacio, Taguig, Metro Manila, as First Party, and STERLING ENERGY LIMITED, a corporation organized and existing under the laws of England, with office address at Mardall House, 7/9 Vaughan Road, Harpenden, Herts, AL5 4HU, United Kingdom, Hereinafter referred to as "CONTRACTOR":

In the implementation of this Contract, the GOVERNMENT and/or DEPARTMENT and CONTRACTOR are herein referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, all petroleum, crude oil, crude, natural gas and/or casinghead petroleum spirit in the Philippines belong to the State and their disposition, exploration, development, exploitation and utilization are governed by Presidential Decree No. 87, as amended, otherwise known as the "Oil Exploration and Development Act of 1972"; and Section 2, Article XII of the 1987 Constitution;

WHEREAS, the Oil Exploration and Development Act of 1972, (hereinafter called the "Act") declares it to be the policy of the State to hasten the discovery and production of indigenous petroleum through the utilization of government and/or private resources, local and foreign;

SECTION III
EFFECTIVITY

This Contract shall come into effect on the Effective Date

SECTION IV
TERM

- 4.1 This Contract shall be for a term of eighteen (18) months from the Effective Date.
- 4.2 The CONTRACTOR may request a six (6) month extension of the term of this CONTRACT by notifying the DEPARTMENT of such request at least sixty (60) days prior to the end of the term or any extension thereof. The DEPARTMENT shall make its decision within thirty (30) days from its receipt of the notice and its approval shall not be unreasonably withheld if appropriate technical justification is provided by CONTRACTOR.
- 4.3 The term shall be further extended for a period of twelve (12) months if CONTRACTOR elects to drill the first Option Well or acquire 3D seismic as detailed in Section V below.
- 4.4 The term shall be further extended for a period of twelve (12) months if CONTRACTOR elects to drill the second Option Well or acquire 3D seismic as detailed in Section V below.

SECTION V
GEOPHYSICAL WORK PROGRAMMES AND COSTS

- 5.1 The CONTRACTOR shall submit a Geophysical Work Programme for the approval of the DEPARTMENT prior to the actual start of the Geophysical Work Programme. The Geophysical Survey Programme shall detail the nature of the work proposed to be done, and the areas to be covered by such work. The Geophysical Work programme shall provide for:
- a. Conduct of an engineering feasibility study to determine the economic viability of the Sampaguita gas discovery.

- b. Seismic interpretation of 350kms of 1995 seismic data over the Reed Bank area, including analysis of AVO and amplitude anomalies.
 - c. Seismic reprocessing as required by the results of the interpretation, including AVO and inversion where necessary.
- 5.2 Upon receipt of data resulting from such programmes, CONTRACTOR shall make an interpretation and evaluation thereof and issue a report thereon to the DEPARTMENT at the same time the CONTRACTOR formally notifies the DEPARTMENT of its decision to:
- a. exercise the option to drill the first option well or
 - b. exercise the option to acquire 3D seismic over the area or
 - c. convert the Geophysical Survey Area to the Service Contract Area or
 - d. relinquish the Contract area.
- 5.3 After completion of the work obligation provided for in Section 5.1 above and the minimum expenditure under Section 5.4 below, CONTRACTOR may abandon the contract without any further obligation or liability to the DEPARTMENT by written notice at least ten (10) days before said expiration of the contract.
- 5.4 CONTRACTOR shall be obliged to spend in direct prosecution of the Geophysical Work programme outlined in Section 5.1 not less than the aggregate amount of Two Hundred Thousand United States Dollar (US\$200,000) and shall include:
- (a) Direct cost incurred pursuant to this Contract or consultant and the cost of processing data arising therefrom:
 - (b) Other direct costs from outside contracts or consultant services directly related to the work program;
 - (c) Costs attributable to the Geophysical Work programme and the interpretation and evaluation of data arising therefrom.
- 5.5 The CONTRACTOR by written notice to the DEPARTMENT given not later than the last day prior to the expiration of the term of the Contract under Section 4.1 shall have the successive option to drill up to two (2) exploratory wells in the Geophysical Survey Area at location or locations to be selected by the CONTRACTOR and duly approved by the

DEPARTMENT. Subject to technical justification either but not both of these Option Wells may be replaced by a programme of 3D seismic acquisition.

- 5.6 CONTRACTOR may exercise its option to drill the first Option Well or carry out 3D seismic operations by notifying the DEPARTMENT of its intention prior to the expiration of the term of the Contract under Section 4.1. CONTRACTOR upon making such election shall be obligated to spud the first Option well or commence the 3D seismic operations prior to end of the extended term provided for in Section 4.3 and shall spend at least Two Million United States Dollars (US\$2,000,000) in its drilling-related Operations for the first Option Well if the well is on a shallow water area or in itself a shallow well or Four Million United States Dollars (US\$4,000,000) if it is on a deep water area or in itself a deep well as defined in the attached Service Contract, or at least One Million United States Dollars (US\$1,000,000) for 3D seismic acquisition, processing and interpretation.
- 5.7 If CONTRACTOR elects to drill the first Option Well or to acquire 3D seismic data, then 90 days from the completion of the well, or 180 days from the completion of processing of the 3D seismic, as applicable, CONTRACTOR shall notify the DEPARTMENT of its election of one of the following:
- (a) totally relinquish the Geophysical Survey Area; or
 - (b) convert the Geophysical Survey Area into a Service Contract Area; or
 - (c) drill an Option Well; or acquire 3D seismic data, or
 - (d) declare that the first Option Well discovered Petroleum in sufficient quantity that could ordinarily be commercially produced except for reasons indicated in Section 5.10 (Moratorium Periods).
- 5.8 If the CONTRACTOR elects to drill the second Option Well or to acquire 3D seismic data, then CONTRACTOR shall be obligated to spud the Option Well or commence 3D seismic operations prior to the end of the extended term provided for in Section 4.4 and shall spend at least Two Million United States Dollars (US\$2,000,000) in its drilling-related Operations for the second Option Well if it is on a shallow water area or in itself a shallow well or Four Million United States Dollars (US\$4,000,000) if it is on a deep water area or in itself a deep well, or at least One Million United States Dollars (US\$1,000,000) for 3D seismic acquisition, processing and interpretation.

5.9 If CONTRACTOR elects to drill the second Option Well or acquire 3D seismic data, then 90 days from the completion of the well, or 180 days from the completion of processing of the 3D seismic, as applicable, CONTRACTOR shall notify the DEPARTMENT of its election of one of the following:

- (a) totally relinquish the Geophysical Survey Area; or
- (b) convert the Geophysical Survey Area into a Service Contract Area; or
- (c) declare that one (1) or more of the Option Well discovered Petroleum in sufficient quantity that could ordinarily be commercially produced except for reasons indicated in Section 5.10 .

5.10 If the CONTRACTOR elects either Section 5.7(d) or Section 5.9(c) the contract shall be extended while the CONTRACTOR and the DEPARTMENT jointly review the findings of CONTRACTOR. If upon mutual satisfaction that:

- (a) Technological means to produce in commercial quantity does not yet exist.
- (b) Unfavourable conditions such as geo-political instability making production non-perishable as determined by both the DEPARTMENT and CONTRACTOR:

the term of this CONTRACT shall be extended for a period of five (5) years corresponding to 5.10(a) and two (2) years corresponding to 5.10 (b) renewable upon mutual consent by the CONTRACTOR and the DEPARTMENT. These shall herein be referred to as MORATORIUM PERIODS. The decision as to whether the Moratorium Period is justified shall be based, inter alia, on projects and operations found elsewhere in the world at compatible conditions to those encountered by the CONTRACTOR under this Contract. During the Moratorium Periods, based on 5.10(a) and (b), CONTRACTOR shall actively pursue the necessary research, by itself or in joint industry studies to commercially produce the discovered Petroleum. The CONTRACTOR shall annually report to the DEPARTMENT its progress in its research work. If during the Moratorium Periods, CONTRACTOR and DEPARTMENT agree that commercial production can already be achieved, then the CONTRACTOR may convert the Geophysical Survey Area into a Service Contract Area. If at the end of the Moratorium Period the CONTRACTOR has not yet converted the Geophysical Survey Area to a Service Contract Area, then CONTRACTOR must elect within a period of sixty (60) days following the Moratorium Period to either convert the Geophysical

Survey Area into a Service Contract or to abandon the Geophysical Survey Area without further commitment or obligations under this Contract.

- 5.11 During the term or any extension of the term of this Contract, CONTRACTOR maintains the right, upon notice to the DEPARTMENT, to exercise its right to convert the Geophysical Survey Area into a Service Contract Area and enter into the Service Contract.
- 5.12 If CONTRACTOR notifies the DEPARTMENT of its election to drill an Option Well and fails to drill such Option Well (for reasons other than Force Majeure, as hereinafter defined) then CONTRACTOR shall pay to the DEPARTMENT Two Million United States Dollars (US\$2,000,000), less the expenditure incurred by CONTRACTOR in the direct prosecution of drilling of such Option Well.
- 5.13 If CONTRACTOR enters into the Service Contract, then the Geophysical Survey Operations performed under this Contract shall be included within the meaning of 'Petroleum Operations' or 'Operations', and the expenditures incurred by CONTRACTOR in performing Geophysical Survey Operations, shall be included within the meaning of 'Operating Expenses' as those terms are respectively defined in the Service Contract and, accordingly, Geophysical Survey Operations shall be applied toward satisfying the CONTRACTOR's work commitments and monetary expenditure requires for the first two (2) Contract Years under Section 6.1 of such Service Contract and the expenditures incurred by CONTRACTOR in performing Geophysical Survey Operations, shall be recoverable by CONTRACTOR as Operating Expenses under Section 8.2 of such Service Contract.
- 5.14 The procedure for submittal of work programmes for Operations related to the drilling of any Option Well shall be governed by the Service Contract.

SECTION VI

RIGHTS AND OBLIGATIONS OF THE PARTIES

- 6.1 CONTRACTOR shall have the following obligations:

manner of implementing any existing laws or regulations; or (c) any introduction of new law or regulations; or (d) any cancellation of existing laws or regulations.

10.3 This Contract shall not be annulled, amended or modified in any respect except by the mutual consent in writing of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and year first above written.

GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

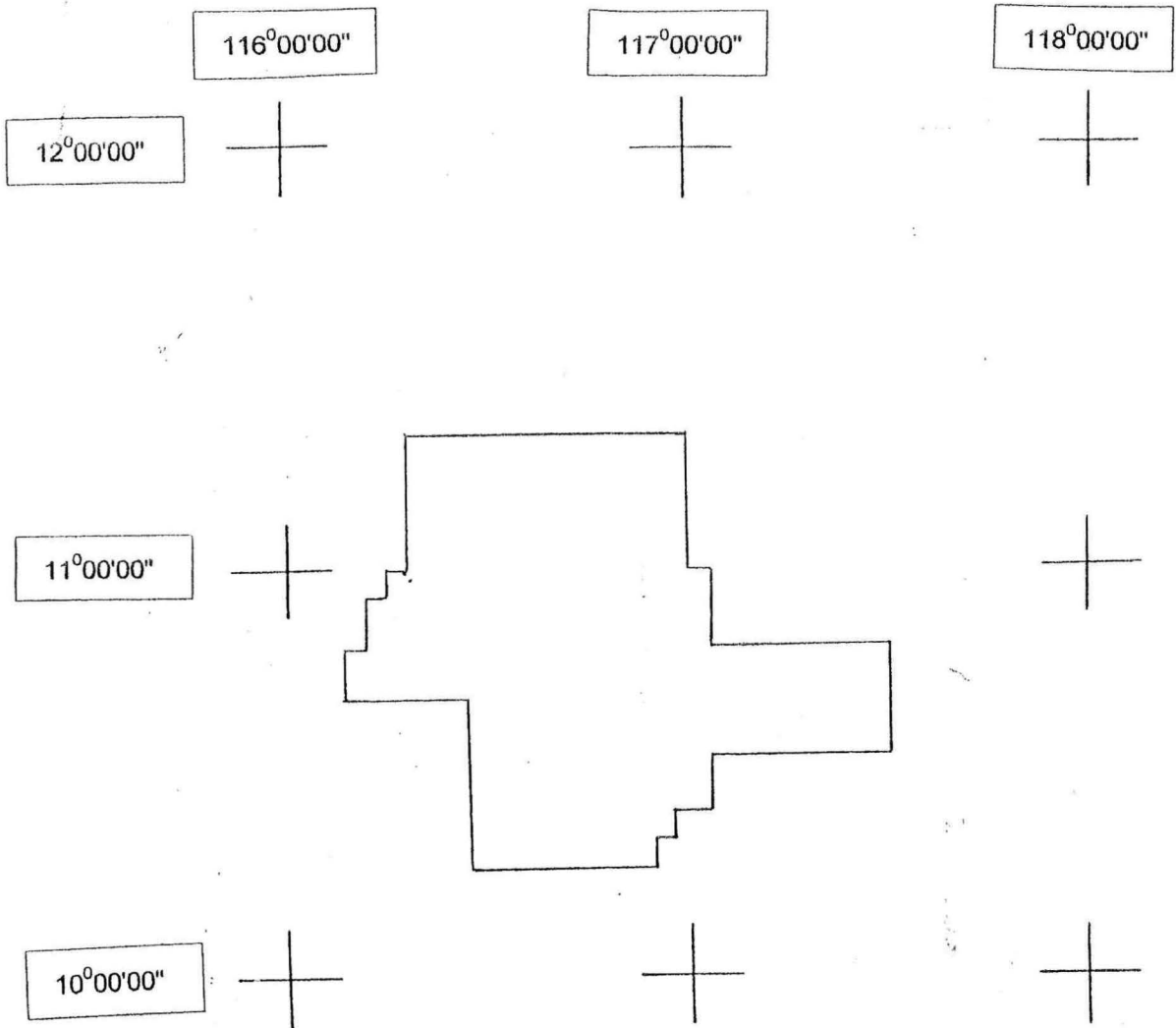
By: Vincent P. King
Title: SECRETARY OF ENERGY

STERLING ENERGY

By: Richard P. L. ...
Title: CHAIRMAN

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**REED BANK GSEC MAP1
STERLING ENERGY**



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Technical Description
(Reed Bank GSEC Map1)

CORNER	LATITUDE	LONGITUDE
1	11°20'	117°00'
2	11°00'	117°00'
3	11°00'	117°03'
4	11°48'	117°03'
5	10°45'	117°30'
6	10°32'	117°30'
7	10°32'	117° 03'
8	10°24'	117° 03'
9	10°24'	116° 57'
10	10°20'	116° 57'
11	10°20'	116° 54'
12	10°16'	116° 54'
13	10°16'	116° 27'
14	10°16'	116° 27'
15	10°16'	116° 09'
16	10°48'	116° 09'
17	10°48'	116° 12'
18	10°56'	116° 12'
19	10°56'	116° 15'
20	11°00'	116° 15'
21	11°00'	116° 18'
22	11°20'	116° 18'

Annex 335

Department of Energy of the Republic of the Philippines and PNOC Exploiration Corporation, *West Calamian Block Service Contract No. 58* (12 Jan. 2006)

SERVICE CONTRACT

WEST CALAMIAN BLOCK

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Republic of the Philippines
DEPARTMENT OF ENERGY
Taguig City
Metro Manila

SERVICE CONTRACT

This SERVICE CONTRACT (the "Contract") is made and entered into this 12TH day of JANUARY 2006 at Taguig City, Metro Manila, Philippines, by and between:

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, hereinafter referred to as the "Government," acting through the DEPARTMENT OF ENERGY, with principal office at Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila, in this act represented by the Secretary, RAPHAEL P. M. LOTILLA, hereinafter referred to as the "DEPARTMENT;"

- and -

PNOC EXPLORATION CORPORATION a corporation organized and existing under and by virtue of the laws of the Philippines, with postal address at Building 1 Energy Center, Fort Bonifacio, Taguig City 1634 Metro Manila, in this act represented by its President and CEO, EDUARDO V. MAÑALAC, hereinafter referred to as the "CONTRACTOR;"

In the implementation of this Contract, the Government shall act through and be represented by the DEPARTMENT. The DEPARTMENT and the CONTRACTOR are hereinafter referred to individually as "Party", and collectively as "Parties".

WITNESSETH; That:

WHEREAS, all Petroleum, as defined in this Contract, and located within the territorial jurisdiction of the Philippines belong to the State and their disposition, exploration, development, exploitation and utilization are governed by Presidential Decree No. 87, as amended, otherwise known as the Oil Exploration and Development Act of 1972 (the "Act") and Section 2, Article XII of the 1987 Constitution ;

WHEREAS, the Act declares it to be the policy of the State to hasten the discovery and production of indigenous Petroleum through the utilization of Government and/or private resources;

WHEREAS, the CONTRACTOR desires and agrees to provide funds, and apply the appropriate and advanced technology and expertise to cooperate with the DEPARTMENT for the exploration, development and exploitation of Petroleum resources within the Contract Area and agrees to be subject to the laws and decrees of the Government and other rules and regulations of the DEPARTMENT in the implementation of the Contract;

NOW, THEREFORE, in view of the foregoing premises, the DEPARTMENT and CONTRACTOR hereby stipulate and agree, as follows:

SECTION I

SCOPE

- 1.01 This Contract is entered into pursuant to Section 7 of the Act with all necessary technology and financing as well as the required services to be furnished by the CONTRACTOR in accordance with the provisions herein contained. The CONTRACTOR shall undertake and execute the Petroleum Operations contemplated herein under the full control, management and supervision of the DEPARTMENT.
- 1.02 The CONTRACTOR shall be responsible to the DEPARTMENT for the execution of the Petroleum Operations in accordance with the provisions of this Contract, and is hereby appointed and constituted the exclusive party to conduct the Petroleum Operations on behalf of the Government. The DEPARTMENT shall have the right to require performance of any or all obligations of the CONTRACTOR under this Contract against any or all of the companies comprising the CONTRACTOR.
- 1.03 The CONTRACTOR shall assume all exploration risks such that if no Petroleum In Commercial Quantity is discovered and produced, it will not be entitled to reimbursement of expenses incurred in connection with this Contract.
- 1.04 During the term of this Contract, the total production achieved in the conduct of the Petroleum Operations shall be accounted for between the Parties in accordance with Section X hereof.

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SECTION II
DEFINITIONS

In this Contract, the words and terms defined in Section 3 of the Act shall, unless otherwise specified therein, have meaning in accordance with the following definitions:

- 2.01 **Act** – refers to Presidential Decree No. 87, as amended.
- 2.02 **Accounting Procedure** – refers to the set of procedures, guidelines and arrangement between the Parties to govern the recording and proper entry of expenses, costs and income, attached as Annex “B” to this Contract.
- 2.03 **Affiliate** - means: (a) a company in which any one of the companies comprising the CONTRACTOR holds directly or indirectly at least fifty percent (50%) of its outstanding shares entitled to vote; or, (b) a company which holds directly or indirectly at least fifty percent (50%) of the outstanding shares entitled to vote of one of the companies comprising the CONTRACTOR; or, (c) a company in which at least fifty percent (50%) of its outstanding shares entitled to vote are held by a company which holds directly or indirectly at least fifty percent (50%) of the outstanding shares entitled to vote of one of the companies comprising the CONTRACTOR.
- 2.04 **Annual Gross Production of Crude Oil** – means the total amount of Crude Oil produced from each Oil Field and/or Gas Field within the Contract Area considered separately in each Calendar Year, less the amount of Crude Oil used for Petroleum Operations and the amount of losses, which is saved and measured by a device jointly-approved before the Date of Commencement of Commercial Production at a jointly-agreed delivery point.
- 2.05 **Annual Gross Production of Natural Gas** – means the total amount of Natural Gas produced from each Oil Field and/or Gas Field within the Contract Area considered separately in each Calendar Year, less the amount of Natural Gas used for Petroleum Operations and the amount of losses, which is saved and measured by a device jointly-approved before the Date of Commencement of Commercial Production at a jointly-agreed delivery point.

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- 2.06 **Appraisal Well** – means a well drilled for the purpose of evaluating the commerciality of a geological trap in which Petroleum has been discovered.
- 2.07 **Appraisal Work Program** – refers to the Work Program developed by the CONTRACTOR and approved by the DEPARTMENT to determine the commerciality of a Petroleum discovery.
- 2.08 **Associated Gas** – means all gaseous hydrocarbons produced in association with Crude Oil from oil reservoirs, including residue gas remaining after the extraction of liquid hydrocarbons therefrom.
- 2.09 **Barrel** - means 42 U.S. gallons or 9702 cubic inches at a temperature of 60 degrees Fahrenheit (60°F).
- 2.10 **Calendar Quarter** – means a period of three (3) consecutive Gregorian months under the Gregorian calendar beginning on the first (1st) day of January, the first (1st) day of April, the first (1st) day of July, or the first (1st) day of October.
- 2.11 **Calendar Year** - means a period of twelve (12) consecutive months commencing on January 1 and ending on the following December 31.
- 2.12 **Casinghead Petroleum Spirit** - means any hydrocarbon, including condensate, existing in liquid form at a temperature of sixty degrees Fahrenheit (60°F) and at an atmospheric pressure of 14.65 PSIA, which is obtained from Natural Gas at the well head or by separation or by any chemical or physical process or ethane, propane, and butane produced by gas processing.
- 2.13 **Contract** - means this Service Contract.
- 2.14 **Contract Area** - means, at any time, the area within the territory of the Philippines, which is the subject of this Contract. The Contract Area is outlined and more particularly described in Annex "A" attached hereto.
- 2.15 **CONTRACTOR** – means the Contractor specified in the Introduction of Parties hereto, including assignee(s) in accordance with Section XXIV hereof.



- 2.16 **Contract Year** - means a period of twelve (12) consecutive months counted from the Effective Date of this Contract and, thereafter, from each anniversary of such Effective Date.
- 2.17 **Crude Oil** - means oil in its natural state before the same has been refined or otherwise treated. It does not include oil produced through destructive distillation of coal, bituminous shales, or other stratified deposits, either in its natural state or after the extraction of water and sand or other foreign substances therefrom.
- 2.18 **Crude Oil Exported** - shall include not only Crude Oil exported as such, but also indigenous Crude Oil refined in the Philippines for export.
- 2.19 **Date of Commencement of Commercial Production** - means the date of commencement of production of Crude Oil and/or Natural Gas from any Oil Field and/or Gas Field determined and announced by the DEPARTMENT in accordance with the provisions in Section IX hereof, after completion of the Development Operations as provided in the Overall Development Program for the said Oil Field and/or Gas Field. This excludes production from extended well test (EWT) and drillstem test (DST).
- 2.20 **Deepwater Area** - refers to an area where water depths are in excess of two hundred (200) meters.
- 2.21 **Deepwater Contract** - refers to a service contract in which at least eighty-five percent (85%) of the total contract area is in water depths beyond two hundred (200) meters.
- 2.22 **Deepwater Contractor** - means the contractor in a Deepwater Contract, whether acting alone or in consortium with others.
- 2.23 **Deep Well** - refers to a well drilled to a subsea depth of at least 10,000 ft. at a minimum cost of Five Million United States dollars (US\$ 5,000,000.00).
- 2.24 **Delivery Point** - means the point at which Petroleum reaches the delivery facility as agreed upon by the CONTRACTOR and the buyer in a sales contract.
- 2.25 **DEPARTMENT** - means the Department of Energy of the Government, or its successor.

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- 2.26 **Development Area** – means a portion of the Contract Area covering an Oil Field and/or Gas Field, which has been designated for development and any potential contiguous extension areas to such Field(s) within the Contract Area. The Development Area(s) shall be proposed by the CONTRACTOR, demarcated by the DEPARTMENT and delineated as such in the Overall Development Program approved by the DEPARTMENT. The Development Area shall automatically cease to be in force as of the date of approval of the Production Area.
- 2.27 **Development Cost** – means the cost incurred by the CONTRACTOR for Development Operations.
- 2.28 **Development Operations** – mean the operations carried out for the realization of Petroleum production from the date of approval of the Overall Development Program for any Oil Field and/or Gas Field by the DEPARTMENT including design, construction, installation, drilling, and related research work as well as relevant activities carried out before the Date of Commencement of Commercial Production for the realization of Petroleum production.
- 2.29 **Development Well** – means any well drilled in a Development Area or a Production Area after the date of approval of the Overall Development Program for the purpose of producing Petroleum, increasing production or accelerating extraction of Petroleum, including production wells, injection wells and dry holes unless such well is designated in the Overall Development Program as an Exploration Well.
- 2.30 **Effective Date** - means the date of execution of this Contract by the Parties.
- 2.31 **Expatriate Employee** – means an alien who is a permanent resident of a foreign country and is legally employed by the CONTRACTOR or Subcontractor for the Petroleum Operations within the scope of this Contract.
- 2.32 **Exploration Area** – means a portion of the Contract Area which has not been relinquished before the expiration of the Exploration Period and which is not included in a Development Area or a Production Area.
- 2.33 **Exploration Cost** – means the cost incurred by the CONTRACTOR for Exploration Operation.

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- 2.34 **Exploration Operations** – mean the operations carried out for the purpose of discovering Petroleum-bearing traps by means of geological, geophysical, geochemical and other methods including exploratory well drilling; all the work undertaken to determine the commerciality of traps in which Petroleum has been discovered including Appraisal Well drilling and feasibility studies, formulation of the Overall Development Program; and activities related to all such operations, including any work done prior to approval of the Overall Development Program in an attempt to identify a market for Natural Gas.
- 2.35 **Exploration Period** – means the seven (7)-year period, or any extension thereof, referred to in Section 4.01 of this Contract during which the CONTRACTOR is allowed to perform exploration works in the Contract Area.
- 2.36 **Exploration Well** – means any Wildcat Well and/or Appraisal Well drilled within the Exploration Period, including dry hole(s) and discovery well(s).
- 2.37 **Filipino Participation Incentive Allowance or “FPIA”** - means:
- (a) the sliding scale allowance from one and one-half percent (1.5%) to seven and one-half percent (7.5%) of the gross proceeds granted to the CONTRACTOR when the aggregate participation in the Contract by one or more Filipino citizens and/or Philippine Corporations is from fifteen percent (15%) to thirty percent (30%), in accordance with OEA Circular No. 87-12-003; or,
 - (b) the allowance of seven and one-half percent (7.5%) of the gross proceeds granted to CONTRACTOR when the aggregate participation in the Contract by one or more Filipino citizens and/or Philippine Corporations is at least fifteen percent (15%) in respect of a Deepwater Contract, in accordance with OEA Circular No. 92-10-05; or,
 - (c) the allowance of seven and one-half percent (7.5%) of the gross proceeds granted to the CONTRACTOR when the aggregate participation in the Contract by one or more Filipino citizens and/or Philippine Corporations is at least fifteen percent (15%) in respect of the drilling of a well by the CONTRACTOR in water depths beyond two hundred (200) meters, whether within or outside a Deepwater Area, in accordance with DOE Circular No. 94 01-01.


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- 2.38 **Filipino Personnel** – means any citizen of the Republic of the Philippines employed by the CONTRACTOR and/or the Subcontractor(s).
- 2.39 **Force Majeure** – refers to events or circumstances that cannot be foreseen or which, though foreseen, are inevitable, as provided in Section 26.01 (b) herein.
- 2.40 **Foreign Exchange** - means any currency other than that of the Philippines which is freely convertible into gold or currencies eligible to form part of the country's international reserves and is acceptable to the DEPARTMENT and the CONTRACTOR.
- 2.41 **Gas Field** - means an accumulation of gas within the Contract Area composed of one or several overlapping gas-bearing zones, within one (1) trap or within associated traps of the same independent geological structure including gas caps, which may or may not be complicated by faulting, and which has commercial value determined in accordance with the procedures stipulated in Section XIII hereof.
- 2.42 **Government** - means the Government of the Philippines.
- 2.43 **GSEC** – means Geophysical Survey and Exploration Contract.
- 2.44 **Gross Income** - means the gross proceeds from the sale, exchange or disposition of all Petroleum, Crude Oil, Natural Gas and/or Casinghead Petroleum Spirit produced under this Contract and sold or exchanged during the Calendar Year at Posted Price or Market Price, as the case may be, all as determined pursuant to Section X and such other income which are incidental to or arising from any one or more of the Petroleum Operations of CONTRACTOR.
- 2.45 **Market Price** - means the price which is or would be realized for Petroleum produced under this Contract if sold in a transaction between independent persons dealing at arm's length in a free market; *Provided*, however, that the Market Price for Natural Gas including condensate shall be determined in accordance with Section X and Section XIII hereof.
- 2.46 **Moratorium**– refers to a period not exceeding three (3) years during which this Contract shall be suspended in accordance with Section 4.05.

- 2.47 **Natural Gas** - means Non-Associated Gas and Associated Gas in their natural state including gas obtained from boreholes and wells and consisting primarily of hydrocarbons.
- 2.48 **Net Proceeds** - has the meaning set forth in Section 10.04 hereof.
- 2.49 **Non-Associated Gas** – means all gaseous hydrocarbons produced from gas reservoirs, including wet gas, dry gas and residue gas remaining after the extraction of liquid hydrocarbons from wet gas.
- 2.50 **Oil Field** – means an accumulation of Oil within the Contract Area composed of one (1) or several overlapping oil-bearing zones, within one (1) trap or within associated traps of the same independent geological structure, which may or may not be complicated by faulting, and which has commercial value determined in accordance with the procedures stipulated in Section IX hereof.
- 2.51 **Oil Field and/or Gas Field Straddling a Boundary** – means any Oil Field and/or Gas Field extending beyond the Contract Area.
- 2.52 **Operating Cost** – means the cost incurred by the CONTRACTOR for the Production Operations.
- 2.53 **Operating Expenses** - mean the total expenditures incurred by CONTRACTOR both within and outside the Philippines in all Petroleum Operations performed pursuant to this Contract as determined in accordance with the Accounting Procedure attached hereto and made part thereof as Annex "B". These expenses shall include, but are not necessarily limited to, the cost of seismic surveys, reprocessing and special processing of seismic data, geological and geophysical studies, drilling, equipping and completing wells, engineering studies, construction of well platforms and tank batteries, flowline systems and terminals, the cost of operating and maintaining all such facilities including general and administrative costs and expenses, home office overhead, in accordance with the Accounting Procedure (Annex "B"). Operating Expenses shall also include, but are not necessarily limited to, charges relating to lifting, transportation, storage, handling, and sale of Petroleum as specified in Section X, whether for export or domestic consumption, together with two-thirds (2/3) of interest and financing charges for development and

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production operations. However, the cost of transportation of petroleum by pipeline shall be subject to separate agreement referred to in Section 2.57 hereof. In the recovery of Operating Expenses, the first to be recovered shall be the Operating Cost followed by the Exploration Cost and the last is the Development Cost. If CONTRACTOR has any previous expenditures for Petroleum Operations over the Contract Area under previous Geophysical Survey and Exploration Contracts (GSECs) before the Effective Date of this Contract then the expenditures shall be included as Operating Expenses up to its participation in those GSECs and expenses account transferred by other previous contractors in those GSECs, subject to validation by the DEPARTMENT.

- 2.54 **Overall Development Program** – means a plan prepared by the CONTRACTOR for the development of an Oil Field and/or Gas Field which has been reviewed and approved by the DEPARTMENT and such plans shall include, but shall not be limited to recoverable reserves, the Development Well pattern, master design, production profile, economic analysis and time schedule of the Development Operations.
- 2.55 **Petroleum** - means any Crude or mineral oil, Natural Gas or hydrocarbon gas, condensate, Casinghead Petroleum Spirit, bitumen, asphalt, mineral gas, and all other similar or naturally associated substances with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits.
- 2.56 **Petroleum In Commercial Quantity** - means Petroleum in such quantities which will permit its being economically developed, either on its own or in combination with other existing and/or future discoveries of Petroleum, as determined by the CONTRACTOR and approved by the DEPARTMENT after taking into consideration the location of the Petroleum reserves, the depths and number of wells required to be drilled, and the transport and terminal facilities needed to exploit the Petroleum which has been discovered.
- 2.57 **Petroleum Operations** - mean searching for and obtaining Petroleum within the Philippines under this Contract, drilling and natural flow or suction or the like, and all other operations incidental thereto. It includes the transportation, storage, handling and sale (whether for export or domestic consumption) of Petroleum so obtained but does not include any: (1) transportation of Petroleum outside the Philippines; (2) processing or refining at a refinery; or (3) any transaction in the products so refined. It includes both transportation of Petroleum up to Delivery Point to the buyer or buyers thereof, and the

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facilities upstream of said Delivery Point for extraction of such Petroleum. In the event that the DEPARTMENT agrees to the participation of the CONTRACTOR in pipeline installation and operation to transport the Petroleum, then the Parties shall negotiate a separate agreement covering construction and operation of such pipeline. However, Petroleum Operations do not include pipeline gas distribution and as a public utility.

- 2.58 **Philippine Corporation** - means a corporation organized under Philippine laws at least sixty percent (60%) of the voting capital of which is owned and held by Filipino citizens and/or other Philippine corporations.
- 2.59 **Philippine Income Tax** - refers to taxes imposed under the National Internal Revenue Code of the Philippines, as amended, upon taxable corporate income.
- 2.60 **Philippines** - means the Republic of the Philippines
- 2.61 **Posted Price** - means the Free on Board (FOB) price established by the CONTRACTOR and the DEPARTMENT for each grade, specific gravity, and quality of Crude Oil offered for sale to buyers generally for export at the particular point of export, which price shall be based upon geographical location and the fair market export values for Crude Oil of comparable grade, specific gravity, quality and quantity.
- 2.62 **Production Area** - means that portion of the Contract Area where all reservoirs containing Petroleum In Commercial Quantity are delineated by the CONTRACTOR with the approval of the DEPARTMENT.
- 2.63 **Production Operations** - mean the operations and all activities related thereto carried out for Petroleum production of an Oil Field and/or Gas Field from the Date of Commencement of Commercial Production, such as extraction, injection, stimulation, treatment, storage, transportation, and lifting, etc.
- 2.64 **Production Period** - means the twenty-five (25)-year period, or any extension thereof, referred to in Section 4.01 of this Contract during which the CONTRACTOR is allowed to perform Production Operations.
- 2.65 **Production Year** - means, in respect of each Oil Field and/or Gas Field, a period of twelve (12) consecutive Gregorian months under the Gregorian calendar beginning on the

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Date of Commencement of Commercial Production of such Field and thereafter from the anniversary thereof.

- 2.66 **Subcontractor(s)** – means an individual or entity which provides the CONTRACTOR with goods or services under a separate agreement by which the CONTRACTOR performs or causes to perform some of its activities and/or obligations under this Contract.
- 2.67 **Sub-Phase** - means the phase within the Exploration Period as determined in accordance with Section 4.01 herein.
- 2.68 **Taxable Net Income** - shall have the meaning set forth in Section XI hereof.
- 2.69 **Third Party** - means any individual or entity except the DEPARTMENT and the CONTRACTOR.
- 2.70 **US\$** - means bills or notes of legal tender in the United States of America
- 2.71 **Wildcat Well** – means a well drilled on any geological trap for the purpose of searching for Petroleum accumulations, including wells drilled for the purpose of obtaining geological and geophysical parameters.
- 2.72 **Work Program** – means all types of plans formulated for the performance of the Petroleum Operations, including plans for exploration, development, and production as approved in Section 8.01 of this Contract.

SECTION III

EFFECTIVITY

This Contract shall come into effect on the Effective Date.

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SECTION IV

TERM

4.01 The Exploration Period under this Contract shall be seven (7) years consisting of five Sub-Phases, the duration of which depends on the proposed Work Programs, commencing on the Effective Date. The Exploration Period may be extended for a maximum period of three (3) years provided that the CONTRACTOR:

- (a) has not been in default in its exploration work obligations and other obligations;
- (b) has drilled to a combined depth, measured from ground level, of a minimum of ten thousand feet of test wells; and,
- (c) has provided a work obligation for the extension acceptable to the DEPARTMENT

Unless Petroleum is discovered at the end of such extension period, the extended Exploration Period shall automatically terminate on the last day of the extension. If Petroleum is discovered by the end of the original or the extended Exploration Period, the CONTRACTOR shall be entitled to an additional extension of the Exploration for a period not exceeding one (1) year, to determine if the Petroleum discovered is of commercial quantity subject to the DEPARTMENT's approval of a Work Program submitted by the CONTRACTOR. This additional extension shall be deemed part of the initial twenty-five (25)-year period for Production Operations if the Contract Area is subsequently developed by the CONTRACTOR.

4.02 Where Petroleum In Commercial Quantity is discovered during the Exploration Period or any extension thereof, this Contract shall remain in force, in respect of any Production Areas delineated pursuant to Section V hereof, during:

- a) the balance of the Exploration Period, or any extension thereof, as the case may be, and
- b) the Production Period which may be renewed for a series of five (5)-year periods but in no case shall such renewal exceed a total of fifteen (15) years under such terms and conditions as may be agreed upon by the Parties at the time of renewal.

Provided that:

- a) the term of this Contract shall in no case exceed fifty (50) years from the Effective Date, and
- b) if, during the Production Period, the CONTRACTOR fails to continue production of Petroleum for more than one (1) year without the prior approval of the

DEPARTMENT, then the DEPARTMENT may unilaterally terminate this Contract.

- 4.03 If the CONTRACTOR discovers Petroleum under this Contract in sufficient quantity that could be normally produced except that, due to inadequate technology, the capability to produce the Petroleum In Commercial Quantity does not yet exist, the CONTRACTOR shall notify the DEPARTMENT and the Parties will jointly review the findings of the CONTRACTOR. Upon mutual satisfaction that technological means to extract Petroleum In Commercial Quantity does not yet exist, then the corresponding work and expenditure obligations under this Contract shall be suspended for a period not exceeding three (3) years (the "Moratorium"), provided that CONTRACTOR, subject to the approval of the DEPARTMENT, shall delineate the Oil Field and/or Gas Field that will be put under Moratorium and elect to either relinquish or continue the Work Program over the rest of the Contract Area, subject to Section V hereof. The decision as to whether a Moratorium is justified shall be based, among others, on projects and operations found elsewhere in the world at comparable depths and conditions to those encountered by the CONTRACTOR under this Contract.
- 4.04 During the Moratorium, the CONTRACTOR shall actively pursue the necessary research, by itself or in joint industry studies, to develop the technology necessary to produce the discovered Petroleum In Commercial Quantity. The CONTRACTOR shall semi-annually report to the DEPARTMENT its progress in developing the requisite technology. If during the Moratorium the CONTRACTOR and the DEPARTMENT mutually agree that technology has developed sufficiently to allow the discovered Petroleum to be Petroleum In Commercial Quantity, then the CONTRACTOR must elect either to terminate the Moratorium and continue with its obligations under this Contract with respect to the Production Area established for the discovered Petroleum, or relinquish with finality the said Production Area without further commitment or obligation under this Contract.

SECTION V

EXCLUSION OF AREAS

- 5.01 On or before the end of the Fourth (4th) Sub-Phase, the CONTRACTOR shall surrender twenty-five percent (25%) of the initial Contract Area.
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- 5.02 On or before the end of the Fifth (5th) Sub-Phase, the CONTRACTOR shall surrender an additional area equal to twenty-five percent (25%) of the initial Contract Area.
- 5.03 In the event that on or before the end of any Sub-Phase during the Exploration Period, the CONTRACTOR has delineated any Production Area, the extent of such Production Area shall be deducted from the initial Contract Area for the purpose of determining the size of such area that must be surrendered pursuant to Sections 5.01 and 5.02 above.
- 5.04 If Petroleum In Commercial Quantity is discovered during any Sub-Phase of the Exploration Period or any extension thereof, the CONTRACTOR may retain after the Exploration Period twelve and one-half percent (12 ½%) of the initial Contract Area for further exploration and development, in addition to the delineated Production Areas; *Provided*, that the CONTRACTOR shall provide the Work Program in accordance with Section 8.01 for the area to be retained subject to the approval of the DEPARTMENT; *Provided further*, that the CONTRACTOR shall pay after the Exploration Period as annual rentals to the DEPARTMENT on such twelve and one-half percent (12 ½%) retained area of forty pesos (P40.00) per hectare or fraction thereof; and, *Provided finally*, that such annual rentals shall be offset by the amount spent by the CONTRACTOR for exploration on such retained area during the Contract Year. Failure by the CONTRACTOR to implement the work program as approved by the DEPARTMENT in any Contract Year will cause the automatic revocation of the CONTRACTOR's rights over the retained area and the surrender thereof to the DEPARTMENT.
- 5.05 Within thirty (30) days prior to the date of each relinquishment, the CONTRACTOR shall submit to the DEPARTMENT a written report on its completed Exploration Operations on the areas to be relinquished, including a map showing the areas to be relinquished with the coordinates of the connecting points of the boundary lines.
- 5.06 The CONTRACTOR shall have the right to submit written notice to the DEPARTMENT, to surrender or abandon the entire Contract Area prior to the end of any Contract Year or exploration Sub-Phase, and be relieved of any work commitment or expenditure amount related to future Contract Years or exploration Sub-Phases; *Provided*, that if the CONTRACTOR surrenders or abandons the entire Contract Area prior to satisfying its minimum work and expenditure commitments for any of the Contract Year or exploration Sub-Phase, it shall pay the DEPARTMENT the amount it

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should have spent, but did not, for exploration work during the concerned unfinished Contract Year or Sub-Phase as specified under Section VI. Such amount shall be charged against the performance guarantee posted by the CONTRACTOR in accordance with Section 7.01(g) of this Contract.

- 5.07 The CONTRACTOR shall have the right, within thirty (30) days prior to the end of each Sub-Phase, to surrender or abandon any portion of the Contract Area. Any portion surrendered shall be credited against that portion of the Contract Area, which the CONTRACTOR is next required to surrender under the provisions of Sections 5.01 and 5.02 hereof.
- 5.08 With respect to any surrender of area pursuant to this Section V, the CONTRACTOR shall advise the DEPARTMENT of the portion to be surrendered at least thirty (30) days in advance of the date of surrender. The areas being surrendered shall each be of sufficient size and convenient shape by themselves or in conjunction with areas outside the Contract Area to enable Petroleum Operations to be conducted thereon.

SECTION VI

MINIMUM WORK COMMITMENT AND MINIMUM EXPECTED EXPLORATIONS EXPENDITURES

- 6.01 The CONTRACTOR shall begin to perform the Exploration Operations within six (6) months from the Effective Date of the Contract.
- 6.02 The CONTRACTOR shall fulfill the minimum exploration work commitment for each Sub-Phase of the Exploration Period in accordance with the following provisions:
- (a) During the First (1st) Sub-Phase of the Exploration Period covering Contract Year 1, the CONTRACTOR shall acquire 1,000 km of regional seismic data and reprocess 1,000 km old seismic data, with an expected equivalent total minimum expenditure of Three Hundred Thousand United States dollars (US\$ 300,000.00).
 - (b) During the Second (2nd) Sub-Phase of the Exploration Period covering Contract Year 2, the CONTRACTOR shall acquire 1,000 km of in-fill seismic data or drill a well, with an expected equivalent minimum expenditure of Three Hundred

Thousand United States dollars (US\$ 300,000.00) for the seismic or Three Million United States dollars (US\$3,000,000.00) for the well.

- (c) During the Third (3rd) Sub-Phase of the Exploration Period covering Contract Years 3 and 4, the CONTRACTOR shall drill a well, with an expected equivalent minimum expenditure of Three Million United States dollars (US\$ 3,000,000.00).
- (d) During the Fourth (4th) Sub-Phase of the Exploration Period covering Contract Year 5 until the end of the first six months of Contract Year 6, the CONTRACTOR shall drill a well, with expected equivalent minimum expenditure of Three Million United States dollars (US\$ 3,000,000.00).
- (e) During the Fifth (5th) Sub-Phase of the Exploration Period covering the last six months of Contract Year 6 until the end of Contract Year 7, the CONTRACTOR shall drill a well, with an expected equivalent minimum expenditure of Three Million United States dollars (US\$ 3,000,000.00).

6.03 Before the end of each Sub-Phase, except on the Fifth (5th) Sub-Phase, of the Exploration Period, the CONTRACTOR has the following options in accordance with the terms of this Contract to:

- (a) enter the next Sub-Phase and continue exploration; or
- (b) conduct only Appraisal Work Program in the Petroleum discoveries awaiting appraisal based on procedures under Section IX of the Contract, and/or Development Operations as approved by the DEPARTMENT, provided that the minimum obligations during the current exploration Sub-Phase have been fulfilled and the areas under Section V hereof have been relinquished; or
- (c) terminate the Contract.

The CONTRACTOR shall notify the DEPARTMENT in writing of its option at least thirty (30) days before the end of each Sub-Phase.

6.04 If the CONTRACTOR fails to comply with the work obligations provided for in this Contract, it shall pay to the DEPARTMENT the amount it should have spent but did not

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in direct prosecution of its work obligations. If the CONTRACTOR elects to terminate the Contract before the end of any Sub-Phase during the Exploration Period and there are unfulfilled work obligations in the Sub-Phase in question, the CONTRACTOR shall pay the value of the unfulfilled balance of the minimum exploration work commitment for such Sub-Phase or Sub-Phases in US\$ after it has been converted into a cash equivalent using the method provided in Annex "B" – Accounting Procedure hereto. However, if the minimum exploration work commitment for any Sub-Phase during the Exploration Period is fulfilled while its expected corresponding minimum exploration expenditures are not fulfilled, the unspent part shall be deemed as savings and shall not be paid to the DEPARTMENT.

- 6.05 Subject to the approval of the DEPARTMENT and provided that the work commitments in the Work Program for the preceding Sub-Phase have been fulfilled, the CONTRACTOR may commence any Sub-Phase during the Exploration Period earlier than the scheduled date. If the exploration work actually fulfilled by the CONTRACTOR exceeds the minimum exploration work commitment for the said Sub-Phase, the excess part may be credited, subject to the approval of the DEPARTMENT, against the minimum exploration work commitment for the next Sub-Phase (s).

SECTION VII

THE CONTRACTOR

- 7.01 The CONTRACTOR shall have the following obligations
- (a) Perform all Petroleum Operations and provide all necessary services, technology, and financing in connection therewith; *Provided*, that no Foreign Exchange requirements of the Petroleum Operations shall be funded from the Philippine banking system unless otherwise allowed under applicable laws and regulations;
 - (b) Be subject to the provisions of applicable laws relating to labor, health, safety, indigenous people's rights, environment and ecology;
 - (c) Provide insurance to adequately cover the expenses for and liabilities associated with any oil spill which may cause pollution and/or damage to the environment, lives and/or property;

or

or

- (d) Operate the Production Area in accordance with good international petroleum practices and pursuant to an efficient and economic program of operation, by using modern and scientific methods to enable maximum economic production of Petroleum once a Production Area has been established. The CONTRACTOR shall avoid hazards to life, health, and property, pollution of air, land, and waters;
- (e) Allow examiners of the Bureau of Internal Revenue and other representatives authorized by the DEPARTMENT, at all reasonable times upon prior written notice, full access to accounts, books, and records relating to Petroleum Operations hereunder for tax and other fiscal purposes;
- (f) Give priority in employment to qualified personnel (as determined by the CONTRACTOR) in the municipalities or provinces where the Petroleum Operations are located;
- (g) Within sixty (60) days after the Effective Date of this Contract to post a bond or other guarantee of sufficient amount, but not less than the minimum expenditure commitment for each Contract Year, in favor of the DEPARTMENT and with surety or sureties satisfactory to the DEPARTMENT, conditioned upon the faithful performance by the CONTRACTOR of any or all of its exploration activities under this Contract. Upon the request of the CONTRACTOR, the amount of guarantee for each Contract Year may be subsequently reduced based on the CONTRACTOR's performance of its work and expenditure commitments;
- (h) Include in the Overall Development Program, submitted to the DEPARTMENT for approval, a provision for abandonment and payment of abandonment costs. It shall provide that beginning on the Date of Commencement of Commercial Production the estimated abandonment and decommissioning cost of the Oil Fields and/or Gas Fields in the Contract Area shall be determined (with annual reviews and adjustments thereafter to be included in the annual Work Program) and accrued and recovered annually as Operating Expenses over the productive life of the Oil Fields and/or Gas Fields. In this regard, the CONTRACTOR shall be responsible for the proper abandonment and rehabilitation of all sites affected by its Petroleum Operations. For this purpose, the CONTRACTOR shall establish and maintain a sinking fund in the form of deposit account within one (1) year after the Date of Commencement of Commercial Production. The

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CONTRACTOR shall then submit to the DEPARTMENT a certification from the concerned bank that the account has been established for the benefit and purpose provided in this Section;

- (i) Apply the appropriate and advanced technology and business experience in performing the Petroleum Operations reasonably, economically and efficiently in accordance with sound international petroleum industry practice;
- (j) Prepare the annual Work Program and budget for the DEPARTMENT's approval to carry out the Petroleum Operations;
- (k) Be responsible for procurement of installations, equipment and supplies and enter into subcontracts related to the Petroleum Operations, in accordance with the approved Work Program and budget;
- (l) Maintain complete and accurate accounting records of all the costs and expenditures for the Petroleum Operations in accordance with the provisions of Annex "B" – Accounting Procedure hereto and to keep securely the accounting books in good order;
- (m) Make necessary preparation for regular meetings of Parties, and to submit in advance to the Parties necessary information related to the matters to be reviewed and approved by the Parties;
- (n) Give preference to local companies/agencies in entering into subcontracts on projects or services which are required in the Petroleum Operations but are not carried out by the CONTRACTOR, provided that these companies/agencies are competitive and the services required are locally available;
- (o) Inform all the Subcontractors which render services for the Petroleum Operations and all the Expatriate Employees of the operator and of Subcontractors who are engaged in the Petroleum Operations in the Philippines that they shall be subject to the laws, decrees of the Government, and other rules and regulations of the DEPARTMENT;

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- (p) Report periodically to the DEPARTMENT its work accomplishment and actual expenditure relative to Section VI hereof.

- (q) Handle the information, samples or reports in accordance with the following provisions:
 - (i) Provide the DEPARTMENT with various information and data in accordance with Section VIII and Section XIV hereof;

 - (ii) Furnish the DEPARTMENT in a timely manner with reports on safety, environmental protection and accidents related to the Petroleum Operations and with financial reports prepared in accordance with the provisions of Annex "B" – Accounting Procedure hereto; and

 - (iii) Furnish the DEPARTMENT with the following:
 - (a) procurement plans for purchasing equipment and materials, inquiries, offers, orders and service contracts, etc;

 - (b) manuals, technical specifications, design criteria, design documents (including design drawings), construction records and information, consumption statistics, equipment inventory, spare parts inventory, etc.;

 - (c) technical investigation and cost analysis reports; and

 - (d) other information relating to the Petroleum Operations already acquired by the CONTRACTOR in the performance of the Contract.

- (r) Abide by the laws, decrees of the Government and other rules and regulations of the DEPARTMENT with respect to environmental protection and safety of the Petroleum Operations and shall endeavor in accordance with the international petroleum industry practice to:
 - (i) minimize the damage and destruction to marine organisms and their living oceanic environments;

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- (ii) control blowouts promptly and prevent or avoid waste or loss of Petroleum discovered in or produced from the Contract Area;
 - (iii) prevent Petroleum from flowing into low pressure formations or damaging adjacent Petroleum-bearing formations;
 - (iv) prevent water from flowing into Petroleum-bearing formations through dry holes or other wells, except for the purpose of secondary recovery; and
 - (v) prevent land, forests, crops, buildings and other installations from being damaged and destroyed.
- (s) Maintain detailed technical records and accounts of Petroleum Operations;
- (t) Meet with the DEPARTMENT on a monthly basis during the formulation of the CONTRACTOR's Overall Development Plan and all issues relative to the development;
- (u) Conform to GOVERNMENT regulations regarding, among others, safety, demarcation of the Contract Area, non-interference with the rights of other Petroleum, mineral, and natural resources operators;
- (v) Maintain all meters and measuring equipment in good order and, upon proper notification from an inspection group, allow access to these as well as to the exploration and production sites to inspectors authorized by the DEPARTMENT;
- (w) Be subject to Philippine Income Tax under the provisions of the National Internal Revenue Code and the Act, both as amended;
- (x) After the Date of Commencement of Commercial Production in the Contract Area, supply from the CONTRACTOR's and the Government's shares in such production, a portion of the domestic requirements of the Philippines on a *pro-rata* basis, which portion shall be offered for sale at Market Price and shall be determined as follows: in respect of each year, by multiplying the total quantity of Petroleum required for domestic consumption by the ratio of the total quantity of



Petroleum produced from the Contract Area to the entire Philippine production of Petroleum. The CONTRACTOR, subject to the approval of the DEPARTMENT, which approval shall not be unreasonably withheld, shall be entitled to sell its portion of such Petroleum in the open market in case domestic purchasers of the Petroleum are not willing or otherwise unable to timely purchase the Petroleum or timely pay the Market Price therefore;

- (y) The CONTRACTOR, in accordance with good international petroleum industry practices, shall at all times ensure rig availability in connection with the performance of its obligations hereunder;
- (z) Secure the petroleum facilities including wells, platform, pipelines and all other equipment installed which are necessary for the Petroleum Operations. Costs and expenses for securing the petroleum facilities shall be included as Operating Expenses under Section X;
- (aa) Refrain from issuing press releases, media statements and interviews on any oil/gas discovery, estimated oil/gas reserves and any well drilling operations, tests, and/or results. The DEPARTMENT shall have the exclusive right to make any such press releases or interviews on the mentioned activities/information; and
- (bb) Coordinate with affected local government units and other government agencies in the implementation of the Work Program, as necessary in relation to such portions of the Contract Area located within the jurisdiction of the respective local government units and prior to the conduct of any such operations.

7.02 The CONTRACTOR shall have the following rights:

- (a) Exemption from all national taxes, except Philippine Income Tax, subject to Section 21.04 hereof, under the provisions of the National Internal Revenue Code and the Act, as amended;
- (b) Exemption from all levies, tariffs, duties, compensating tax and value added tax subject to Section 21.04 hereof, on the importation into the Philippines of all machinery, equipment, spare parts, and all materials required for, and to be used exclusively by the CONTRACTOR or its Subcontractor(s) in the Petroleum

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Operations, on the conditions that: (1) said machinery, equipment, spare parts, and materials of comparable price, quality and quantity are not manufactured domestically nor readily available to CONTRACTOR or its Subcontractor(s) within the same or better time frame; (2) said machinery, equipment and spare parts are directly and actually needed, and will be used exclusively by the CONTRACTOR in its Petroleum Operations or in the operations for it by a Subcontractor(s) and are covered by shipping documents in the name of the CONTRACTOR to whom the shipment will be delivered directly by the customs authorities; and, (3) the prior approval of the DEPARTMENT was obtained by the CONTRACTOR prior to the importation of such machinery, equipment, spare parts, and materials, which approval shall not be unreasonably withheld; *Provided*, however, that if the CONTRACTOR or its Subcontractor(s) sell, transfer, or dispose of such machinery, equipment, spare parts, and materials within the Philippines without the prior approval of the DEPARTMENT, the CONTRACTOR shall pay twice the amount of the tax exemption granted on the equipment sold, transferred or disposed; *Provided further*, that the DEPARTMENT shall allow, and approve the sale, transfer, or disposition of the said items within the Philippines, without tax, if made: (1) to another contractor who is granted similar Philippine duty-exempt status; (2) for reasons of technical obsolescence; or, (3) for purposes of replacement to improve and/or expand the Petroleum Operations of the CONTRACTOR;

- (c) Exemption from posting of performance/surety bond during the Production Period of the Contract;
- (d) Exemption, upon approval by the DEPARTMENT, which approval shall not be unreasonably withheld, from laws, regulations and/or ordinances restricting the exportation of machinery, equipment, spare parts and materials which were imported solely for the CONTRACTOR's Petroleum Operations when no longer needed therefore;
- (e) Exemption from publication requirements under Republic Act No. 5455, and the provisions of Republic Act No. 6173, as amended, with respect to the exploration, production, exportation, sale, or disposition of Petroleum discovered and produced in the Contract Area;

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- (f) Exportation of Petroleum subject to the obligation to supply a portion of domestic requirements as provided in Section 7.01(x) above;
- (g) Entry, upon the sole approval of the DEPARTMENT, which approval shall not be unreasonably withheld, of alien technical and specialized personnel (including the immediate members of their families), who may exercise their professions solely for the Petroleum Operations of the CONTRACTOR; *Provided*, that if the employment or connection of such aliens with the CONTRACTOR ceases, the applicable laws and regulations on immigration shall apply to him and his immediate family; *Provided further*, that Filipinos shall be given preference to positions for which they have adequate training and experience (as determined by the CONTRACTOR); *Provided finally*, that the CONTRACTOR shall adopt and implement a training program for Filipinos along technical or specialized lines;
- (h) Have at all times the right of ingress to and egress from the Contract Area and to and from facilities wherever located;
- (i) Subject to the regulations of the *Bangko Sentral ng Pilipinas*, be entitled to:(1) repatriate over a reasonable period the capital investment and all costs and expenses actually spent on or brought into the country in Foreign Exchange or other assets and registered with the *Bangko Sentral ng Pilipinas*; (2) retain abroad all Foreign Exchange representing proceeds arising from exports accruing to the CONTRACTOR and/or its designated Operator: (a) the Foreign Exchange to be converted into pesos in an amount sufficient to cover the costs of the Petroleum Operations payable in Philippine currency; and, (b) revenues payable to the Government on such Crude Oil exported; (3) convert into Foreign Exchange and remit abroad at prevailing rates no less favorable to the CONTRACTOR than those available to any other purchaser of foreign currencies, any excess balances of the CONTRACTOR's peso earnings from Petroleum production and sale over and above the current working capital they require; and, (4) convert Foreign Exchange into Philippine currency for all purposes in connection with its Petroleum Operations at prevailing rates no less favorable to the CONTRACTOR than those available to any other purchaser of such currency;
- (j) Be allowed the Filipino Participation Incentive Allowance (FPIA); and

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- (k) Exemption from the investment requirements of foreign corporations under Section 126 in relation to Section 148 of the Corporation Code of the Philippines.
- (l) May block off, upon notice to and approval by the DEPARTMENT, which approval shall not be unreasonably withheld, any delineated structure that straddles or adjoins a portion of the Contract Area and a free area. Such blocked-off area(s) shall thereupon be deemed a part of the Contract Area subject to the terms and conditions of this Contract and, subject further to Section V hereof;

7.03 The DEPARTMENT shall remit, on behalf of the CONTRACTOR, all Philippine Income Taxes as defined under Section II of this Contract, the National Internal Revenue Code, and the Act based on income or profit derived from Petroleum Operations under this Contract. The DEPARTMENT shall separately remit such Philippine Income Tax to, and obtain separate official receipts acknowledging payment of said taxes from, the proper Government authority and shall furnish to each of the companies comprising the CONTRACTOR their respective official receipts issued in their names.

SECTION VIII

WORK PROGRAM AND BUDGET

8.01 Before the end of October of each Calendar Year after the Effective Date of the Contract, the CONTRACTOR shall submit and present to the DEPARTMENT for review and approval its annual Work Program and budget for the next Calendar Year. Within forty-five (45) days following the receipt of the annual Work Program and budget, the DEPARTMENT shall notify the CONTRACTOR in writing of its approval or suggest modifications thereto with its detailed reasons. If the DEPARTMENT requests any modifications on the aforesaid annual Work Program and budget, the Parties shall promptly hold meetings to discuss modifications and all suggested modifications will be respectively considered by the CONTRACTOR. Any modifications agreed upon by the Parties shall be effected immediately. In case the DEPARTMENT fails to act on the proposed annual Work Program and budget within forty-five (45) days from receipt, the proposed annual Work Program and budget shall be deemed to have been approved by the DEPARTMENT. The CONTRACTOR shall conduct the Petroleum Operations in accordance with the approved or modified annual Work Program and budget.

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8.02 The CONTRACTOR may, in accordance with the following provisions, incur excess expenditures or expenditures outside the budget in carrying out the Work Program and budget, provided that the activities in the approved Work Program and budget are not changed.

- (a) In carrying out an approved budget for a single item, such as the drilling of well, the CONTRACTOR may, if necessary, incur excess expenditures of no more than ten percent (10%) of the budgeted amount. The CONTRACTOR shall inform the DEPARTMENT in writing of such possible excess of aggregate amount ten (10) days prior to incurring such expenditures and explain the need for such expenditures.
- (b) For the efficient performance of the Petroleum Operations, the CONTRACTOR may, without approval of the DEPARTMENT, undertake certain cases of emergency works, such as blowout and oil spill corrective measures, which are not included in the Work Program and budget, but the CONTRACTOR shall, within fifteen (15) working days after such emergency expenditures are incurred, make a written report to the DEPARTMENT.
- (c) In the event that the aggregate of excess expenditures under Section 8.02(a) herein and expenditures under Section 8.02(b) herein in a Calendar Year cause the total expenditures of that Calendar Year to exceed the approved annual budget, such excess shall not be more than fifteen percent (15%) of the approved annual budget for that Calendar Year. If the aforesaid excess is expected to be more than fifteen percent (15%) of the annual budget, the CONTRACTOR shall present its reasons therefor to the DEPARTMENT in writing and also meet with the DEPARTMENT to discuss the expenditures for approval prior to incurring such expenditures.

SECTION IX

DETERMINATION OF COMMERCIALITY

9.01 If any Crude Oil or Natural Gas discovery is made within the Contract Area, the CONTRACTOR shall promptly report in writing such discovery to the DEPARTMENT.

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If the CONTRACTOR makes a decision that a Crude Oil/Natural Gas discovery is worthy of appraisal, the CONTRACTOR shall, at the soonest possible time, submit to the DEPARTMENT an Appraisal Work Program providing in detail the appraisal work and timetable for such discovery. For crude oil/natural gas discovery such Appraisal Work Program shall be prepared and submitted by the CONTRACTOR to the DEPARTMENT not later than ninety (90) days from the date of the aforesaid decision made by the CONTRACTOR. The Appraisal Work Program shall, insofar as is practicable, be prepared on the basis of continuous appraisal work, with a view to commencing Petroleum Operations within one hundred eighty (180) days from the date of the aforesaid decision was made by the CONTRACTOR.

- 9.02 After the submission to and approval by the DEPARTMENT of the Appraisal Work Program referred to in Section 9.01 herein, the CONTRACTOR shall carry out the operations as soon as possible without unreasonable delay in accordance with the timetable set forth in the approved Appraisal Work Program.
- 9.03 Within one hundred eighty (180) days after the completion of the last Appraisal Well, the CONTRACTOR shall submit to the DEPARTMENT a detailed report on the appraisal of the commerciality of the discovery. Under special circumstances, the above-mentioned periods may be reasonably extended upon agreement of the Parties. The appraisal report shall include the evaluation on geology, development, engineering and economics.
- 9.04 Within thirty (30) days following the submission of the appraisal report on any Crude Oil bearing trap, the CONTRACTOR shall convene a meeting with the DEPARTMENT to review such report. When Parties decide unanimously after its review that the said Crude Oil bearing trap may be an Oil Field containing Petroleum in Commercial Quantity, then the CONTRACTOR shall, within a reasonable period of time, submit an Overall Development Program to the DEPARTMENT. The Overall Development Program shall include the maximum efficiency rate (MER) and the expected duration of the production determined in accordance with the international petroleum industry practice.

Prior to the submission of the Overall Development Program, the CONTRACTOR shall submit to the DEPARTMENT a report of Crude Oil and Natural Gas reserves in place for review. The CONTRACTOR shall likewise submit to the DEPARTMENT for approval the Overall Development Program of the said Oil Field to be developed.

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- 9.05 In the event of an Oil Field and/or Gas Field straddling a boundary, the CONTRACTOR shall endeavor to arrange with the neighboring parties involved to work out a unitized Overall Development Program for such Field and to negotiate the relevant provisions thereof.

- 9.06 If a Petroleum bearing trap without commercial value within the Contract Area can be most economically developed as a commercial Oil Field and/or Gas Field by linking it up with facilities located outside the Contract Area, then the development of such Field shall be dealt with in the same manner as provided in Section 9.05 herein or in any other manner agreed with the neighboring parties.

- 9.07 The procedures specified in this Section IX shall be applied, by analogy, to the determination of additional development projects in any Oil/Gas Field within the Contract Area during the Production Period, such projects being designed to increase the level of production and/or total quantity of Petroleum recoverable from the said Field.

- 9.08 If an appraisal trial production or temporary trial production or an extended well test is deemed by the CONTRACTOR to be necessary with respect to any trap in which Petroleum is discovered or any Oil Field and/or Gas Field within the Contract Area, the CONTRACTOR shall reach a written agreement with the DEPARTMENT through negotiation on terms and conditions of appraisal trial production or temporary trial production or extended well test.

SECTION X

**RECOVERY OF OPERATING EXPENSES AND
ACCOUNTING FOR PROCEEDS OF PRODUCTION**

- 10.01 For the purpose of determining gross proceeds, Petroleum shall be valued as follows:
 - (a) All Petroleum sold, exchanged, or otherwise disposed for consumption in the Philippines, or for export, shall be valued at Market Price; *Provided*, that the actual sales price for such Petroleum shall be deemed to be the Market Price if such Petroleum is sold in a transaction between independent persons dealing at arm's length in a free market.

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- (b) If there are no transactions which can be used to determine the Market Price of Crude Oil, then such Petroleum shall be valued at the Posted Price.
- (c) If there are no transactions which can be used to determine the Market Price of Natural Gas, then the value of Natural Gas produced from the Contract Area shall be agreed upon based on general pricing principles prevailing internationally, taking into account such factors as the market, quality and quantity of the Natural Gas, including equivalent hydrocarbon substitute energy imported into the Philippines.
- (d) The value determined under Section 10.01(a), (b) or (c) above shall be reduced by reasonable commissions or brokerage fees incurred in connection with sales to Third Parties but shall not exceed the customary and prevailing rate.

10.02 In each Calendar Year, the CONTRACTOR shall recover from the Gross Income resulting from the sale, exchange, or other disposition of all Petroleum produced under this Contract an amount equal to all unrecovered Operating Expenses in accordance with the Accounting Procedure; *Provided*, that the amount so recovered shall not exceed seventy percent (70%) of the Gross Income from Petroleum production in any Calendar Year; *Provided further*, that if, in any Calendar Year, the unrecovered Operating Expenses exceed seventy percent (70%) of the Gross Income from Petroleum production, or if there is no Gross Income, then the unrecovered Operating Expenses shall be recovered from the Gross Income in the succeeding Calendar Year(s).

10.03 Unless elected otherwise by the DEPARTMENT, the CONTRACTOR shall market the Government share of Petroleum. The CONTRACTOR shall have the right and privilege of receiving in kind and disposing of the CONTRACTOR's portion of the Petroleum produced from the Contract Area.

10.04 If the DEPARTMENT elects to receive the Government's entire share of Petroleum in kind, which shall not be less than sixty percent (60%) of the estimated Net Proceeds from each Petroleum lifting or delivery operation, then the DEPARTMENT shall notify the CONTRACTOR of such election at least six (6) months in advance of any Calendar Year in which Petroleum is to be received. However, if the CONTRACTOR markets the Government share of Petroleum produced, the CONTRACTOR shall account for the proceeds from such sales as provided in this Section X. For purposes of this Section X,

Net Proceeds means the difference between Gross Income, and the sum of: (1) the Operating Expenses recoverable pursuant to Section 10.02 and (2) the Filipino Participation Incentive Allowance (FPIA) pursuant to Section 7.02(j)

- (a) If the CONTRACTOR markets the Government's entire share of Petroleum production, the CONTRACTOR shall within three (3) working days from the collection date, but in no case beyond sixty (60) days from lifting or delivery date, pay to the DEPARTMENT, with respect to such Petroleum production, an amount equal to sixty percent (60%) of the estimated Net Proceeds from each Petroleum lifting or delivery operation. This payment shall be calculated in accordance with the United States dollar amounts recorded in the books of accounts pursuant to Section XVIII. The payment corresponding to the first lifting or delivery of the Calendar Year shall include any adjustments on the Government's share for the preceding Calendar Quarter.
- (b) If the payment for the Petroleum marketed is not received by the CONTRACTOR within sixty (60) days from a lifting or delivery date, the CONTRACTOR shall accordingly inform the DEPARTMENT within ten (10) days from the date payment should have been received. The CONTRACTOR and the DEPARTMENT shall then meet to agree upon a mutually acceptable solution.

10.05 If the CONTRACTOR has not been authorized to market the Government's entire share of Petroleum production, then with respect to such Petroleum the Government shall be entitled to receive in kind and shall take Petroleum equal in value to at least sixty percent (60%) of the Net Proceeds.

10.06 The CONTRACTOR shall retain its share of Petroleum as service fee equivalent to forty percent (40%) of the Net Proceeds from Petroleum Operations.

10.07 If the DEPARTMENT and the CONTRACTOR elect to take their respective shares of Petroleum in kind, the Parties will enter into separate agreements providing, among others, for the manner and form of deliveries, offtake procedures, over/under reconciliation, terminal operations procedures, terminal Force Majeure details and appropriate quarterly adjustments.

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SECTION XI

INCOME TAXES

- 11.01 The CONTRACTOR shall be liable each taxable year for Philippine Income Tax under the provisions of the National Internal Revenue Code and the Act, both as amended.
- 11.02 In computing the Taxable Net Income, it shall be equivalent to the gross-up amount of the CONTRACTOR's share on Net Proceeds.
- 11.03 The CONTRACTOR shall render to the DEPARTMENT a return for each taxable year in duplicate in such form and manner as provided by law setting forth its Taxable Net Income. The DEPARTMENT shall file the CONTRACTOR's return with the Commissioner of Internal Revenue or his deputies or other persons authorized to receive such return within the period specified in the National Internal Revenue Code and the Rules and Regulations promulgated thereunder.
- 11.04 The DEPARTMENT shall separately remit the Philippine Income Taxes of each company comprising the CONTRACTOR and, upon payment thereof, shall obtain separate official receipts in the name of each company comprising the CONTRACTOR and shall furnish such receipts to each company. Each of the companies comprising the CONTRACTOR shall be subject to tax separately on its share of income.

SECTION XII

PAYMENTS

All payments which this Contract obligates the CONTRACTOR to make to the DEPARTMENT shall be in Foreign Exchange at a bank to be designated by the DEPARTMENT and agreed upon by the *Bangko Sentral ng Pilipinas*; *Provided*, that the CONTRACTOR may make such payments in Philippine Pesos to the extent that such currency is realized as a result of the domestic sale of Petroleum. All such payments shall be translated at the applicable exchange rate as defined in the Accounting Procedure attached hereto as Annex "B".



SECTION XIII
NATURAL GAS

13.01 Associated Gas.

- (a) Associated Gas produced from any Oil Field within the Contract Area shall be used primarily for purposes related to the Production Operations and production enhancement of Oil Fields including, without limitations, oil treating, gas injection, gas lifting and power generation.

- (b) Based on the principle of full utilization of the Associated Gas and with no impediment to normal production of the Crude Oil, the Overall Development Program of each Oil Field shall include a plan of utilization of Associated Natural Gas. If there is any excess Associated Gas remaining in any Oil Field after utilization pursuant to Section 13.01(a) herein, the CONTRACTOR shall carry out a feasibility study regarding the commercial utilization of such excess Associated Gas. Such feasibility study, if carried out before the Development Operations of an Oil Field, shall be included as part of the feasibility study on the development of the Oil Field.
 - i) If the Parties agree that excess Associated Gas has no commercial value, then such gas shall be disposed of by the CONTRACTOR, provided that there is no impediment to normal production of the Crude Oil.

 - (ii) If the Parties agree that excess Associated Gas has commercial value, CONTRACTOR shall complete the gas sales contract(s) and other commercial and technical arrangements required to develop such Gas with prior approval of the DEPARTMENT. The DEPARTMENT shall participate in all gas sales negotiations to be entered into for the sale of Associated Gas to be produced from the Contract Area.

 - (iii) If any Party considers that excess Associated Gas has commercial value while the other Party considers that excess Associated Gas has no commercial value, the Party which considers excess Associated Gas to have commercial value may utilize such excess Associated Gas, at its own cost and expense and without impeding the production of Crude Oil and

without affecting the shares of Crude Oil and Gas otherwise allocable to the Parties under the other provisions of this Contract, but if such excess Associated Gas is not so utilized at any time or from time to time, then such excess Associated Gas shall be disposed of by the CONTRACTOR, provided that there is no impediment to normal production of the Crude Oil.

13.02 Non-Associated Gas.

- (a) For Non-Associated Gas discovery pursuant to Sections 9.01 and 9.02 herein, an Appraisal Work Program shall be prepared and submitted by the CONTRACTOR to the DEPARTMENT not later than twenty-four (24) months from the submission of the discovery report. During this period the CONTRACTOR will conduct preliminary market studies in order to analyze the markets for the Non-Associated Gas as well as investigate such technical issues as reserve size ranges, deliverability and other issues pertaining to the exploitation of the Non-Associated Natural Gas.
- (b) Following the completion of the Appraisal Work Program and review of the potential of the discovery, the CONTRACTOR shall submit an appraisal report to the DEPARTMENT within one (1) Year from the completion of the last Appraisal Well. If the CONTRACTOR with the approval of the DEPARTMENT decides that the discovery is commercial, the Parties shall agree on a development plan for the Gas Field. The CONTRACTOR shall complete the gas sales contract(s) and other commercial and technical arrangements required to develop such Natural Gas. The DEPARTMENT may participate in all gas sales negotiations to be entered into for the sale of the Non-Associated Gas to be produced from the Contract Area.
- (c) If the Parties decide unanimously that a Non-Associated Gas reservoir is non-commercial, the corresponding area covered by the Non-Associated Gas reservoir may be retained in the Contract Area as long as the CONTRACTOR is actively seeking in good faith to solve technical issues and find a market for the Non-Associated Gas, but in no event can the CONTRACTOR retain the area longer than ten (10) years from the submission of the discovery report nor beyond the termination of this Contract.

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- (d) Prior to the expiration of the Exploration Period, if the DEPARTMENT considers that a Non-Associated Gas reservoir which has been determined to be non-commercial needs to be reappraised because of some favorable factors, the CONTRACTOR shall work out a new evaluation report on that Non-Associated Gas reservoir and submit the same to the DEPARTMENT for review and approval.

13.03 Natural Gas Transportation.

- (a) To the extent allowed by law, the DEPARTMENT shall allow the participation of the CONTRACTOR in the pipeline installation and operation to transport Natural Gas, subject to a separate pipeline agreement between the DEPARTMENT and the CONTRACTOR. If the CONTRACTOR participates in the installation and operation of such pipeline(s), the installation and operation of such pipeline(s) shall be included in the Overall Development Program and Petroleum Operations under this Contract.
- (b) If a Third Party provides Natural Gas pipeline transportation services to the CONTRACTOR, the tariffs charged to the CONTRACTOR for such services shall be fair and reasonable based on the investment and shall be appropriate for pipeline infrastructure projects in the Philippines.

SECTION XIV

TECHNICAL DATA AND REPORTS SUBMISSION

14.01 All technical data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the CONTRACTOR to the DEPARTMENT within sixty (60) days after such technical data and reports became available. The technical data and reports to be submitted by the CONTRACTOR include but are not limited to the following:

- (a) Unprocessed and migrated seismic data in tapes, CD and hard copies

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- (b) Geological and geochemical reports, including geological maps, petrographic data and geochemical data/analysis
- (c) Geophysical Reports
 - (i) Seismic acquisition, processing and interpretation reports
 - (ii) Gravity & magnetic surveys
 - (iii) Navigation data of surveys
 - (iv) Other geophysical surveys
- (d) Rock cores, rock cuttings, geological logs and hydrocarbon or fluid samples obtained from drilling
- (e) Drillstem and well test data, analysis and interpretation
- (f) Well drilling, completion and abandonment reports
- (g) All petrophysical and geophysical logs from wells in digital and hard copies
- (h) Data, analysis, and interpretation on oil and gas reservoir characteristics
- (i) Oil, gas and condensate production reports
- (j) Other relevant data and reports generated from Petroleum Operations

SECTION XV

ASSETS AND EQUIPMENT

15.01 The CONTRACTOR shall acquire for the Petroleum Operations only such assets and equipment as are reasonably estimated to be required in carrying out the Petroleum Operations and approved in the Work Program.

15.02 The CONTRACTOR may also utilize in the Petroleum Operations equipment owned and made available by the CONTRACTOR. Charges to the Petroleum Operations account for the use of such equipment shall be made as provided in the Annex "B" - Accounting Procedure.

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- 15.03 The DEPARTMENT shall have ownership of any cost-recovered assets and materials, equipment and facilities which it elects to retain after the termination of this Contract. However, all other materials, equipment and facilities, which the DEPARTMENT does not elect to retain shall be removed and disposed by the CONTRACTOR within one (1) year after the termination of this Contract, or within the period agreed by the Parties.
- 15.04 The ownership of all data, records, samples, and other technical data obtained in the course of performing the Petroleum Operations shall be vested in the DEPARTMENT.
- 15.05 The CONTRACTOR will not remove any material, equipment or facilities covered by this Contract from the Contract Area without the prior written consent of the DEPARTMENT. The ownership of all materials, equipment and facilities erected or placed within the Contract Area shall be transferred to the DEPARTMENT immediately after the recoupment by the CONTRACTOR of all costs pertaining to such materials, equipment and facilities; Provided, that all materials, equipment and facilities which are of a movable nature and the costs for which have not been fully recouped by the CONTRACTOR shall remain the property of the CONTRACTOR unless not removed from the Contract Area within one (1) year after termination of this Contract. The DEPARTMENT shall assume ownership of the materials, equipment and facilities subject to all financing agreements, liens and other burdens thereon but may delay assuming ownership thereof pending the satisfaction and release of any such burdens. Notwithstanding the transfer of ownership to the DEPARTMENT, the CONTRACTOR shall: (i) have the right to transfer the materials, equipment and facilities within the Contract Area; (ii) have the right to use the materials, equipment and facilities free of charge other than the obligation to maintain or repair the same as deemed necessary in accordance with generally accepted offshore oil field and marine practices; and, (iii) be permitted to fully recoup all expenditures for such purposes. The provisions of this Section shall not apply to leased or chartered materials, equipment and facilities.

SECTION XVI

CONSULTATION AND ARBITRATION

- 16.01 The Parties shall make their best efforts to settle amicably through consultation any dispute arising in connection with the performance or interpretation of any provision hereof.



16.02 Disputes arising between the DEPARTMENT and the CONTRACTOR relating to this Contract or the interpretation and performance of any of its clauses which cannot be settled amicably shall be settled by arbitration, subject to the provisions of Section 16.04 below. The DEPARTMENT and the CONTRACTOR shall each appoint one (1) arbitrator and so advise the other Party within thirty (30) days after receipt of a written request to do so. Such two (2) arbitrators shall appoint a third arbitrator. If either Party fails to appoint an arbitrator within thirty (30) days after receipt of a written request from the other Party to do so, such arbitrator shall be appointed, at the request of the other Party, by the President of the International Chamber of Commerce. If the first two (2) arbitrators appointed as aforesaid fail to agree on a third arbitrator within thirty (30) days after receipt of a written request from the other Party to do so, such third arbitrator shall be appointed, at the request of either Party, by the President of the International Chamber of Commerce. If an arbitrator fails or is unable to act, his successor will be appointed in the same manner as the arbitrator whom he succeeds. Unless the Parties agree otherwise, the Philippines shall be the venue of the arbitration proceedings.

16.03 The English language shall be the official language to be used in the arbitral proceedings. All hearing materials, statement of claim or defense, award and the reasons supporting them shall be written in English.

16.04 The decision of a majority of the arbitrators shall be final and binding upon the Parties. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. Each Party shall bear its respective cost of arbitration unless the arbitrators decide otherwise.

16.05 Except as provided in this Section XVI, arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce then in effect.

16.06 The right to continue or complete arbitration proceedings commenced during the term of this Contract shall survive the termination or cancellation of this Contract.

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SECTION XVII

**EMPLOYMENT AND TRAINING
OF PHILIPPINE PERSONNEL**

- 17.01 The CONTRACTOR agrees to employ qualified Filipino Personnel (as determined by CONTRACTOR) in the Petroleum Operations and, after the Date of Commencement of Commercial Production, will undertake the education and training of such Filipino Personnel for labor and staff positions, including administrative, technical and management positions.
- 17.02 The CONTRACTOR shall provide assistance for training programs, conferences, seminars and other similar activities for the DEPARTMENT's personnel with a total training commitment of Twenty Thousand United States dollars (US\$20,00.00) per year, cumulative during the Exploration period and Development Operations and Fifty Thousand United States dollars (US\$50,000.00) per year, cumulative during the Production Period. Any unfulfilled training obligation shall survive the cancellation/termination of this Contract.
- 17.03 The costs and expenses of training Filipino/Foreign personnel for the CONTRACTOR's own employment and the training assistance of the DEPARTMENT's personnel shall be included as Operating Expenses in the Work Program and budget under Section VIII hereof.

SECTION XVIII

BOOKS OF ACCOUNTS AND AUDIT

- 18.01 The CONTRACTOR shall be responsible for keeping complete books of accounts, both in United States dollars and Philippine peso denominations, reflecting all transactions in connection with the Petroleum Operations in accordance with Annex "B" - Accounting Procedure. The basic currency for the determination of cost recovery shall be United States dollars.
- 18.02 The DEPARTMENT shall have the right to inspect and audit the CONTRACTOR'S books of accounts relating to this Contract for any Calendar Year within twenty-four (24)
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months following the end of such Calendar Year. Any such audit shall be completed within eighteen (18) months after the DEPARTMENT's commencement of such audit. Any exception must be made to the CONTRACTOR in writing within ninety (90) days following the completion of such audit. If the DEPARTMENT fails to give such written exception within such time, or fails or declines to conduct an audit of the CONTRACTOR's books of accounts within the time period stated above, then the CONTRACTOR's books of accounts and statements of Operating Expenses for such Calendar Year shall be established as correct and final for all purposes including the recovery of Operating Expenses.

18.03 The DEPARTMENT is entitled upon prior notice access to all relevant joint account, records, files and other information and may inspect such sites and facilities as necessary

18.04 If the DEPARTMENT notifies the CONTRACTOR of an exception to the CONTRACTOR'S books of accounts within the time period specified in Section 18.02 above, the CONTRACTOR shall, within ninety (90) days after receipt of such notice, confer with the DEPARTMENT regarding the exception and the Parties shall attempt to reach a mutually acceptable resolution of such exception within a period not to exceed three (3) months. If any cost or expense included in the CONTRACTOR'S statement of Operating Expenses is the subject of an exception which cannot be resolved during such three (3) month period, then such cost or expense shall be excluded as an Operating Expense and shall not be recoverable from gross proceeds pending the resolution of such exception through mutual agreement or arbitration. If such cost or expense is subsequently determined to be properly included in the CONTRACTOR's statement of Operating Expenses, either by mutual agreement or arbitration, then the CONTRACTOR's current statement of Operating Expenses shall be increased by the amount of such cost or expense.

SECTION XIX

MISCELLANEOUS PROVISIONS

19.01 Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's designated representative or the person in charge of the Party's office or place of business; or, when sent by facsimile, notice shall be effective upon the issuance of a confirmation report that

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the notice was successfully transmitted to addressee's number; or, when sent by registered mail, notice shall be effective upon actual receipt by the addressee; *Provided*, that if addressee fails to claim its mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed, as follows:

To the GOVERNMENT -

The Director
Energy Resource Development Bureau
DEPARTMENT OF ENERGY
Energy Center
Merritt Road, Fort Bonifacio
Taguig City, Metro Manila, Philippines
Telefax : (632) 840-2068

To the CONTRACTOR -

Mr. Rafael E. del Pilar
Executive Vice-President & COO
PNO Exploration Corporation
Bldg. 1, Energy Center
Merritt Road, Fort Bonifacio
Taguig City, Metro Manila, Philippines
Tel. No. 840 2015 / Fax No. 840 1456

Any Party may substitute or change its address on written notice thereof to the other Parties.

- 19.02 The laws of the Philippines shall apply to this Contract.
- 19.03 Subject to Section XXI of this Contract, the CONTRACTOR shall abide by the circulars, rules and regulations on petroleum issued or to be issued by the DEPARTMENT; *Provided*, however, that the DEPARTMENT shall send notice to the CONTRACTOR of the complete text of any new or amended circulars, rules and regulations issued on or after the Effective Date immediately upon the issuance of any such new or amended circulars, rules and regulations.
- 19.04 The DEPARTMENT shall have the power to cancel and annul this Contract after due written notice for failure of the CONTRACTOR without justifiable cause to: (a) fulfill its work obligation in any Contract Year or exploration Sub-Phase; (b) remit the government share within sixty (60) days from lifting or delivery date; (c) post the required

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performance bond within sixty (60) days from award of this Contract; (d) implement safety measures required by the DEPARTMENT, and; (e) submit the reportorial requirements.

- 19.05 At such time as the CONTRACTOR has established commercial production, the CONTRACTOR may undertake technical and economic studies to determine the feasibility of establishing downstream facilities such as petrochemical, liquefied natural gas ("LNG"), liquefied petroleum gas ("LPG"), compressed natural gas ("CNG") or middle distillate synthesis plants in the Philippines to utilize a portion of the Petroleum produced from the Contract Area. If the studies indicate that a particular downstream facility could be constructed and operated in an economical and technically feasible manner, then the CONTRACTOR shall have the option, subject to the DEPARTMENT's approval, to design, construct, and operate such facility. The DEPARTMENT shall assist the CONTRACTOR in obtaining such approvals.

SECTION XX

PAYMENTS BY CONTRACTOR

- 20.01 The CONTRACTOR shall pay the DEPARTMENT a signature bonus in kind equivalent to Fifty Thousand United States dollars (US\$ 50,000.00) within sixty (60) days from Effective Date.
- 20.02 The CONTRACTOR shall, within sixty (60) days following the Date of Commencement of Commercial Production pay to the DEPARTMENT the sum of Five Hundred Thousand United States dollars (US\$ 500,000.00).
- 20.03 On the first occasion that there shall be produced and sold from the Contract Area an average rate, over a period of sixty (60) consecutive days, of either twenty-five thousand (25,000) barrels of Crude Oil and/or Casinghead Petroleum Spirit per day (BPD); or two hundred fifty million (250,000,000) cubic feet of Natural Gas per day (CFGD), the CONTRACTOR shall, within sixty (60) days following the expiration of said sixty (60)-day period, pay to the DEPARTMENT the sum of Five Hundred Thousand United States dollars (US\$ 500,000.00); *Provided*, it is understood that the CONTRACTOR, in order to sustain said rate of twenty-five thousand (25,000) BPD of Crude Oil and/or Casinghead Petroleum Spirit or two hundred fifty million (250,000,000) CFGD for said sixty (60) day

period, shall not be required to operate the Contract Area other than as a reasonably prudent operator following sound oil and/or gas field practice prevalent in the international petroleum industry.

20.04 On the first occasion that there shall be produced and sold from the Contract Area an average rate, over a period of sixty (60) consecutive days, of either fifty thousand (50,000) BPD of Crude Oil and/or Casinghead Petroleum Spirit or five hundred million (500,000,000) CFGD, the CONTRACTOR shall, within sixty (60) days following the expiration of said sixty (60) day period, pay to the DEPARTMENT the sum of One Million United States dollars (US\$ 1,000,000.00); *Provided*, it is understood that the CONTRACTOR, in order to sustain said rate of fifty thousand (50,000) BPD of Crude Oil and/or Casinghead Petroleum Spirit or five hundred million (500,000,000) CFGD for said sixty (60) day period, shall not be required to operate the Contract Area other than as a reasonably prudent operator following sound oil and/or gas field practice prevalent in the international petroleum industry.

20.05 On the first occasion that there shall be produced and sold from the Contract Area an average rate, over a period of sixty (60) consecutive days, of either seventy-five thousand (75,000) BPD of Crude Oil and/or Casinghead Petroleum Spirit or seven hundred fifty million (750,000,000) CFGD, the CONTRACTOR shall, within sixty (60) days following the expiration of said sixty (60) day period, pay to the DEPARTMENT the sum of Two Million United States dollars (US\$ 2,000,000.00); *Provided*, it is understood that the CONTRACTOR, in order to sustain said rate of seventy-five thousand (75,000) BPD of Crude Oil and/or Casinghead Petroleum Spirit or seven hundred fifty million (750,000,000) CFGD for said sixty (60) day period, shall not be required to operate the Contract Area other than as a reasonably prudent operator following sound oil and/or gas field practice prevalent in the international petroleum industry.

SECTION XXI

STABILIZATION

21.01 Rights and obligations under this Contract shall be deemed as essential considerations for the conclusion hereof and shall not be unilaterally changed or impaired.

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- 21.02 This Contract shall not be annulled, amended or modified in any respect except by the mutual consent in writing of the Parties hereto.
- 21.03 The CONTRACTOR's rights under this Contract shall not be impaired and its obligations shall not be increased by: (1) any change in Philippine laws or regulations; or, (2) any change in the manner of implementing any existing laws or regulations; or (3) any introduction of new laws or regulations; or (4) any cancellation of existing laws or regulations.
- 21.04 In the event of any change in existing laws or regulations that increases or results in increase of, among others, the percentage (%) for cost recovery allowed to the CONTRACTOR, the amount of or extension of the FPIA or the benefits relating to cross recovery of deepwater incentives, the Parties shall immediately meet and negotiate on an equitable allocation of the benefits with the end in view of retaining the commercial terms or gains by which this Contract was agreed to by the Parties.

SECTION XXII

INSURANCE

- 22.01 The CONTRACTOR shall work out an insurance program for the Exploration Operations and submit the same to the DEPARTMENT for review and approval within one hundred twenty (120) days after the Effective Date. The CONTRACTOR shall obtain the insurance contracts in accordance with such program as approved by the DEPARTMENT before commencement of Petroleum Operations within the Contract Area. Similar provisions shall apply in respect of Development Operations and Production Operations.
- 22.02 The insurance programs worked out by the CONTRACTOR shall include, but not be limited to, the following insurance covering:
- (a) damages to and expenses for all drilling installations and equipment, including damages to and expenses for the properties used in work sites and supply bases for the Petroleum Operations, while any damage to and expense for the equipment and properties owned by any Third Party rendering services to the CONTRACTOR shall be handled in accordance with Section 22.04 herein;

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[Signature]

- (b) damages to and expenses for any of the equipment or installations for production, storage and transportation, and buildings in the course of construction and installation both onshore and offshore;
- (c) damages to and expenses for the Crude Oil and/or Natural Gas production installations, facilities, equipment and pipelines, both onshore and offshore;
- (d) liability to Third Party;
- (e) liability for pollution and expenses for cleaning up in the course of drilling and Production Operations;
- (f) expenses for killing blowouts;
- (g) liability incurred by the CONTRACTOR who takes the responsibility in chartering drilling vessels, supply boats or other boats, ships and aircraft serving the Petroleum Operations;
- (h) liability for removal of wrecks; and
- (i) losses and expenses incurred during the transportation and storage in transit of goods shipped from different parts of the world to work sites.


22.03 Losses within the deductible limits of the insurance program reviewed and approved by the DEPARTMENT in accordance with Section 22.01 herein shall be chargeable as Operating Expenses.

22.04 The CONTRACTOR shall endeavor to ensure that its Subcontractors and lessors shall insure themselves against relevant losses.

SECTION XXIII

CONFIDENTIALITY

23.01 All documents, information, data and reports related to the Petroleum Operations within the Contract Area ("Confidential Information") shall be kept confidential by the Parties



and shall not be shared with or divulged to any Third Party, except in cases as specified in Sections 23.02 and 23.03.

23.02 Without the written consent of the DEPARTMENT, no company comprising the CONTRACTOR or any assignee shall disclose the Confidential Information to any Third Party and to any Affiliate not directly connected with the implementation of the Contract except the Third Parties and Affiliates in Section 23.03 herein, and no Party shall otherwise transfer, present, sell or publish it in any way.

The DEPARTMENT shall bear the obligations for confidentiality for the Confidential Information. However, the DEPARTMENT has the right to furnish the following original information and data or interpretation thereon with respect to the Contract Area to any Third Parties:

- (a) raw and/or processed data generated and held by CONTRACTOR for over three (3) years from the date the data were generated; and
- (b) interpretations of information and data generated and held by CONTRACTOR for over seven (7) years.

23.03 The CONTRACTOR may furnish necessary Confidential Information to the following:

- (a) Banks or other credit institutions from which finance is sought by the CONTRACTOR for the implementation of this Contract;
- (b) Third Parties and Affiliates which provide services for the Petroleum Operations, including Subcontractors and other service contractors; and,
- (c) A prospective assignee or assignees to whom rights and obligations under this Contract are intended to be assigned.

23.04 Necessary Confidential Information may be furnished by the CONTRACTOR to governments and stock exchanges in accordance with the laws of the relevant countries.

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23.05 The CONTRACTOR when furnishing Confidential Information to Third Parties and Affiliates as mentioned in Section 23.03 herein shall require them to assume the confidentiality obligations as set forth herein.

SECTION XXIV

ASSIGNMENTS AND AUTHORIZATION

24.01 The CONTRACTOR may assign part or all of its rights and/or obligations under the Contract to its Affiliate with prior written notice to the DEPARTMENT and provided that the assignment shall be effective subject to the following provisions:

- (a) the CONTRACTOR shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned;
- (b) the CONTRACTOR shall guarantee in writing to the DEPARTMENT the performance of the assigned obligations; and
- (c) no such assignment shall interfere with the performance of the Petroleum Operations.

24.02 The CONTRACTOR may assign part or all of its rights and/or obligations under this Contract to any Third Party, provided that such assignment shall be approved in writing by the DEPARTMENT in advance, such approval not to be unreasonably withheld.

24.03 The CONTRACTOR may authorize its subsidiaries, branches or regional corporations to implement this Contract, but the CONTRACTOR shall remain responsible for the faithful performance of this Contract.

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SECTION XXV

HEALTH, ENVIRONMENTAL PROTECTION AND SAFETY

- 25.01 In the performance of the Petroleum Operations, the CONTRACTOR shall be subject to the laws, decrees and regulations on environmental protection, indigenous people's rights and safety promulgated by the Government and endeavor to make its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land, and secure the safety and health of the operating personnel. The CONTRACTOR shall use all reasonable endeavors as are applicable to eliminate promptly any pollution occurring in the performance of the Petroleum Operations and minimize its consequences.
- 25.02 When the GOVERNMENT assigns any person to inspect for environmental protection and safety within the scope of the Petroleum Operations according to relevant laws, decrees, rules and regulations, the CONTRACTOR shall provide such reasonable facilities and assistance as are applicable to enable the inspectors to carry out such inspection smoothly. The CONTRACTOR shall be given reasonable notice of all such inspections.

SECTION XXVI

FORCE MAJEURE26.01 *Force Majeure*

- (a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure. If operations are delayed, curtailed, or prevented by such causes, then the time for enjoying the rights and carrying out of the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention.
- (b) Force Majeure shall include Acts of God, unavoidable accidents, acts of war or conditions attributable to or arising out of war (declared or undeclared), laws, rules, regulations, and orders by any government or governmental agency strikes,

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lockouts, or other labor or political disturbances, insurrections, riots, and other civil disturbances, hostile acts of hostile forces constituting direct and serious threat to life and property, and all other matters or events of a like or comparable nature beyond the control of the Party concerned, other than rig availability; *Provided*, that laws, rules, regulations, and orders of the Government or any of its agencies shall not constitute Force Majeure as to the DEPARTMENT.

- (c) The Party whose ability to perform its obligations is impaired due to Force Majeure shall notify the other Party in writing of such fact with reasonable detail as to the cause and nature thereof and both Parties shall do what is reasonably within their power to remove such cause.

SECTION XXVII

TERMINATION

27.01 This Contract shall be terminated as provided in Sections 4.01 and 4.02 hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and year first above written.

**GOVERNMENT OF THE REPUBLIC
OF THE PHILIPPINES**

**PNOC EXPLORATION
CORPORATION**

**THROUGH THE
DEPARTMENT OF ENERGY**

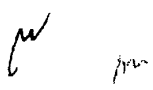
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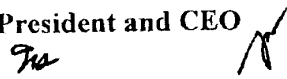
By: 

By: 

RAPHAEL PERPETUO M. LOTILLA
Secretary

EDUARDO V. MAÑALAC
President and CEO







Republic of the Philippines
DEPARTMENT OF ENERGY

ANNEX "A"

PNOC - EXPLORATION CORP.

Technical Description

West Calamian Block

<u>Corner</u>	<u>Longitude</u>	<u>Latitude</u>
1	118 - 30 - 00	13 - 00 - 00
2	119 - 15 - 00	13 - 00 - 00
3	119 - 15 - 00	12 - 52 - 00
4	119 - 12 - 00	12 - 52 - 00
5	119 - 12 - 00	12 - 40 - 00
6	119 - 09 - 00	12 - 40 - 00
7	119 - 09 - 00	12 - 28 - 00
8	119 - 06 - 00	12 - 28 - 00
9	119 - 06 - 00	12 - 16 - 00
10	119 - 03 - 00	12 - 16 - 00
11	119 - 03 - 00	12 - 00 - 00
12	119 - 00 - 00	12 - 00 - 00
13	119 - 00 - 00	11 - 52 - 00
14	118 - 54 - 00	11 - 52 - 00
15	118 - 54 - 00	11 - 44 - 00
16	118 - 51 - 00	11 - 44 - 00
17	118 - 51 - 00	11 - 32 - 00
18	118 - 48 - 00	11 - 32 - 00
19	118 - 48 - 00	11 - 24 - 00
20	118 - 30 - 00	11 - 24 - 00
21	118 - 30 - 00	11 - 20 - 00
22	118 - 36 - 00	11 - 20 - 00
23	118 - 36 - 00	11 - 00 - 00
24	118 - 30 - 00	11 - 00 - 00


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<u>Corner</u>	<u>Longitude</u>	<u>Latitude</u>
25	118 - 30 - 00	10 - 32 - 00
26	118 - 21 - 00	10 - 32 - 00
27	118 - 21 - 00	12 - 00 - 00
28	118 - 30 - 00	12 - 00 - 00

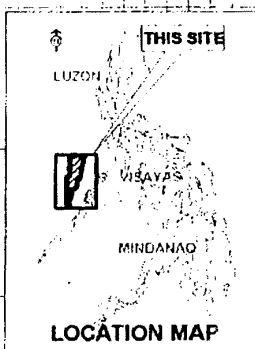
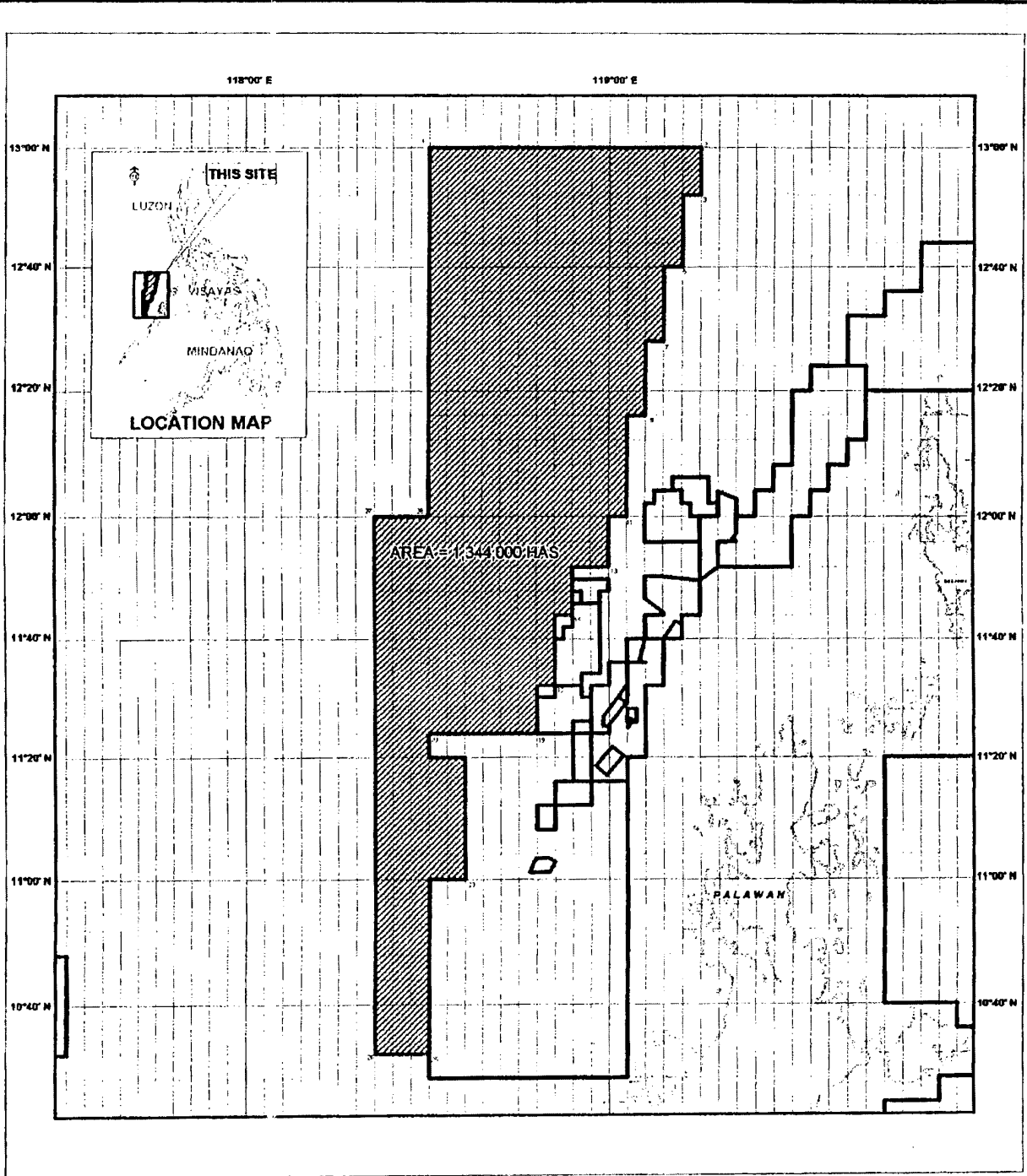
Containing an area of **ONE MILLION THREE HUNDRED FORTY FOUR THOUSAND (1,344,000) HECTARES**, more or less.

Prepared by:


Fernandez B. Apoderado
Geodetic Engineer

MCUG: AAP
10/19/2005

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0 1 2
KILOMETERS

LEGEND

APPLICATION AREA

PNOC - Exploration Corp.
 Service Contact Area Application
 West Calamian Block
 Northwest Palawan

DEPARTMENT OF ENERGY OFFICE OF ENERGY TECHNOLOGY & MANAGEMENT SERVICES	
PREPARED BY	WJD
NAME OF SUBJECT/PROJECT	WEST CALAMIAN BLOCK, PALAWAN
DATE	10 DEC 1998
DATA SOURCE: Bureau of Natural Resources Atlas 1988 Datum: Luzon Datum 1911 Original Scale: 1:500,000 Projection: UTM Projected	

Handwritten initials/signature

Republic of the Philippines
DEPARTMENT OF ENERGY
 Taguig City

ACCOUNTING PROCEDURE

Attached to and made an integral part of the Contract between the DEPARTMENT and the CONTRACTOR dated _____, 200__.

ARTICLE I : GENERAL PROVISIONS

1. Definitions

The Accounting Procedure herein provided for is to be followed and observed in the performance of all obligations under the Contract. Unless otherwise specified, the terms used herein shall have the same meaning as those defined in the Contract.

2. Purpose

Generally, the purpose of this Accounting Procedure is to set out principles and procedures of accounting which will enable the DEPARTMENT to monitor effectively the CONTRACTOR's costs, expenditures, production and income as well as Government's entitlement to Net Proceeds pursuant to the terms of the Contract. More specifically, the purpose of the Accounting Procedure is to:

- classify costs and expenditures and to define which costs and expenditures shall be allowable for cost recovery, production sharing and participation purposes;
- specify the manner in which the CONTRACTOR's accounts shall be prepared and approved; and
- address numerous other related accounting matters.
- for purposes of Article III, the CONTRACTOR herein shall refer to the Operator who is designated in accordance with the CONTRACTOR's operating agreement to conduct the Petroleum Operations in the Contract Area for the joint account of the CONTRACTOR except for Article III. 2 L, P and Q.

3. Conflicts

If there should be any conflict between the provisions of this Accounting Procedure and the Contract, the provisions of the Contract shall prevail.

4. Working Language and Units of Account

The CONTRACTOR shall maintain all accounts, records, books, reports and statements for the Petroleum Operations in the English language. The amounts shall be recorded both in United States Dollars and Philippine Pesos in accordance with generally accepted international petroleum industry accounting principles and practices.

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5. **Currency Translation**

For conversion purposes for transactions between United States Dollars and Philippine Pesos or any other currency, the applicable exchange rate shall be the exchange rate as quoted by the Philippine Dealing System at the close of business on the last banking day of the same month of disbursement or receipt, or if there were no such quotations on that day, then such rates on the most recent day in such preceding month during which were such quotations or on such other basis as may be agreed upon by the Parties. Provided, however, that in the event of a significant change in the rate of exchange after the end of the preceding month, then all transactions after such re-evaluations until the end of that month shall be translated at the rates in effect on the day of the transactions.

It is agreed, however, that any adjustment resulting from the exchange of currency required for the use of this Petroleum Operations or from the translation above mentioned, shall be charged or credited to the Operating Expenses. The matter of translation rates will be reconsidered if it is determined that the above methods result in inequities.

6. **Accounting Records and Statements**

All accounting records related to the Petroleum Operations shall be established and maintained by the Operator within the Philippines during the development/production period.

In implementation of Section X of the Contract, the CONTRACTOR shall render to the DEPARTMENT a statement of all charges and credits to the Petroleum Operations summarized by appropriate classifications indicative of the nature thereof.

Notwithstanding the generality of the foregoing, the CONTRACTOR shall make regular statements relating to the Petroleum Operations as follows:

- A. Expenditure Report
- B. Production Statement
- C. Statement of Revenue and Distribution
- D. Budget Statement

7. **Adjustments**

Subject to the provisions of Section 18.02 of the Contract, all statements rendered to the DEPARTMENT by the CONTRACTOR during any Calendar Year shall conclusively be presumed to be true and correct and reasonable unless within the period provided in said section, the DEPARTMENT takes written exception thereto and makes claim on the CONTRACTOR for adjustment. Failure on the part of the DEPARTMENT to make written claim on the CONTRACTOR for adjustment within such period shall establish the correctness and reasonableness thereof and preclude the filing of exceptions thereto or making claims for adjustment thereon.

8. **Arm's Length Transactions**

Unless otherwise specifically provided for in the Contract, all transactions giving rise to revenues or expenditures which will be credited or charged to the accounts prepared, maintained or submitted hereunder shall be conducted at arm's length or on such a basis as will assure that all such revenues or expenditures will not be lower or higher, as

the case may be, than would result from a transaction conducted at arm's length on a competitive basis with Third Parties.

9. Audit and Inspection

Without prejudice to statutory rights, the DEPARTMENT, upon at least fifteen (15) days advance written notice to the CONTRACTOR, shall have the right to inspect and audit, during normal business hours, all records and documents supporting costs, expenditures, receipts and income, such as the CONTRACTOR's accounts, books, records, invoices, cash vouchers, debit notes, price lists or similar documentation with respect to the Petroleum Operations conducted in each Calendar Year, within two (2) years (or such longer period as may be required in exceptional circumstances) from the end of such Calendar Year.

The DEPARTMENT shall undertake the conduct of the audit through its own representatives and the costs of such audit shall be borne by the CONTRACTOR as a general and administrative cost. The CONTRACTOR shall not be required to incur any costs and expenses as a consequence of any such access; provided, however, that the CONTRACTOR, if requested by the DEPARTMENT, shall provide reasonable assistance and logistical support (including without limitation, suitable office space, equipment, stationery, local area transportation, and other like resources) to the representatives authorized by the DEPARTMENT using its existing resources.

In conducting the audit, the auditors shall be entitled to examine and verify, at reasonable times, all charges and credits relating to the CONTRACTOR's activities under the Contract and all books of accounts, accounting entries, material records and inventories, vouchers, payrolls, invoices and any other documents, correspondences and records considered necessary by the DEPARTMENT to audit and verify the charges and credits. The auditors shall also have the right, in connection with such audit, to visit and inspect, at reasonable times, all sites, plants, facilities, warehouses and offices of the Operator directly or indirectly serving the Petroleum Operations, and to physically examine other properties, facilities and stocks used in Petroleum Operations, wherever located and to question personnel associated with those operations.

10. Revision of the Accounting Procedure

By mutual agreement between the DEPARTMENT and the CONTRACTOR, this Accounting Procedure may be revised from time to time, in writing, signed by the Parties, stating the date upon which the amendments shall become effective.

ARTICLE II : CLASSIFICATION, DEFINITION AND ALLOCATION OF COSTS AND EXPENDITURES

1. Segregation of Costs

The costs shall be segregated in accordance with the purposes for which such expenditures are made. All costs and expenditures allowable under Article III, relating to Petroleum Operations, shall be classified, defined and allocated as set out below in this Article. Expenditure records shall be maintained in such a way as to enable proper allocation to each Oil Field or Gas Field in the event of more than one Oil Field or Gas Field.

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2. **Depreciable/Amortizable Assets**

Plant, property and equipment including production, processing, storage, transportation and other facilities and equipment used directly in the Petroleum Operations.

3. **Direct Survey Expenditures**

- A. Survey expenditures include all geological and geophysical expenditures incurred in performing activities such as geological studies and mapping, and geophysical prospecting, the various phases of which cover data acquisition, data processing, interpretation and restudies.
- B. The costs of contracted and company performed services should be segregated into contracted services and in-house costs. Contracted services, include those, which were supplied by Third Parties and covered by contracts/agreements. In-house costs should include that portion of exploration survey, which are directly performed by the CONTRACTOR.

4. **Direct Well Costs**

Included are exploration, appraisal and development drilling costs. The following activities are covered:

- A. Exploration and Appraisal – Location of potential oil or gas trap including the drilling of Exploration Well and the examination of specific oil and gas reserves .
- B. Development – Activities needed to obtain access to proved reserves and to provide facilities for extracting, treating, gathering, and storing oil and gas. More specifically, Development Cost and other costs directly identifiable with development activities are costs incurred to:
 - a) Gain access to and prepare well locations for drilling, including surveying well locations for the purpose of determining specific development drilling sites, clearing ground, draining, road building and relocating public roads, gas lines and power lines, to the extent necessary in developing the proved reserves.
 - b) Drill and equip Development Well, including the cost of well equipment such as casing, tubing, pumping equipment and the wellhead assembly.

5. **Direct Development Costs**

Materials and equipment for the construction of the facilities for extracting, treating, gathering and storing Crude Oil and Natural Gas.

6. **Intangible Development Costs**

Intangible Development Costs represent development expenditures other than cost of development wells and production facilities such as but not limited to installation costs, mobilization of barges to be used in installation, engineering studies and the like.

7. **Direct Production Expenses**

Direct production expenses are generally regarded as those expenditures which are absolutely essential to the Production Operations. Indirect production expenses are those which facilitate or are incidental to the Production Operations but do not directly contribute to it.

8. **Overhead/Indirect Expenses**

A. Expenses incurred in operating one or more administrative levels in exploration, development and production activities are to be included herein.

B. Overhead/indirect expenses shall include expenses incurred in the following:

District Office(s) – an office which may be established to serve the Petroleum Operations in the vicinity of the Petroleum Operations.

Principal Office – an office established in Metro Manila which may serve all activities in the Philippines.

Outside the Philippines – the Operator’s home office or parent company or Affiliate.

ARTICLE III : REVENUES, COSTS, EXPENDITURES AND INCIDENTAL INCOME OF THE CONTRACTOR

1. **Revenue definition**

A. Gross proceeds shall be valued in accordance with Section 10.01 of the Contract.

B. Other income as enumerated in Article III.5 of this Accounting Procedure.

2. **Recoverable and Allowable Costs Under the Contract**

The costs incurred by the CONTRACTOR on Petroleum Operations pursuant to the Contract as classified under the headings referred to in Article II shall be allowable for purposes of the Contract except to the extent provided in Article III.4 or elsewhere in this Accounting Procedure, subject to audit as provided for herein.

A. **Surface Rights**

All direct costs attributed to the acquisition, renewal or relinquishment of surface rights acquired and maintained in force for the Petroleum Operations hereunder when paid by the CONTRACTOR in accordance with the provisions of the Contract.

B. **Labor and Associated Labor Cost**

1) Salaries and wages of the CONTRACTOR’s employees directly engaged in the conduct of Petroleum Operations of the Contract Area within the Philippines. Salaries and wages shall include everything constituting gross pay to employees as reflected on the CONTRACTOR’s payroll. To the extent not included in the salaries and wages, the Operating Expenses shall also be charged with overtime pay, rest day pay, holiday pay, vacation pay, and vacation travel pay, sickness and disability benefits, bonuses and customary allowances.

2) The costs of expenditures or contributions made pursuant to obligations imposed by the governmental authority which are applicable to the CONTRACTOR’s labor costs or salaries and wages.

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- 3) Personal income and fringe benefit taxes where and when they are paid by the CONTRACTOR to the Government of the Philippines for the employee, in accordance with the CONTRACTOR's standard personnel policies.
- 4) The CONTRACTOR's cost of established plans for employee's group life insurance, health insurance, pension retirement, thrift and other benefits of like nature.
- 5) For Home Office based employees, salaries and wages and employees benefits shall be charged to Operating Expenses based on the percentage of time dedicated to the Petroleum Operations under the Contract.

C. Materials and equipment

1) General

So far as it is reasonable, practicable and consistent with efficient and economical operation, only such materials shall be purchased or furnished by the CONTRACTOR for use in the Petroleum Operations as may be required for use in the reasonably foreseeable future and the accumulation of surplus stocks shall be avoided. Materials and equipment held in inventory shall only be charged to Operating Expenses when such materials and equipment is removed from inventory and used in Petroleum Operations.

2) Warranty

In the case of defective materials or equipment, any adjustment received by the CONTRACTOR from the suppliers or manufacturers or their agents in respect of any warranty on materials or equipment shall be credited to the accounts under the Contract.

3) Value of materials charged to the account under the Contract

- a) Except as otherwise provided in subparagraph (b) below, materials purchased by the CONTRACTOR for use in the Petroleum Operations shall be valued to include invoice price less trade and cash discounts, if any, purchase and procurement fees plus freight and forwarding charges between point of supply and point of shipment, freight to port of destination, insurance, taxes, custom duties, consular fees, other items chargeable against imported material and, where applicable, handling and transportation costs from point of importation to warehouse or operating site, and these costs shall not exceed those currently prevailing in normal arm's length transactions in the open market.
- b) Materials purchased from or sold to Affiliates or transferred to or from activities of the CONTRACTOR other than Petroleum Operations under the Contract:
 1. New materials (hereinafter referred to as condition A) shall be valued at the price prevailing in normal arm's length transactions in the open market;
 2. The cost of inventories shall comprise all cost of purchase,

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cost of conversion and other costs incurred in bringing the inventories to their present locations and condition. The cost of purchase of inventories comprise the purchase price, import duties and other taxes, and transport, handling and other costs directly attributable to the acquisition of finished goods, material and services. Trade discounts, rebates and other similar items are deducted in determining the cost of purchase.

D. Transportation Costs

- 1) Reasonable transportation and travel expenses of employees of the CONTRACTOR including those made for travel and relocation of the Expatriate Employees and their families (limited to spouse and dependent children) assigned in the Philippines. Transportation costs for returning Expatriate Employees and their families to their country of origin shall be chargeable to the Operating Expenses provided that Operating Expenses shall not be charged expenses incurred in moving Expatriate Employees beyond their point of origin established at the time of their transfer to the Philippines.
- 2) Reasonable costs of transportation of equipment, materials and supplies for the conduct of Petroleum Operations under the Contract, including directly related costs such as unloading charges, dock fees and inland and ocean freight charges.

E. Services

- 1) Third Parties

The actual costs of contract services, services of professional consultants, utilities and other services necessary for the conduct of Petroleum Operations under the Contract performed by Third Parties other than an Affiliate provided that the corresponding contracts for services are registered with the DEPARTMENT.

- 2) Affiliate

- a) Professional and Administrative Personnel

The costs of professional and administrative services provided by an Affiliate for the direct benefit of Petroleum Operations, including, but not limited to, services provided by the legal, financial, insurance accounting and computer services. Charges shall be equal to the actual cost of providing their services, but shall not include any element of profit and shall not be any higher than the most favorable prices charged by the Affiliate to third parties for comparable services under similar terms and conditions elsewhere and will be fair and reasonable in the light of prevailing international petroleum industry principles and practices. These expenses shall be considered in the computation under Article III.2.O of this Accounting Procedure.

- b) Technical Personnel

The costs of technical personnel services provided by an Affiliate of CONTRACTOR for the direct benefit of Petroleum Operations,

which costs shall be charged on a cost of service basis. Charges therefore shall not exceed charges for comparable services currently provided by outside technical service organizations of comparable qualifications.

- c) Equipment, facilities and property owned and furnished by the CONTRACTOR's Affiliate, at rates commensurate with the cost of ownership and operation provided, however, that such rates shall not exceed those currently prevailing for the supply of like equipment, facilities and property on comparable rates in the area where the Petroleum Operations are being conducted. The equipment and facilities referred to herein shall exclude major investment items such as (but not limited to) drilling rigs, producing platforms, oil and gas treating facilities, oil and gas loading and transportation systems, storage and terminal facilities and other major facilities, rates for which shall be subject to separate agreement with the DEPARTMENT.

F. Damages and Losses

All costs or expenses necessary to replace or repair damages or losses not recovered from insurance incurred by fire, flood, storm, theft, accident or any other cause not controllable by the CONTRACTOR through the exercise of reasonable diligence. The CONTRACTOR shall furnish the DEPARTMENT written notice of damages or losses incurred as soon as practicable after report of the same has been received by the CONTRACTOR.

G. Communication

The costs of acquiring, leasing, installing, operating, repairing and maintaining communication systems including radio and satellite communication facilities between the Contract Area and the CONTRACTOR's nearest base facility.

H. Office, Shore Bases and Miscellaneous Facilities

The costs of establishing, maintaining and operating any office, sub-office, shore base facility, warehouse, housing or other facility directly serving the Petroleum Operations. If any such facility serves contract areas other than the Contract Area, or any business other than Petroleum Operations, the costs thereof shall be allocated on an equitable and consistent basis.

I. Environmental Studies and Protection

The costs incurred in conducting the environmental impact studies for the Contract Area, and in taking environmental protection measures pursuant to the terms of the Contract.

J. Duties, Fees and Other Charges

Any duties, levies, fees and charges levied by any governmental or taxing authority in connection with the CONTRACTOR's activities under the Contract and paid directly by the CONTRACTOR except those charges and assessments for which the CONTRACTOR is solely liable under the terms of the Contract.

K. Insurance and Claims

- 1) Premium paid for insurance required to be carried for the Petroleum Operations conducted under the Contract, together with all the

expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments, and other expenses, including legal services not recovered from the insurer.

- 2) All actual expenditures relative to the Petroleum Operations incurred and paid by the CONTRACTOR in settlement of any and all losses, claims, damages, judgments and any other expenses not covered by insurance, including legal services shall be charged to the Operating Expenses.

L. Legal Expenses

All reasonable costs and expenses resulting from the handling, investigating, asserting, defending or settling of any claim or legal action necessary or expedient for the procuring, perfecting, retention and protection of the Contract Area and in defending or prosecuting lawsuits involving the Contract Area or any third party claim arising out of Petroleum Operations under the Contract, or sums paid in respect of legal services necessary for the protection of the joint interest of the DEPARTMENT and the CONTRACTOR. Such expenditures shall include attorney's fees, court costs, costs of investigation and procurement of evidence and amounts paid in settlement or satisfaction of any such litigation and claims provided such costs are not covered elsewhere in the Accounting Procedure.

M. Training Costs

All costs and expenses of training the CONTRACTOR's personnel for the direct benefit of the Petroleum Operations and the costs of training of the DEPARTMENT's personnel shall be charged as Operating Expenses.

N. Administrative Overhead within the Philippines

The costs and expenses incurred by the CONTRACTOR for an office and staff established in the Philippines which may serve all activities of the Petroleum Operations under the Contract. Allocation of such costs and expenses between the CONTRACTOR's other activities and Petroleum Operations activities hereunder shall be made on actual expenditures or other equitable basis. Examples of such services which are chargeable to the Petroleum Operations include, but are not necessarily limited to the following:

- 1) Administrative and Managerial
- 2) Accounting and Internal Control
- 3) Legal and Tax
- 4) Human Resource and Medical
- 5) Communications
- 6) Purchasing
- 7) Treasury and Financial Services
- 8) Insurance
- 9) Safety and Security

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10) Budgeting and Planning

O. Administrative Overhead – Outside the Philippines

- 1) Administrative overhead refers to the costs for the managerial and operational services provided by the Operator's management organizations for the Petroleum Operations, including management, administration, accounting, treasury, intercompany audit, tax, legal matters, human resources or employee relations, financing, purchasing, medical, the collection of economic data and costs, and related office costs incurred by the parent company or an Affiliate outside the Philippines. The administrative overhead outside the Philippines applicable to Petroleum Operations shall be charged and limited on the following percentages of the adjusted net expenditures:

For first U.S. \$2,000,000 per year	3% but not less than US\$6,000.00 per year
For next U.S. \$1,000,000 per year	2%
Over U.S. \$3,000,000 per year	1%

- 2) Net expenditures for purposes of applying the percentage charges stipulated in sub-paragraph (1) above shall be adjusted to exclude the following:
- Administrative overhead charged under Article III.2.O.1 above;
 - Nonrecoverable costs as provided in Article III.4 of this Accounting Procedure;
 - Surface taxes and rentals;
 - Major construction projects covered by Article III.2.O.3 below;
 - Settlements of judgments or claims in excess of five thousand United States Dollars (US\$5,000.00) per transaction;
 - Proceeds received from sale of assets (including division in kind) amounting to more than five thousand United States Dollars (US\$5,000.00) per transaction;
 - Foreign Exchange adjustments; and
 - Pipeline tariff costs paid to outsider.
- 3) Administrative Overhead for major construction projects such as but not limited to offshore platforms, pipelines, gas and/or water repressuring and processing plants, tanker, loading and terminal facilities, shall be agreed to by the Parties.
- 4) Operator's Administrative Overhead outside the Philippines shall be reviewed by the Parties periodically upon request of either Party and the future charges adjusted upward or downward as indicated by the Operator's cost experience.

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P. Interest

Any interest, charges, fees or other consideration paid or suffered in respect of financing the CONTRACTOR's Petroleum Operations including but not limited to, financial advisor fees, investment banker fees, registration and stamp fees and all closing costs, as approved by the Government, shall be considered Operating Expenses to the extent of two-thirds (2/3) of the amount thereof, except interest on loans or indebtedness incurred to finance the Exploration Operations. The DEPARTMENT's approval of such interest, charges, fees or other considerations shall not be withheld if reflective of prevailing conditions in the international capital market.

Q. Abandonment Costs

The CONTRACTOR shall submit its best estimate of total abandonment cost for its Production Area in accordance with its abandonment program within two (2) years from the Date of Commencement of Commercial Production.

The CONTRACTOR shall charge as Operating Expenses such costs on a per unit or production per quarter basis, commencing with the first quarter of the first Calendar Year of commercial production, calculated as provided below.

At least ninety (90) days prior to each subsequent Calendar Year, the CONTRACTOR shall present to the DEPARTMENT an adjusted estimate of such abandonment costs, which shall be subject to the DEPARTMENT approval in the same manner as provided above and shall apply as of the commencement of said Calendar Year.

Quarterly Petroleum Produced <hr style="width: 20%; margin-left: 0;"/> Remaining Recoverable Reserves At the beginning of the Calendar Year	Approval estimate of Total Abandonment costs Less cumulative X Abandonment costs recovered	Quarterly recoverable = abandonment
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The quarterly recoverable abandonment cost shall be subject to the cost recovery limit contained in Section 10.02 of the Contract and shall be deposited into an interest earning escrow account with a mutually acceptable licensed bank, subject to an escrow agreement between the CONTRACTOR and the DEPARTMENT. An amount equal to the quarterly recoverable abandonment costs, less any interest earned in the escrow account during the applicable Calendar Quarter, shall be paid into the escrow account within thirty (30) days after the end of such Calendar Quarter.

The CONTRACTOR shall give the DEPARTMENT at least twelve (12) months notice prior to the commencement of abandonment operations in respect of any Production Area. Within ninety (90) days from receipt of the abandonment notice, the DEPARTMENT shall notify the CONTRACTOR either:

- 1) That the CONTRACTOR is authorized to abandon the Petroleum Operations in the Production Area, in which event the amount in the escrow account shall be transferred to the CONTRACTOR and the CONTRACTOR shall carry out the abandonment operations in accordance with accepted industry practices for international offshore Petroleum Operations and all applicable Philippine laws, rules and regulations; or

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- 2) That the DEPARTMENT desires to take over the responsibility of abandonment of Petroleum Operations in the Production Area, in which event the amount in the escrow account shall be transferred to the DEPARTMENT, and the CONTRACTOR shall be relieved of any further liability for the Petroleum Operations in the Production Area to be abandoned;

Provided, however, that the amount in the escrow account shall be adjusted to be equal to the current approved estimate of total abandonment costs. Any deficiency in the escrow account at that time shall be funded by the CONTRACTOR. Any excess in the escrow account at that time shall be considered as an offset against Operating Expenses.

For purposes of this provision:

"Remaining recoverable reserves" shall mean the estimated proven plus probable volume of Petroleum that can be commercially produced by the CONTRACTOR from the Production Area in question from the beginning of the relevant Calendar Year until the end of the commercial production from the Production Area. A firm of independent reservoir engineers selected by the CONTRACTOR and acceptable to the DEPARTMENT shall determine the estimations referred to in the foregoing definitions.

3. **Other Expenditures**

Any other costs and expenditures not included in Article III.2 of this Accounting Procedure which have been incurred by the CONTRACTOR for the necessary and proper conduct of Petroleum Operations shall be allowed to be recovered.

4. **Costs not recoverable and not allowable under the Contract**

The following costs and expenditures shall not be recoverable nor allowable for cost recovery and production sharing purposes under the Contract:

- A. Processing/application fees, bonuses, rentals and other payments made to the DEPARTMENT such as but not limited to the payments for signature bonus, discovery bonus and tax exemption certificates;
- B. Costs attributed to posting the performance guaranty deposits required under this Contract;
- C. Costs and charges incurred before the Effective Date including costs in respect of preparation, signature or ratification of this Contract;
- D. Expenditures in respect of any financial transaction to negotiate, float or otherwise obtain or secure funds which are not used for Petroleum Operations;
- E. Costs of marketing or transportation of Petroleum beyond Delivery Point;
- F. Expenditures incurred in obtaining, furnishing and maintaining the guarantees required under the Contract and any other amounts spent on indemnities with regard to non-fulfillment of contractual obligations;
- G. Fines and penalties imposed by courts of law of the Republic of the Philippines;
- H. Donations and contributions beyond the limitations set under The Comprehensive Tax Reform Act of 1997;

- I. Costs incurred in the creation of any partnership or joint venture arrangement;
- J. Membership and club dues not related to professional organizations;
- K. Costs incurred as a result of failure to insure where insurance is required pursuant to the Contract, or where the CONTRACTOR has elected to self insure, or has under-insured;
- L. Costs and expenditures incurred as a result of willful misconduct or negligence of the CONTRACTOR; and
- M. Any costs and expenditures which by reference to generally accepted international petroleum industry accounting principles and practices can be shown to be excessive.

5. **Incidental Income and Credits**

All incidental income and proceeds received from Petroleum Operations under the Contract, including but not limited to the items listed below, shall be credited to the accounts under the Contract and shall be treated as follows:

A. **As part of Gross Income**

- 1) Revenue received from third parties for the use of property or assets, the cost of which has been charged to the accounts under the Contract;
- 2) Proceeds from sale of sulphur or a by-product of the H₂S extraction process;
- 3) Such other income which is incidental to and/or arising from any Petroleum Operations or other aspects of the Contract.

B. **As offset against Operating Expenses**

- 1) Proceeds of any insurance or claim or judicial awards in connection with Petroleum Operations under the Contract or any assets charged to the accounts under the Contract where such operations or assets have been insured and the premiums charged to the accounts under the Contract;
- 2) Any adjustment received by the CONTRACTOR from the suppliers/ manufacturers or their agents in connection with defective materials, the costs of which was previously charged by the CONTRACTOR to the accounts under the Contract;
- 3) Refunds or other credits received by the CONTRACTOR which apply to any charge which has been made to the accounts under the Contract;
- 4) Net dividends received from utilities and dividends received from investments;
- 5) Costs originally charged to the accounts under the Contract for materials subsequently exported from the Republic of the Philippines without being used in Petroleum Operations under the Contract;

- 6) Legal costs charged to the accounts and subsequently recovered by the CONTRACTOR.

C. As hundred percent (100%) revenue for the DEPARTMENT

In the event the proceeds on sale/disposal of assets are more than the acquisition costs, the excess shall be 100% revenue for the DEPARTMENT. In the event that the proceeds on sale/disposal of assets are less than the acquisition costs, the proceeds shall be offset against Operating Expenses.

ARTICLE IV: RECOVERY OF EXPENDITURES

1. Tangible Investments

The initial costs of physical assets classified as depreciable in accordance with the generally accepted international petroleum industry accounting principles and practices purchased and/or fabricated by the CONTRACTOR, and used by the CONTRACTOR in its Petroleum Operations shall include such costs as export broker's fees, purchasing agent's fees, transportation charges, loading and unloading fees, license fees associated with the procurement of materials and equipment, duties and customs fees, in-transit losses not recovered through insurance and installation costs necessary to put the asset ready for use. All tangible investments shall be allocated to Operating Expenses over a five-(5) year period if the Contract qualifies as a Deepwater Contract and a ten-(10) year period for other assets if the Contract is not a Deepwater Contract, beginning in the Calendar Year in which Petroleum production starts or in the Calendar Year in which the costs are incurred, whichever is later. The total cost of the asset shall be allocated to Operating Expenses under either of the following methods, at the option of the CONTRACTOR:

- a) The straight-line method, or
- b) The double declining balance method in the first three (3) years and then straight-line method in the last two (2) years of the five (5) year period.

2. Leasehold Improvements

Improvements and betterments on leasehold which can be capitalized in accordance with generally accepted international petroleum industry accounting principles and practices shall be allocated to Operating Expenses in accordance with depreciation principles established in Article IV.1 above. Such improvements shall include but not be limited to office improvements, additional equipment and other improvements installed on a ship operated under a bareboat charter, etc.\

3. Intangible Investments

Notwithstanding any other provision of this Accounting Procedure, all intangible investments shall be recoverable in full in the Calendar Year incurred.

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Republic of the Philippines
DEPARTMENT OF ENERGY

ANNEX "A"

PNOC - EXPLORATION CORP.

Technical Description

West Calamian Block

<u>Corner</u>	<u>Longitude</u>	<u>Latitude</u>
1	118 - 30 - 00	13 - 00 - 00
2	119 - 15 - 00	13 - 00 - 00
3	119 - 15 - 00	12 - 52 - 00
4	119 - 12 - 00	12 - 52 - 00
5	119 - 12 - 00	12 - 40 - 00
6	119 - 09 - 00	12 - 40 - 00
7	119 - 09 - 00	12 - 28 - 00
8	119 - 06 - 00	12 - 28 - 00
9	119 - 06 - 00	12 - 16 - 00
10	119 - 03 - 00	12 - 16 - 00
11	119 - 03 - 00	12 - 00 - 00
12	119 - 00 - 00	12 - 00 - 00
13	119 - 00 - 00	11 - 52 - 00
14	118 - 54 - 00	11 - 52 - 00
15	118 - 54 - 00	11 - 44 - 00
16	118 - 51 - 00	11 - 44 - 00
17	118 - 51 - 00	11 - 32 - 00
18	118 - 48 - 00	11 - 32 - 00
19	118 - 48 - 00	11 - 24 - 00
20	118 - 30 - 00	11 - 24 - 00
21	118 - 30 - 00	11 - 20 - 00
22	118 - 36 - 00	11 - 20 - 00
23	118 - 36 - 00	11 - 00 - 00
24	118 - 30 - 00	11 - 00 - 00

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<u>Corner</u>	<u>Longitude</u>	<u>Latitude</u>
25	118 - 30 - 00	10 - 32 - 00
26	118 - 21 - 00	10 - 32 - 00
27	118 - 21 - 00	12 - 00 - 00
28	118 - 30 - 00	12 - 00 - 00

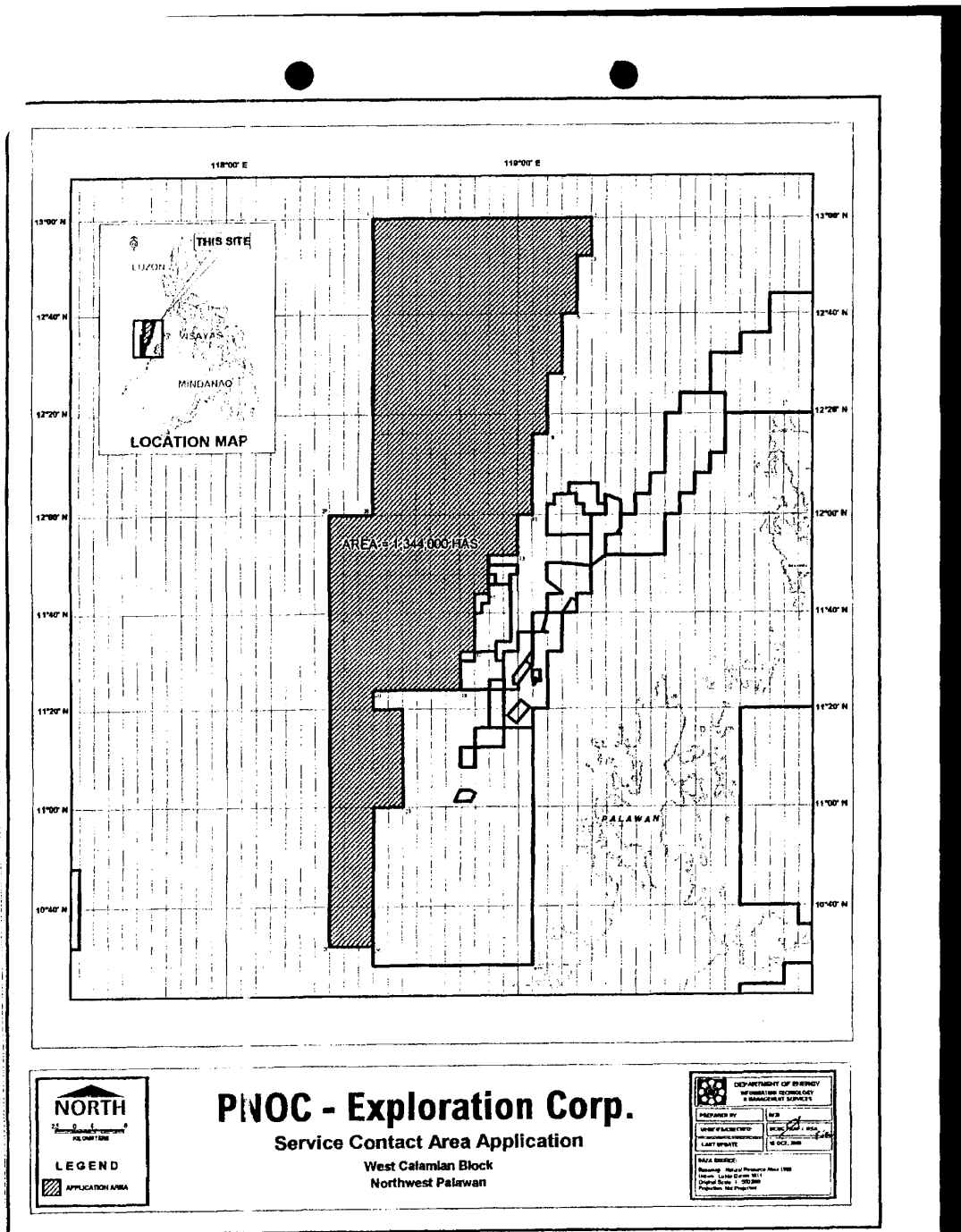
Containing an area of **ONE MILLION THREE HUNDRED FORTY FOUR THOUSAND (1,344,000) HECTARES**, more or less.

Prepared by:


Fernández B. Apoderado
Geodetic Engineer

MCUG: AAP
10/19/2005

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Annex 336

Deloitte LLP, "Fourth Philippine Energy Contracting Round (PECR 4) 2011" (2011)

Print Close Window

Deloitte.



Fourth Philippine Energy Contracting Round (PECR 4) 2011

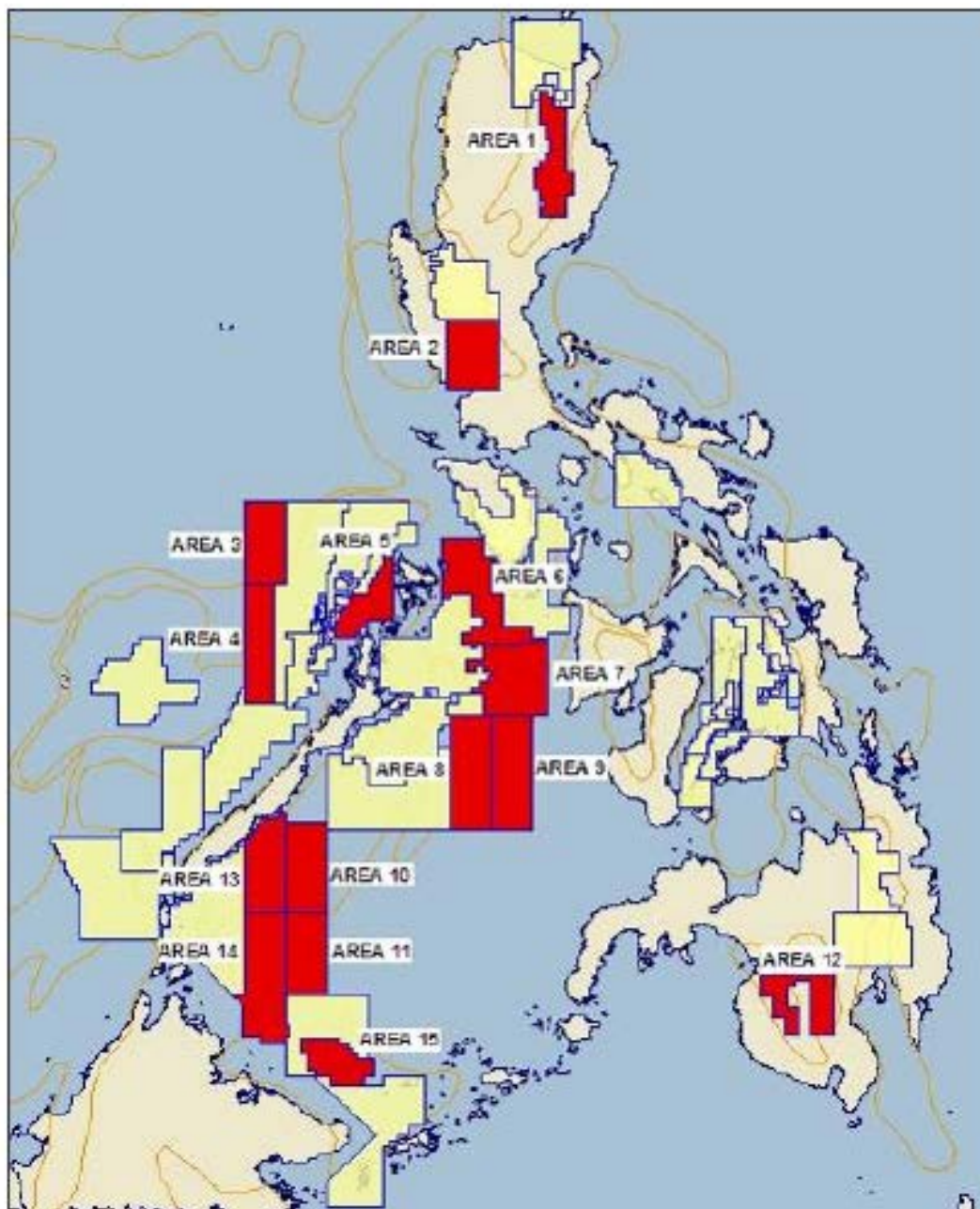
The Department of Energy (DOE), on behalf of the Philippines Government has announced that the Fourth Philippine Energy Contracting Round (PECR 4) will be launched in June 2011.

Fifteen blocks, covering a total area of approximately 100,339 square kilometres, are being offered in the round. The blocks are mainly located in frontier regions and cover an average size of 6,700 square kilometres per block, with the largest covering 9,839 square kilometres, in the East Palawan region.

The areas on offer are as follows:

Blocks offered under PECR 4

Block name	Basin	Acreage (sqkm)
AREA 1	CAGAYAN	5440
AREA 2	CENTRAL LUZON	6780
AREA 3	NORTHWEST PALAWAN	6000
AREA 4	NORTHWEST PALAWAN	6180
AREA 5	NORTHWEST PALAWAN	4240
AREA 6	MINDORO CUYO	8400
AREA 7	MINDORO CUYO	8440
AREA 8	EAST PALAWAN	8400
AREA 9	EAST PALAWAN	8400
AREA 10	EAST PALAWAN	6400
AREA 11	EAST PALAWAN	6000
AREA 12	COTABATO	4560
AREA 13	EAST PALAWAN	6480
AREA 14	EAST PALAWAN	9839
AREA 15	SULU SEA	4820



Location of blocks offered under PECR 4. Source: PetroView®

The DOE Contract Negotiation Panel will assess each proposal based on the following criteria:

- ◆ Work programme (30%)
- ◆ Financial qualifications (30%)
- ◆ Technical qualifications (30%)
- ◆ Legal qualifications (10%)

Proposals will only be accepted upon presentation of an original official receipt of payment of a non-refundable application fee of PHP100,000 per area. The winning proponent will be charged an additional processing fee of PHP0.48 per 0.01 square kilometres.

The application period is within 90 days upon the launch of the round. The evaluation period will last 45 days. Service contracts will be awarded to the new operator 80 days after application.

Further information will be released at a later date by the Department of Energy, www.doe.gov.ph or

www.doe.gov.ph/PECR/index.htm

Top

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Please see [About Deloitte](#) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its Member Firms.

Annex 337

Xiao Ao Jiang Hu Hu, "The Pearl of the South China Sea : Taiping Island", *360doc.com* (9 Jan. 2013)

360doc
Personal Library

[...]

The Pearl of the South China Sea: Taiping Island

Favorite by: Xiao Ao Jiang Hu Hu 9 Jan. 2013 | read: 137 Online post: 0 | Share| Source

[...]

Geological and Topographical Conditions

[...]

Since Taiping Island is a coral island, the fine sand surface of the island is formed by the weathering of coral reefs. Under the surface is hard reef disk. The island is surrounded by beaches. The beaches in south and north are as narrow as five meters, east beach is around 20 meters and south-west beach is as broad as 50 meters. The piles of fine sand on the beach appear reddish white, which is mainly made of coral and shell fragments. The red color comes from the fragments of red coral.

[...]

Plants

As Taiping Island is close the doldrums, there are almost no typhoons. The plants are tall and dense, forming typical tropical coastal forests, while trees and grassland areas are scattered around.

[...]

Ocean Shipments

The original trestle pier in the island was damaged and has not yet repaired until 1992. Supplying the island depends mainly on ocean shipments. Before each shipment of supplies, it requires pre-operation. Confined by the shape of Taiping Island's coral reef, the water is too shallow for supply vessels to come near the shore. Goods have to be loaded onto a rubber raft from open sea and brought ashore for unloading. The mothership (boom's safety load 15 tons) has to moor at open sea around 1.2 nautical miles away from the coast. Then goods are transported by a feeder ship (safety load at 10 tons).

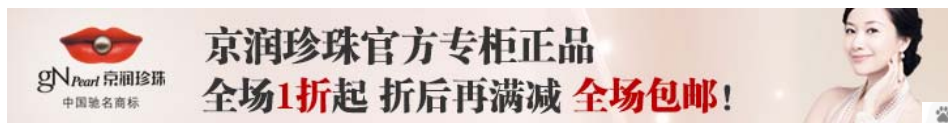
In order to improve the capacity and safety of shipment supplies and be capable of accommodating permanently four 20-tonnage cruise vessels or small boats, in December 2006, a L-shaped simple pier was built besides the damaged pier, which is called "Nanxing" Pier. It is 30 meters long and 15 meters wide.

Currently, supplying through ocean shipments is as follows:

Military supply ships: One voyage in every April and November. One-way voyage takes about three days, and then it stays in the island for a day. The main supplies provided by military ship are for the purpose of military or official use.

Civil merchant ship: One voyage every 20 days. Civil merchant ship provides supplies for general use or garrison personnel's vacation. One-way voyage takes about four days, and it then stays on the island for about 1 to 2 days.

[...]



南海明珠——太平岛

收藏人: 笑熬浆糊糊

2013-01-09 | 阅: 137 转: 0 | 分享 ▼ | 来源

太平岛（英语：Itu Aba Island），又称黄山马礁或黄山马峙，是位于中国南沙群岛北部中央郑和群礁西北角的一个岛屿，位居南海西侧航道的东边，台湾岛南方约1600公里。太平岛是南沙群岛中最大的岛屿，面积0.49平方公里。目前由台湾当局实际控制，菲律宾、越南等国宣称拥有其主权。

政治评论家邱毅：越南政府在1月1日颁布海洋法，将南海中的西沙及南沙群岛纳入其主权，1月25日成立渔政局，将派遣公务船对任何外国进入捕鱼、研究、调查、探勘的船舶进行拦截、扣押、拘捕等，这又是倚仗美国撑腰的另一侵犯中华主权的非法蛮横行为，而且直接威胁到台湾管理的太平岛，两岸该合作了。



太平岛，又称黄山马礁（英文：Itu Aba Island），是南沙群岛中最大的岛屿，面积为0.49平方公里。位于南沙群岛北部中央“郑和群礁”的西北角，位居南海西侧航道的东边，地理位置十分重要。

太平岛全部由珊瑚礁组成，从外观看来，太平岛是东西狭长的岛屿，地势低平，东西长约1360米，南北宽约350米。它距离台湾本岛860海里。

太平岛是南沙群岛中唯一有淡水资源的岛屿，有肥沃的土壤、椰树、木瓜、香蕉等，具有南海其它岛屿无法比拟的生存优势。

太平岛由中国台湾实际控制，行政上由高雄市旗津区管辖，与高雄港相距约1,600公里。

太平岛建有码头、环岛防御工事和楼房。[1]

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太平岛台军驻地

早在13世纪，中国渔民就在太平岛附近海域作业，到近代随着国力衰落中国遂丧失了对它的控制权。

1907年，大批日商渔民拥入南沙。

1929年4月，因岛上蕴藏的磷矿已开采殆尽，而且受到世界经济危机的影响，日商宣告停止开采，全部人员撤返日本。

1933年4月10日，法军占领太平岛，赶走岛上日商与台湾劳工。

1935年初，日本人平田末治和台湾总督府设立开发太平岛的开洋兴行株式会社，同年4月，法国以军舰派遣30名越南人长住太平岛。

1936年12月，日本的开洋兴业公司非法派员探查磷矿。

1938年8月9日，日本派遣军舰，建立石碑记载日本人开发经过；10月30日，日本派遣士兵和台湾劳工登陆；12月7日则有更多人登陆。

1939年4月，日军攻占太平岛，并将其更名为长岛，纳入高雄州管理。在这期间，日本曾在岛上驻扎过陆战队、气象情报队、通信派遣队和侦察机部队。

1944年，日本在岛上建立了潜艇基地。

1946年，当时的国民党政府在抗战胜利后收回南沙群岛主权时，海军上校姚汝钰率“太平舰”、“中业舰”等四艘军舰在该岛重立碑牌，并以接收舰队的“太平舰”命名。

1950年，国民党军队被赶离海南岛，设立在那的海军“南沙管理处”部队乘“中胜舰”把太平岛上的人员物资装备撤回左营。菲律宾民众则进入太平岛及其它诸岛大肆盗采磷矿。

1952年，根据对日和约中规定，日本放弃对其之主权。

1956年6月6日，蒋介石政权先派“立威支队”开赴当地驱离菲国军民，7月11日再派“威远支队”和陆战队重返太平岛戍守，组建“南沙守备区”，派一营海军陆战队在该岛担任守备。

为进一步强化“主权”宣示，1990年台湾“内政部”登岛设立“南疆锁钥国界碑”。同年，台“行政院”指示高雄市政府成立管理委员会，接管太平岛，并设立了编号为819的邮政编码。

1992年，台“内政部”增设南沙群岛“收复照壁”，以证明南沙群岛历史上是中国领土。

1999年，台当局“国防部长”唐飞宣布从太平岛撤军，改由海巡部队接防。

2000年，具有海上警察性质的“海巡署”成立后，专门设置“南巡局南沙指挥部”，在岛上派出百余名海巡人员。台海军气象中心在太平岛设立南沙气象站，有5名官兵。

2003年8月16日，台当局“内政部长”余政宪等人，搭乘“拉法耶”导弹驱逐舰，到南沙群岛的太平岛“宣示主权”。

2011年9月，台湾军方称针对南海局势将加强南沙群岛太平岛的军备物资，增强防区战力。[2]

2012年2月，台湾在岛上兴建具有协助飞机降落的助导航设施的太康天线铁塔，铁塔高度约达7~8米。太康天线预计于9月底测试完毕后启用，届时将有助飞机起降，协助相关运补输送作业。[2]



Internet Explorer cann

What you can try:

[Diagnose Connection Pro](#)

[More information](#)

2012年3月22日及26日，越南武装巡逻艇两度接近太平岛，台湾方面海巡警艇驱离时，遭对方鸣枪挑衅，台方随后也开枪示警。太平岛的台湾守军立刻进入紧急状态准备开火还击。[3]

2012年4月30日，针对越南巡逻船挑衅事件，台湾“国防部副部长”杨念祖、国民党籍“立法委员”林郁方等人搭C130运输机到南沙太平岛视岛并“宣示主权”，林郁方等人考察后表示，“行程目的是宣示主权、慰问官兵”，并呼吁台湾当局采取积极作为，捍卫台湾在南海“主权”，加强太平岛防务。并且台湾拟提升南沙守备能力，称菲进黄岩岛执法属非法行为。[4]

2012年7月25日，据台湾《中国邮报》报道，台湾最新设计建成的海洋探测船将前往太平岛周边海域，实施“海域震测及钻探”，展开台湾在南海油气开发的前置作业。[5]

2012年9月3日，据台湾《联合报》报道，台湾立法机构外事及防务委员会计划9月4日到太平岛视察。这一行动引起了境外媒体，尤其是美越的密切关注。[6]

2013年1月7日，台湾《旺报》报道，台立委要求台外交部邀请国际媒体赴南沙太平岛举行记者会，以强化台湾对南海主权的宣示。台外交部长林永乐则称“会考虑”。[7]

地理位置



太平岛所在位置

南海诸岛分布图北纬10度22分38秒，东经114度21分59秒。位于南沙群岛北部中央“郑和群礁”大型环礁上的西北角，位居南海西侧航道的东边。东距中洲礁约3.1海里（约6公里），东距敦谦沙洲约7.1海里（约13公里），西南距南薰礁16海里（约30公里）。

地质地形

岛形东西狭长，地势低平，东西长约1,289.3米，南北宽约365.7米，岸线范围41.3公顷，海岸植被线范围36.6公顷；平均潮位时陆域出水面积约为0.49平方公里，海水低潮位时礁盘与陆域出水面积约0.98平方公里，海拔4到6米。由于是一珊瑚礁岛，地表之细砂土为珊瑚礁风化所形成，下层为坚硬之礁盘。岛之四周均有沙滩，南北侧沙滩较狭宽仅5米、东侧宽约20米、西南侧宽约50米。沙滩上堆积的细砂白里透红，主要为珊瑚和贝壳碎屑，红色的砂是由红珊瑚碎裂而成。

气候条件

太平岛气候终年皆夏，年温差小，年均温27.5℃，最冷月均温26.1℃。年降水量1862毫米。岛上森林遍布，林木高大，椰子树、木瓜树和香蕉树等丛生。是南沙群岛中唯一存在淡水资源的岛，再加入几乎没有台风侵袭，因此，岛上覆盖着各种高大茂密的热带植被，如椰子林，木瓜树，香蕉树等等。太平岛东西狭长，地势低平，属热带海洋性气候。

植物

南海明珠——太平岛



太平岛

由于接近赤道无风带，几无台风侵袭，故植物高大茂密，形成典型的热带海岸林，另有草地及散生树木区。

岛上共有109种植物，若栽培种及驯化种不计，共有81种原生植物分属于33科66属；其中蕨类植物有3种；双子叶植物有57种分属于25科45属；单子叶植物有21种分属于6科19属，内含海生植物泰莱藻。其植物组成以禾本科13种最多，豆科及大戟科各9种次之，紫草科、旋花科、茜草科及莎草科各4种再次之。以生长习性而言乔木有12种，灌木有10种，蔓性植物有11种，其余48种为草本类。

本岛东部有一片热带海岸林，其树高可达20米，主要以檫树、榄仁树、莲叶桐、葛塔德木、草海桐、白水木、海柠檬、藤蓼麒麟菊、长柄菊、长鞍藤、葛蕾草等乔木为主，林间杂有林投、可可椰子。林内灌木及小乔木层极为稀少。林下草本植物蛇尾草为主。少数的藤本植物如老虎心、莲实藤散布于其间另由草海桐等灌木组成外围屏障。

开阔的海滨地区，主要的植物种类有马鞍藤、双花蓼麒麟菊。由于人为开发不时清除林下灌木及除草，因此部份地区变为散生树木区及草地。散生树木区之树种以檫树、草海桐、葛塔德木生长最好。草地以长柄菊、黄细心为主。故本岛在植物地理上属于马来西亚植物区系。

动物



太平岛

鸟类

以候鸟为主，这些海洋性的鸟类，多做短暂停留渡冬、过境，也因为太平岛是亚洲东边候鸟迁徙所经路线，所以也成为候鸟的重要歇脚点。就地形上而言，岛上的鸟类活动范围，常因腹地太小，礁岩不多及地势过于平坦，大受限制。每日的早晨及黄昏，都可看见岛上水鸟聚集于东北角沙岸、西南边码头旁边的沙地及沿岸四周的沙岸觅食；陆鸟则分布于岛内四周的乔木与灌木上。另岛上也常有雀鹰及白尾热带鸟等鸟类栖息。

珊瑚

岛之南侧，海底人为废弃物甚多，珊瑚礁死亡情形相当严重，珊瑚礁台浪拂区（约水深1至3米左右）的珊瑚相还算丰美，但由水深约5米已降至礁盘斜坡，珊瑚礁破坏严重，水中藻类丛生，加上锚泊区的垃圾到处杂陈，水中景观“乏善可陈”。太平岛保留了较完整的自然生态。岛东侧向海延伸1公里以上的礁盘外斜坡进行实勘，该处为一片少经人迹打扰的“海底花园”，色彩缤纷的各种软硬珊瑚，开展在水深7米的礁平台边缘，并直降到水深36米的垂直海壁上，形成一片艳丽的花墙。太平岛附近礁岩分布状况，东边、北边有几处断崖、陡坡，东南边是缓斜坡，南边有被炸平的现象。珊瑚一般在水深1至3米较易遭受干扰，生长不稳定是属正常情形，但在3至6米间应是一般珊瑚生长较佳的环境，太平岛只有零星散布。登录了150种。

贝类

附近海域有很多水字螺、唐冠螺和宝螺。

鱼类及浮游生物

在太平岛四周，常见热带鱼、珊瑚礁鱼类、潮间带生物。亦是众多动物性浮游生物的群聚地，水母类及原索动物类即占很大比例；而其种类组成繁杂，可能与4月份正逢季风和海流转换的季节有关。此时东北季风退缩，西南季风扩张，造成海流流势紊乱，各海流的浮游动物随之在此交汇流离，因而形成这种奇特现象。

海龟

岛北、东及东南侧沙滩为主要产卵场地。沙滩上也可以看到保育类动物海龟及玳瑁等缓缓爬行。

矿物资源

岛上磷矿已开采殆尽，无主要自然资源。南海盆地虽发现蕴藏大量石油及天然气，但太平岛附近海域尚未正式探勘和开采。

水源

岛上的地下水位高，但水质含氯盐，虽然有数口水井，然而除了东部水质尚可接受外，其余均不适合饮用。1980年代，台军“国防部”曾经在岛上钻一口600多米深的水井。1992年，兴建集水坪、蓄水池等设施。1993年，设置完成两部海水淡化机，每天造水4小时，约有6000加仑的淡水产量。

电力

主要以5部150kW柴油发电机供电，发电用油需由台湾运补。2001年12月，完成20.3kW容量的太阳能装置当备用电源。

建筑

太平岛是中国渔民的一个渔业支援基地，设有：南沙医院、气象观测站、卫星电讯通讯、雷达监控等通讯设备。

人口

有100多位中国台湾海巡署人员和海军的气象人员驻扎，另有19位空军南沙太平基地勤务派遣分队的场站维护、空军第六天气中心太平派遣气象组、航管人员驻守，无一般平民居住。

运输



台军运输机降落在在南沙太平岛上

海运

原有的栈桥码头自1992年即损坏至2012年仍未修复。

岛上物资以船舰补给为主，在每次的运补前，都要先有前置作业，因为受限于太平岛是礁盘地形，水深过浅，运补船均无法靠岸，因此物资运补须由胶筏在外海装卸后再返回岸边搬运，母船（吊杆载重15吨）均需停泊外海约1.2海里，转由接驳船（安全载重10吨）运送。

南海明珠——太平岛

2006年12月在损坏的栈桥码头旁整建完成L型简易泊靠平台，称“南星码头”，长度为30米、宽度为15米，以改善运补能量及作业安全，并可长期进驻4艘20吨级海岸巡逻艇或运补小艇。

2009年进驻一艘20吨巡逻艇。

运补情形如下：

军用补给舰：每年4及11月各1航次，单程约3天，停留岛上约1天，主供军品物资运补及公务使用。

民用商船：每20天一航次，供一般物资运补及驻防人员休假使用，单程航程约4天，停留岛上约1至2天。

空运

岛上设有直升机平台，但是使用率很低。

有可提供C-130运输机起降的简易机场，台湾单局每两个月会派遣一架次的C-130运输机往返太平岛，但岛上机场跑道目前仅能供一架运输机起降，该飞机跑道长度为1200米、宽度为30米，并有东停机坪7800平方米可停两架C-130运输机、西停机坪1800平方米，驻防岛上官兵的休假、物资运补后送，都可以在7至8小时内完成。[8]



太平岛

- 1、土地公庙：建筑年代已无法得知。
- 2、岛的东南侧有一日本兴建现已损坏的旧栈桥头，成为岛上的游览景点。
- 3、观音堂所供奉之千手观音是于1959年由台湾恭迎至太平岛祭祀，曾于1972年重修。
- 4、在码头附近有“太平文化公园”牌楼，此为利用岛上兴建机场所移除的树木，搭成公园牌楼矗立在沙滩上。
- 5、岛上的南沙群岛界碑，宣示太平岛为中国领土。

台湾在南沙群岛设立的邮递区号：819。

台军邮局：“68局”。

透过卫星通讯，岛上设有5部公用电话。

岛上可使用互联网。

移动电话通讯方面，可以国际漫游连线到越南军用电子电信（Viettel Mobile）设在鸿麻岛岛上的GSM基地台，该岛由越南控制。也可以国际漫游连线到中国移动设在南薰礁上的GSM基地台。

来自：[笑熬浆糊](#) > 《时事 政治 社会》

上一篇：[传查韦斯去世 委内瑞拉政局引猜测](#)

下一篇：[朝鲜孩子们热烈庆祝“金正恩爷爷”30岁生日](#)

Annex 338

Petronas, *Media Release: Petronas Awards Two Deepwater Blocks* (17 Jan. 2013)

PETRONAS

17/1/2012

PETRONAS AWARDS TWO DEEPWATER BLOCKS

PETRONAS today awarded two deepwater exploration blocks offshore Sabah under separate Production Sharing Contracts (PSC) to partnerships between JX Nippon, INPEX Corporation and PETRONAS Carigali Sdn Bhd.

The PSC for Deepwater Block R was awarded to the partnership of JX Nippon Oil & Gas Exploration (Deepwater Sabah) Ltd (operator; 37.5%), INPEX Offshore South West Sabah Ltd (37.5%) and PETRONAS Carigali Sdn Bhd (25%).

For Deepwater Block S, the PSC was awarded to INPEX Offshore North West Sabah Ltd (operator; 75%) and PETRONAS Carigali (25%).

The Deepwater Blocks R and S measure 672km² and 574km² respectively and are located in water depths ranging from 100 to 1,600 metres. These exploration blocks are near key discoveries such as the Kikeh, Keabangan, and Gumusut-Kakap fields, to name a few.

The partners for the Deepwater Block R are committed to drill three wildcat wells and acquire 700km² of new 3D seismic data, while for the Deepwater Block S the PSC partners will drill two wildcat wells and acquire 600km² of new 3D seismic data. The minimum financial commitment for Deepwater Blocks R and S are US\$123 million and US\$72 million respectively.

The PSCs were signed today at the PETRONAS Twin Towers in Kuala Lumpur. PETRONAS was represented by its Vice President (Petroleum Management), Encik Ramlan Abdul Malek; JX Nippon by its President & CEO Mr. Makoto Koseki; and INPEX by its Director Mr. Seiji Yui. PETRONAS Vice President and CEO of PETRONAS Exploration Encik Effendy Cheng Abdullah represented PETRONAS Carigali.

Issued by

Media Relations Department

Group Corporate Affairs Division

PETRONAS

17 January 2012

Annex 339

Antonio Carpio, “The Rule of Law in the West Philippine Dispute”, Speech Graduate School of Law of the Pamantasan ng Lungsod ng Maynila (18 May 2013)

THE RULE OF LAW IN THE WEST PHILIPPINE SEA DISPUTE

By **Hon. Justice Antonio T. Carpio**

[Note: The following is the Commencement Speech delivered by Justice Antonio T. Carpio on 18 May 2013 before the Graduating Class of the Graduate School of Law of the Pamantasan ng Lungsod ng Maynila.]

As life-long students of the law, we ask: in the international sphere, is there a Rule of Law that governs sovereign nations to achieve a just and orderly world? If there is, what is the source of that Rule of Law? How is the Rule of Law enforced in the international sphere?

We ask these questions because the Philippines today is invoking the Rule of Law in resolving its maritime dispute with China in the [West Philippine Sea](#). In terms of military, economic or diplomatic clout, the Philippines is obviously no match to China. International law, however, levels the playing field between China and the Philippines. International law ignores military, economic or diplomatic superiority in the resolution of disputes. International law is the greatest invention of man to level the playing field when large nations threaten small nations.

The Philippines wisely chose an arbitral tribunal under the [United Nations Convention on the Law of the Sea](#), or UNCLOS, in resolving its maritime dispute with China. Recently, a five-man arbitral panel under [Annex VII](#) of UNCLOS has been formed to hear the application for arbitration by the Philippines.

There is, of course, in the international sphere a Rule of Law, which ordains how sovereign nations must conduct themselves in a just and orderly manner to maintain peace and stability in the world. On maritime matters, the Rule of Law has evolved over the centuries since the time Hugo Grotius published his classic [Mare Liberum](#) in 1609.

The latest codification of the Rule of Law on maritime matters is the UNCLOS, which was adopted in 1982 and entered into force in 1994. UNCLOS is considered as the greatest achievement of mankind in codifying international law. UNCLOS is the fundamental source of the Rule of Law in the governance of the oceans and seas of our planet. In short, UNCLOS is the world's Constitution for our oceans and seas, which comprise two-thirds of the surface of our planet.

There are two principal reasons why, as of today, 165 coastal and landlocked states have ratified UNCLOS. First, UNCLOS entitles every coastal state in the world to a 200NM exclusive economic zone, plus an additional 150NM extended continental shelf where applicable. Second, UNCLOS gives all states, including landlocked states, sovereign economic rights to what is called the AREA – the seabed outside the jurisdiction of coastal states. The AREA is the common heritage of mankind.

By ratifying UNCLOS, member states bound themselves, and gave their consent in advance, to follow a finely crafted dispute settlement mechanism specified in UNCLOS. The dispute settlement mechanism is compulsory on “any dispute concerning the interpretation or application” of UNCLOS, save in certain limited cases where a member state may opt out or make reservations.

In the case of maritime boundary delimitation where a country may opt out of compulsory arbitration, compulsory conciliation is still required. There is no opt-out for any member state on compulsory conciliation. It is this detailed dispute settlement mechanism, to which member states have consented to be bound in advance even prior to any actual dispute, which ensures a just and orderly system in the oceans and seas of our planet.

The Philippines and China are bound by this dispute settlement mechanism since both have ratified UNCLOS. If a member state refuses to take part in a compulsory arbitration or compulsory conciliation that the member state is under obligation to participate under UNCLOS, the arbitration or conciliation will nevertheless proceed and an award or finding can still be made. In the words of UNCLOS, absence of a party or failure to submit to such proceedings “shall not constitute a bar to the proceedings.”

For coastal developing countries that ratified UNCLOS, the heart and soul of UNCLOS is the entitlement of every coastal state, as a matter of sovereign right under UNCLOS, to the 200NM exclusive economic zone, plus the additional 150NM extended continental shelf where applicable. These maritime entitlements are the most important new maritime rules of international law established by UNCLOS. Without these maritime entitlements, there might have been no UNCLOS. If today these maritime entitlements are taken away from coastal states, UNCLOS will surely die.

China’s 9-dashed line claim to almost the entire South China Sea takes away the maritime entitlements of the Philippines, Vietnam, Malaysia, Brunei and even Indonesia to exclusive economic zones and extended continental shelves in the South China Sea, in gross violation of UNCLOS. In the case of the Philippines, China’s 9-dashed line claim takes away our exclusive economic zone and extended continental shelf in the West Philippine Sea beyond 30 to 50 NM from the baselines of the Philippines. That deprives the Philippines of 80% of its exclusive economic zone, and 100% of its extended continental shelf, in the West Philippine Sea.

China’s 9-dashed line claim nullifies the operation of UNCLOS in almost the entire South China Sea. China’s 9-dashed line claim converts the South China Sea into an internal Chinese lake, allowing China to unilaterally appropriate for itself what belongs to other sovereign coastal states, in defiance of UNCLOS. In the apt words of the Director-General of the Maritime Institute of Malaysia, China’s 9-dashed line claim is “frivolous,

unreasonable and illogical xxx by no stretch of the imagination can the South China Sea be considered by any nation as its internal waters or historic lake.”

China’s 9-dashed line claim simply cannot co-exist with UNCLOS – one kills the other. To uphold China’s 9-dashed line claim is to wipe out centuries of progress in the law of the sea since the time of Grotius. To uphold China’s 9-dashed line claim is to embolden other naval powers to claim wholesale other oceans and seas, taking away the exclusive economic zones and extended continental shelves of other coastal states. Even to simply allow China’s 9-dashed line claim to continue vexing other coastal states in the South China Sea will seriously undermine and weaken the faith of all coastal states in UNCLOS.

Today, there is no graver danger to the future existence and survival of UNCLOS than China’s 9-dashed line claim to almost the entire South China Sea. Scholars of the law of the sea all over the world consider China’s 9-dashed line claim as utterly without basis in international law. China’s 9-dashed line claim, if left to stand, will destroy and abrogate UNCLOS, the Constitution for the oceans and seas of our planet.

The arbitration case of the Philippines against China is certainly not about territorial sovereignty. We are not asking the arbitral tribunal to declare any island or any rock above water at high tide as part of Philippine territory. The arbitration case is also not about any maritime boundary delimitation. We are not asking the arbitral tribunal to delineate the metes and bounds of our maritime boundaries with China.

What we are asking the arbitral tribunal is to rule whether China’s 9-dashed line claim, or its domestic laws, can take away the Philippines’ exclusive economic zone and extended continental shelf in the West Philippine Sea as determined in accordance with UNCLOS.

We are also asking the tribunal to rule on the legal status of the land features in the West Philippine Sea – whether the islands and rocks generate the full set of maritime zones – territorial sea, contiguous zone, exclusive economic zone, and extended continental shelf.

We are further asking the tribunal to rule whether China can occupy and erect structures on fully submerged reefs like Mischief Reef, and on low-tide elevations like Mckennan Reef, all within 200NM from Palawan and more than 600NM from China’s Hainan Island, the nearest Chinese land territory.

We are, moreover, asking the tribunal to rule whether China, under its 9-dashed line claim or domestic laws, can unilaterally appropriate for itself maritime space in the South China Sea beyond the exclusive economic zone of any coastal state. This maritime space constitutes the high seas, which under UNCLOS no state can subject to its sovereignty. UNCLOS declares that the high seas and their living resources are open to all states, whether coastal or landlocked.

Every state that ratified UNCLOS bound itself to fulfill its treaty obligations in good faith, and thus align its domestic laws with UNCLOS. In adopting its 2009 Baselines Law, the Philippines scrupulously followed

UNCLOS. As ponente of the Supreme Court decision that unanimously affirmed the constitutionality of the Baselines Law, I stated that the strict observance by the Philippines of UNCLOS in enacting the Baselines Law “manifests the Philippine State’s responsible observance of its *pacta sunt servanda* obligation under UNCLOS.”

Thus, the Philippines comes to the arbitral tribunal with clean hands. On the other hand, China’s 1998 Law on Exclusive Economic Zone and Continental Shelf claims “historic rights” to all geologic formations in the South China Sea, whether above water or under water, in gross violation of UNCLOS. That is why we are also asking the tribunal to direct China to bring its maritime laws into conformity with UNCLOS.

If the islands and rocks in the West Philippine Sea generate only territorial seas, then the Philippines has no overlapping exclusive economic zone with any opposite coastal state, including China. China’s Hainan Island is more than 750 NM from Palawan and more than 600 NM from Luzon. China’s mainland coastline is also more than 500 NM from the northern tip of Luzon. There will be no maritime boundary to delineate between China and the Philippines. China’s argument that the arbitral tribunal has no jurisdiction because the dispute is about maritime boundary delimitation will fail.

Among all coastal states in the South China Sea, only China claims that the Spratlys generate an exclusive economic zone and even a continental shelf. The largest island in the Spratlys has a land area of less than 50 hectares. In comparison, Palawan’s land area is 1.49 million hectares. It is doubtful if any of the islands in the Spratlys is capable of sustaining human habitation or economic life of its own. There have never been native settlers or inhabitants in the Spratlys. The present inhabitants in the Spratlys are mostly soldiers who cannot survive there without periodic supplies from their countries of origin.

If, and that is a big if, the arbitral tribunal rules that an island in the Spratlys is capable of sustaining human habitation or economic life of its own, thus generating an exclusive economic zone, then and only then will there be a maritime boundary delimitation dispute between the Philippines and the state that exercises sovereignty over such island. At that point the arbitral tribunal will proceed no further and its ruling will simply declare that the island generates an exclusive economic zone. The arbitral tribunal has no jurisdiction to proceed further because assuming China exercises sovereignty over such island, China has not consented to submit to arbitration any maritime boundary delimitation.

In such an eventuality, the Philippines will then bring China to compulsory conciliation to delineate its maritime boundary with China in the Spratlys. A member state of UNCLOS, like China, cannot opt-out of compulsory conciliation.

The compulsory conciliation commission will have to consider that Palawan’s more than 600-mile coastline facing the West Philippines Sea is overwhelmingly longer than the less than one-mile opposing coastline of the largest island in the Spratlys. Based on prevailing law of the sea jurisprudence, such gargantuan disproportion in the opposing coastlines will only entitle the tiny island either to an exclusive economic zone seaward away from Palawan so that there will be no overlapping zones, or to a proportionately minuscule

exclusive economic zone facing Palawan, if at all.

In the island of Luzon, there can be no overlapping exclusive economic zones between China and the Philippines. There is no Chinese-claimed island in the West Philippine Sea opposite Luzon that is within 400NM from Luzon. The baselines of the Paracel Islands are more than 400NM from the Luzon baselines. The rocks in Scarborough Shoal are not islands and cannot generate exclusive economic zones whatever state may have sovereignty over them.

Thus, in the island of Luzon, the arbitral tribunal, aside from ruling that the rocks of Scarborough Shoal generate only territorial seas whoever may have sovereignty over them, can also rule that the exclusive economic zone of the Philippines extends 200NM from the Luzon baselines, excluding the 12NM territorial seas surrounding the rocks of Scarborough Shoal.

As life-long students of the law, the final question that we ask is, how can a decision of the arbitral tribunal be enforced? If the decision is adverse to the Philippines, there is no problem of enforcement. Whether the Philippines accepts the decision or not, China has the naval might to enforce the decision on its own.

If the decision is adverse to China, China has already signaled that it will not be bound by such adverse decision. The Philippines does not have the naval might to compel China to comply with any decision of the arbitral tribunal. So what can the Philippines do?

Under the United Nations Charter, the winning state in a decision rendered by the International Court of Justice can ask the Security Council to enforce the decision of the ICJ. However, UNCLOS does not provide for any enforcement mechanism for decisions of the International Tribunal on the Law of the Sea (ITLOS) or the arbitral tribunals created under UNCLOS. Even for decisions of the ICJ, the Security Council can only act if none of the five permanent members of the Security Council will oppose the implementation of the ICJ decision, as each of the five permanent members wields veto power. China is a permanent member of the Security Council and will naturally veto any enforcement measure against itself.

Decisions of ITLOS, and of UNCLOS arbitral tribunals, may declare that there is an international law giving rise to a right, and a correlative duty, between states that are parties to a maritime dispute. There is, however, no way of enforcing that right, or exacting compliance with that duty, between the parties to the dispute. This is where the Rule of Law in the international sphere falls into a black hole – a gap in the Rule of Law where there is a Law but there is no Justice. The community of civilized nations must someday close this glaring gap between Law and Justice in the international sphere.

The only remaining recourse for the Philippines is to appeal to world opinion. As life-long students of the law with an abiding faith in the Rule of Law, it is your mission from now on to help shape world opinion that a nation should follow the Rule of Law if it wants to be accepted as a member and leader of the community of civilized nations. If a nation refuses to comply with the Rule of Law, then it becomes a rogue nation, an outcast in the community of civilized nations where adherence to the Rule of Law is the norm. A nation that

aspires to be a world power but refuses to follow the Rule of Law is a danger to peace and stability in our world.

These are the basic principles that you, the Class of 2012 of the Graduate School of Law, as life-long students of the law, must impart to all the peoples of the world. You will help shape world opinion with these principles. The world will welcome these principles not only because they preserve the sovereign right of all coastal states to their exclusive economic zones and extended continental shelves, but also because these principles guarantee that the high seas and their living resources are open to all states, whether coastal or landlocked. If world opinion adopts strongly these principles, then world opinion may even one day force the community of nations to close the gap between Law and Justice arising from decisions of ITLOS and arbitral tribunals under UNCLOS.

World opinion is the defining force in enforcing arbitral decisions that fall into the legal black hole due to the absence of effective international enforcement mechanisms. World opinion is the defining force that bestows respect and prestige to a nation aspiring to be a world power and global leader. A nation aspiring to be a global leader can earn the respect and admiration of the world only through adherence to the Rule of Law.

With a favorable decision from the arbitral tribunal, and world opinion also in our favor, time will be on the side of the Philippines. In matters of sovereign rights among nations, our time horizon should span several decades or even longer. In the battle to defend a nation's sovereign rights from encroachment by other states, there is no such thing as instant success. Even nations with the Rule of Law and world opinion on their side must persevere for a very long time to succeed.

To the Class of 2012, history has set out your mission for you. As life-long students of the law, your mission is to help protect, through advocacy of the Rule of Law, our nation's maritime entitlements in the West Philippine Sea from encroachment by other countries. Our nation counts on you.

This entry was posted in News, West Philippine Sea and tagged Justice Antonio T. Carpio, Nine Dash Line, South China Sea Dispute, UNCLOS, UNCLOS Philippines-China Arbitration on May 19, 2013 [<http://www.imoa.ph/the-rule-of-law-in-the-west-philippine-sea-dispute/>] by admin.

Annex 340

Letter from Mr. Anthony P. Ferrer, Country Representative, Nido Petroleum, to the Office of the Undersecretary, Department of Energy of the Republic of Philippines (7 Oct. 2013)



7 October 2013

UNDERSECRETARY RAMON ALLAN V. OCA

Office of the Undersecretary
Department Of Energy
Energy Center, Merritt Road
Fort Bonifacio, Taguig City

Subject : Chinese Claims

Dear Sir:

We write to respectfully and formally report the two (2) separate incidents that happened 2010 and 2011, respectively involving People's Republic of China (PRC) claims in the West Philippine Sea. Both of these incidents relate to Nido Petroleum Philippines Pty Ltd (Nido) existing service contracts with the Department of Energy (DOE), particularly SC 58 and SC 54.

- On 2 August 2010, Nido Office Manager, Gema Capati, received an email from Wang Xiaolong of the Chinese Embassy requesting for a meeting between then Nido Vice President Mr. Leonardo M. Ote and Chinese Embassy First Secretary Mr. Yongsheng Li. Mr. Ote agreed to the requested meeting, which was set for 6 August 2010. A copy of the email exchange regarding the requested meeting is attached as **Annex "A"**.

On 6 August 2010, Chinese Embassy First Secretary Mr. Yongsheng Li met with Mr. Ote at the Nido office in Philamlife Building, Makati City. During the meeting, Mr. Yongsheng showed Mr. Ote a copy of China's 9-dash-line map and informed the latter that all areas within that map are being claimed by PRC, including those areas covered by Nido's existing service contracts with the Philippine Government. Mr. Ote informed Mr. Yongsheng that Nido is a service contractor which derives its licenses and permits from the DOE. Mr. Ote suggested that Mr. Yongsheng discuss any claims with the DOE. Nido has not heard from Mr. Yongsheng since then.

Prior to this requested meeting, Nido released on 24 March 2010 an announcement with the Australian Stock Exchange (ASX) that it will commence multi beam and sea bed coring in Service Contract (SC) 58. A copy of this ASX release is attached as **Annex "B"**. Also on 3 August 2010, Nido participated in the Australian Energy Pacesetters Conference in Perth, Australia. In its presentation, Nido declared that the SC 58 "block contains an extensive deepwater fairway with a number of large multi hundred million barrel structures comparable in size to the giant Shell operated Malampaya gas field." A copy of this presentation is attached as **Annex "C"**.

- In September 2011, Jian Lianming of COSL, a Chinese service contractor, wrote to then Nido Operations Manager for SC 54, Mr. Simon Leith, signifying its refusal to conduct any seismic activity in SC54 and SC58 due to PRC's territorial claims in the said areas. A copy of the email

Manila Office
Perth Office

Unit 38B, 38th Floor, Philamlife Tower, 8767 Paseo de Roxas Street, Makati City 1226, Philippines | P: +63 2 856 5910 F: +63 2 856 5494
Registered Office | Aquila Centre Level 3, 1 Preston Street Como WA 6152 | P: +61 8 9474 0000 F: +61 8 9474 0099 | www.nido.com.au

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Annex 341

“Type 053 Jianghu-class frigates”, *GlobalSecurity.org*

Jianghu-class frigates - People's Liberation Army Navy

Type 053 *Jianghu*-class frigates

The most numerous [class](#) of warships serving with the PLAN, the F18 *Jianghu*-class represents a modification of the Type 053H *Jiangdong*-class with SSM in place of SAM. The frigates carry high-powered ant-aircraft guns, air and surface search radar and depth charges for anti-submarine warfare.

The early variants of this small, obsolete frigate are now primarily useful for coastal patrol, given the absence of gunfire control radars and obsolete missiles. The fact that modern surface combatant ships have combat direction [systems](#) may not seem remarkable, but the Jianghu-class frigate does not seem to have such a system -- the ships lack a facility comparable to the combat information center in American ships.

The No. 701 Institute began to research the concept of a guided missile frigate specialized with both anti-air and some anti-ship capabilities. From 1966 to 1969, the conceptual design of the frigate involved a diesel/oil engine. The development of the ship was carried about by the Hutong shipyard, No. 701 Institute, and [navy](#).

Development and construction of the frigate was almost completed in the mid-70s, until the primary mission of the frigate, which was anti-air, was changed to anti-ship due to the needs of the PLAN. Resultantly, the weapon systems of the frigate were modified. Instead of a fitting the frigate with anti-air missiles, the frigate was now re-equipped with anti-ship missiles and systems. Instead of twin 100mm cannons, the frigate was now equipped with a single-barreled 100mm cannon. By 1976, the newly re-oriented anti-ship frigate was finished and designated as the Type I anti-ship guided missile frigate.

Improvements to the Type I frigate were made in 1983. The two Shangyou No.1 missiles were replaced by eight Yingji No.9 guided missiles. The frigate was also equipped with a simple combat-intelligence-command [system](#), a new electronic warfare system. The newly improved frigate was designated the Type II guided missile frigate.

The first four units of the 'Jianghu' class were laid down in 1973 and as of 2005 Chinese navy operated 30 of them. Two were exported to Egypt, two to Bangladesh and four to Thailand. There are three main versions: the 'Jianghu IIs' have a hangar and carry a helicopter 'Jianghu IIIs' have twin 100-mm gun turrets instead of single weapons. There are reports of severe equipment problems aboard these vessels. The stabilizers do not work, and the air-conditioning must be used sparingly to save the generators. The 100-mm guns are hand-loaded and on the 'Jianghu Is' they have no fire-control radar. Their SSMs are the Chinese copy of the elderly Soviet 'Styx'.

As many as five variants have been produced, with considerable variation in armament and [electronics](#) among units.

- **Type 53 Jianghu I** *Xiamen* - 1 dual 100 mm gun mounts and 4 37 mm guns
- **Type 53H Jianghu II** *Xiamen* - 2 dual 100 mm gun mounts and 2 37 mm guns
- **Type 53HT Jianghu III** *Huangshi* -8 C-801/YJ-1 SSMreplace 2 C-201/HY-2 SSM

- **Type 53HT-H Jianghu IV Siping** - intended primarily for ASW, a helicopter facility replaces half the armament.
- **Type 53HT Jianghu V Zigong** - the least expensive and least powerful variant feature a reduction in missiles and no helicopter facilities.

While sources agree that a total of 23 Jianghu I units were built, sources disagree on reported pennant numbers and names for later Jianghu I units, with a total of 25 names and/or pennant numbers being reported. Many pennant numbers were changed in 1979. Curiously, sources also disagree on the nomenclature for different variants, and the assignment of specific units to each variant.

In early 1999 China deployed a pair of *Jianghu*-class frigates to the Mischief Reef area in the South China Sea. The two frigates were spotted moving around the Chinese-occupied Mischief, Fiery Cross and Johnson atolls. Although publicly expressing concern, the Philippine [government](#) did not formally protest this deployment, since the presence of such warships is allowed by international law in high seas, even if they are within another country's exclusive economic zone. In November 1998 the Philippines protested China's intrusion into the Mischief Reef, a part of the Spratlys group of islands which is claimed in whole or in part by Malaysia, Vietnam, Taiwan, Brunei, the Philippines and China.

Thailand has purchased four Chinese *Jianghu*-class FFGs and two improved Type IV frigates. The frigates, two being of the Chinese-made F25T class, were designed and built by the China State Shipbuilding Corp in Shanghai. The type IV frigates are HTMS *Taksin* (delivered in November 1995) and HTMS *Naresuan*. The four *Jianghu*-class FFGs are the HTMS *Bang Pakong*, HTMS *Chao Phraya* (delivered in 1991), HTMS *Saiburi*, and HTMS *Kraburi*. The ships were purchased at "friendship [prices](#)" of 2,000 million baht each, compared to the 8,000 million baht price tag for Western-built frigates.

Apparently, these frigates proved less than impressive to the Thai Navy. The quality of workmanship of the frigate was said to be inferior, and considerable rework was needed to bring the vessels up to acceptable standards. The ability of the ships to resist battle damage was extremely limited, and damage control facilities were virtually non-existent. Fire-suppression systems were rudimentary, and it appeared that were the hull breached rapid flooding would quickly lead to the loss of the ship.

As of 2000 it appeared that the four Chinese Type 053 Jianghu-class planned may have been canceled or delayed due to the money spent on the Agosta 90B submarines. It has also been reported that a Jianwei-II class frigate has been ordered by Pakistan. At least one if not as many as four of the Jianwei-II ships were built for Pakistan's Navy to replace four US warships, but budgetary constraints have delayed the delivery.

Annex 342

Forum Energy plc, “SC72 Recto Bank (Formerly GSEC101)”

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SC72 RECTO BANK (FORMERLY GSEC101)

The Recto Bank concession or SC72 is located in the West Philippine Sea west of Palawan Island and southwest of the Shell-operated Malampaya Gas Field.

SC72 (formerly GSEC101) was awarded to Sterling Energy PLC in June 2002 and covered an initial two-year term. Exploration in the area began in 1970 and in 1976 gas was discovered in the Sampaguita structure following the drilling of a well. In total, three wells have been drilled to date, all located at the south west end of the structure. Two of the wells tested gas at rates of 3.6 mmcf/d and 3.2 mmcf/d. In April 2005, Forum acquired the concession from Sterling and became its operator.

In 2008, Monte Oro Resources & Energy, Inc. acquired a 30% interest in the block upon payment of certain portion of the past costs and expenses of Forum.

On 15 February 2010, the licence was converted to a Service Contract and the Company immediately performed geological and geophysical works to further evaluate the block and to fulfill its commitment to the government.

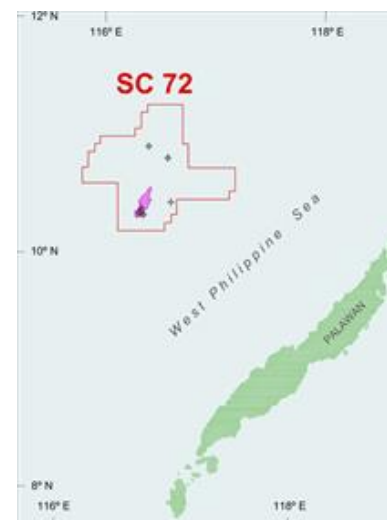
In mid-January to mid-March 2011, Forum acquired more than 2,200km of 2D and 565 sq km of 3D seismic data over the block.

2D and 3D seismic interpretation was carried out by Weatherford Petroleum Consultants. The study shows the Sampaguita Field to contain 2.6 trillion cubic feet (TCF) of contingent in-place gas resources and 5.5 TCF of prospective in-place gas resources. There are also estimates made for possible condensates associated with the gas.

On 28 July 2011, the Department of Energy ("DOE") approved Forum's entry to the second sub-phase of SC72, which has 24 months duration and the drilling of two (2) wells as the minimum work commitment.

Preparations for drilling of the two wells were undertaken in 2011-2012 for spud in early 2013. However, the requisite approvals from the DOE to conduct the said program were not received. In January 2013, the DOE extended the deadline for completion of the two wells from August 14, 2013 to August 14, 2015.

[Oil and Gas Assets](#) | [SC40](#) | [Libertad Gas Field](#) | [Maya Area Prospect](#) | [SC40 Prospects](#)



**Annual Report and Accounts
2010**

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Annex 343

“Zhong Guo Hai Jian 71,” *Marine Traffic*



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ZHONG GUO HAI JIAN 71

Unspecified

Add to My Fleet

Flag: China
 Type: Patrol Vessel
 IMO: 9355678
 MMSI: 413211000
 Call Sign: BNTF

Gross Tonnage: 1111
 DeadWeight: 253
 Length x Breadth: 74m x 10m
 Year Built: 2005
 Status: Active

Last Position Received

Out of range

Info Received: 2014-02-25 02:11
 Area: China Sea South
 Latitude / Longitude: 23.07827 / 113.3758
 Speed/Course: 0.4kn / -
 Last Known Port: GUANGZHOU
 AIS Source: 116
[Itineraries History](#)
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Last Position Received >>



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Voyage Related Info (Last Received)

Draught: 0m
 Destination:
 Speed recorded (Max / Average): 15.4 / 12 knots
 Info Received: 2014-02-25 02:16

Recent Port Calls

Local Times | UTC Times

Port	Arrival (LT)	Departure (LT)
No Records Found		

Vessel Particulars

Last update: 2013-12-13 08:10:00

General

Companies

Build

Class

Contacts

IMO: 9355678
 Name: ZHONG GUO HAI JIAN 71
 MMSI: 413211000
 Type: PATROL VESSEL
 GRT: 1111 t
 Summer DWT: 253 t
 Build: 2005



Live Map **CHINA** Vessels Ports Photos Participate Vessel/Port Subn Members

Home port: **GUANGZHOU** Services



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