

**China Adheres to the Position of Settling Through Negotiation  
the Relevant Disputes Between China and the Philippines  
in the South China Sea**

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## **Introduction**

1. Situated to the south of China's mainland, and connected by narrow straits and waterways with the Pacific Ocean to the east and the Indian Ocean to the west, the South China Sea is a semi-closed sea extending from northeast to southwest. To its north are the mainland and Taiwan Dao of China, to its south Kalimantan Island and Sumatra Island, to its east the Philippine Islands, and to its west the Indo-China Peninsula and the Malay Peninsula.
2. China's Nanhai Zhudao (the South China Sea Islands) consist of Dongsha Qundao (the Dongsha Islands), Xisha Qundao (the Xisha Islands), Zhongsha Qundao (the Zhongsha Islands) and Nansha Qundao (the Nansha Islands). These Islands include, among others, islands, reefs, shoals and cays of various numbers and sizes. Nansha Qundao is the largest in terms of both the number of islands and reefs and the geographical area.
3. The activities of the Chinese people in the South China Sea date back to over 2,000 years ago. China is the first to have discovered, named, and explored and exploited Nanhai Zhudao and relevant waters, and the first to have continuously, peacefully and effectively exercised sovereignty and jurisdiction over them. China's sovereignty over Nanhai Zhudao and relevant rights and interests in the South China Sea have been established in the long course of history, and are solidly grounded in history and law.
4. As neighbors facing each other across the sea, China and the Philippines have closely engaged in exchanges, and the two peoples have enjoyed friendship over generations. There had been no territorial or maritime delimitation disputes between the two states until the 1970s when the Philippines started to invade and illegally occupy some islands and reefs of China's Nansha Qundao, creating a territorial issue with China over these islands and reefs. In addition, with the development of the international law of the sea, a maritime delimitation dispute also arose between the two states regarding certain maritime areas of the South China Sea.
5. China and the Philippines have not yet had any negotiation designed to

settle their relevant disputes in the South China Sea. However, the two countries did hold multiple rounds of consultations on the proper management of disputes at sea and reached consensus on resolving through negotiation and consultation the relevant disputes, which has been repeatedly reaffirmed in a number of bilateral documents. The two countries have also made solemn commitment to settling relevant disputes through negotiation and consultation in the 2002 *Declaration on the Conduct of Parties in the South China Sea* (DOC) that China and the ASEAN Member States jointly signed.

6. In January 2013, the then government of the Republic of the Philippines turned its back on the above-mentioned consensus and commitment, and unilaterally initiated the South China Sea arbitration. The Philippines deliberately mischaracterized and packaged the territorial issue which is not subject to the *United Nations Convention on the Law of the Sea* (UNCLOS) and the maritime delimitation dispute which has been excluded from the UNCLOS dispute settlement procedures by China's 2006 optional exceptions declaration pursuant to Article 298 of UNCLOS. This act is a wanton abuse of the UNCLOS dispute settlement procedures. In doing so, the Philippines attempts to deny China's territorial sovereignty and maritime rights and interests in the South China Sea.
7. This paper aims to clarify the facts and tell the truth behind the relevant disputes between China and the Philippines in the South China Sea, and to reaffirm China's consistent position and policy on the South China Sea issue, in order to get to the root of the issue and set the record straight.

## I. Nanhai Zhudao are China's Inherent Territory

### i. China's sovereignty over Nanhai Zhudao is established in the course of history

8. The Chinese people have since ancient times lived and engaged in production activities on Nanhai Zhudao and in relevant waters. China is the first to have discovered, named, and explored and exploited Nanhai Zhudao and relevant waters, and the first to have continuously, peacefully and effectively exercised sovereignty and jurisdiction over them, thus establishing sovereignty over Nanhai Zhudao and the relevant rights and interests in the South China Sea.
9. As early as the 2<sup>nd</sup> century BCE in the Western Han Dynasty, the Chinese people sailed in the South China Sea and discovered Nanhai Zhudao in the long course of activities.
10. A lot of Chinese historical literatures chronicle the activities of the Chinese people in the South China Sea. These books include, among others, *Yi Wu Zhi* (An Account of Strange Things) published in the Eastern Han Dynasty (25-220), *Fu Nan Zhuan* (An Account of Fu Nan) during the period of the Three Kingdoms (220-280), *Meng Liang Lu* (Record of a Daydreamer) and *Ling Wai Dai Da* (Notes for the Land beyond the Passes) in the Song Dynasty (960-1279), *Dao Yi Zhi Lue* (A Brief Account of the Islands) in the Yuan Dynasty (1271-1368), *Dong Xi Yang Kao* (Studies on the Oceans East and West) and *Shun Feng Xiang Song* (Fair Winds for Escort) in the Ming Dynasty (1368-1644) and *Zhi Nan Zheng Fa* (Compass Directions) and *Hai Guo Wen Jian Lu* (Records of Things Seen and Heard about the Coastal Regions) in the Qing Dynasty (1644-1911). These books also record the geographical locations and geomorphologic characteristics of Nanhai Zhudao as well as hydrographical and meteorological conditions of the South China Sea. These books record vividly descriptive names the Chinese people gave to Nanhai Zhudao, such as “*Zhanghaiqitou*” (twisted atolls on the rising sea), “*Shanhuzhou*” (coral cays), “*Jiuruluozhou*” (nine isles of cowry), “*Shitang*” (rocky reefs), “*Qianlishitang*” (thousand-li rocky reefs), “*Wanlishitang*” (ten thousand-li rocky reefs), “*Changsha*” (long sand cays), “*Qianlichangsha*” (thousand-li sand cays), and “*Wanlichangsha*”

(ten thousand-li sand cays).

11. The Chinese fishermen have developed a relatively fixed naming system for the various components of Nanhai Zhudao in the long process of exploration and exploitation of the South China Sea. Under this system, islands and shoals have become known as “Zhi”; reefs “Chan”, “Xian”, or “Sha”; atolls “Kuang”, “Quan” or “Tang”; and banks “Shapai”. *Geng Lu Bu* (Manual of Sea Routes), a kind of navigation guidebook for Chinese fishermen’s journeys between the coastal regions of China’s mainland and Nanhai Zhudao, came into being and circulation in the Ming and Qing Dynasties, and has been handed down in various editions and versions of handwritten copies and is still in use even today. It shows that the Chinese people lived and carried out production activities on, and how they named Nanhai Zhudao. *Geng Lu Bu* records names for at least 70 islands, reefs, shoals and cays of Nansha Qundao. Some were named after compass directions in Chinese renditions, such as *Chouwei* (Zhubi Jiao) and *Dongtou Yixin* (Pengbo Ansha); some were named after local aquatic products in the surrounding waters such as Chigua Xian (Chigua Jiao, “chigua” means “red sea cucumber”) and Mogua Xian (Nanping Jiao, “mogua” means “black sea cucumber”); some were named after their shapes, such as Niaochuan (Xian’e Jiao, “niaochuan” means “bird string”) and Shuangdan (Xinyi Jiao, “shuangdan” means “shoulder poles”); some were named after physical objects, such as Guogai Zhi (Anbo Shazhou, “guogai” means “pot cover”) and Chenggou Zhi (Jinghong Dao, “chenggou” means “steelyard hook”); still some were named after waterways such as Liumen Sha (Liumen Jiao, “liumen” means “six doorways”).
12. Some of the names given by the Chinese people to Nanhai Zhudao were adopted by Western navigators and marked in some authoritative navigation guidebooks and charts published in the 19<sup>th</sup> and 20<sup>th</sup> centuries. For instance, Nanyit (Hongxiu Dao), Sin Cowe (Jinghong Dao) and Subi (Zhubi Jiao) originate from “Nanyi”, “Chenggou” and “Chouwei” as pronounced in Hainan dialects.
13. Numerous historical documents and objects prove that the Chinese people have explored and exploited in a sustained way Nanhai Zhudao and relevant waters. Starting from the Ming and Qing Dynasties, Chinese

fishermen sailed southward on the northeasterly monsoon to Nansha Qundao and relevant waters for fishery production activities and returned on the southwesterly monsoon to the mainland the following year. Some of them lived on the islands for years, going for fishing, digging wells for fresh water, cultivating land and farming, building huts and temples, and raising livestock. Chinese and foreign historical literature as well as archaeological finds show that there were crops, wells, huts, temples, tombs and tablet inscriptions left by Chinese fishermen on some islands and reefs of Nansha Qundao.

14. Many foreign documents also recorded the fact that during a long period of time only Chinese lived and worked on Nansha Qundao.
15. *The China Sea Directory* published in 1868 by order of the Lords Commissioners of the Admiralty of the United Kingdom, when referring to Zhenghe Qunjiao of Nansha Qundao, observed that “Hainan fishermen, who subsist by collecting trepang and tortoise-shell, were found upon most of these islands, some of whom remain for years amongst the reefs”, and that “[t]he fishermen upon Itu-Aba island [Taiping Dao] were more comfortably established than the others, and the water found in the well on that island was better than elsewhere.” *The China Sea Directory* published in 1906 and *The China Sea Pilot* in its 1912, 1923 and 1937 editions made in many parts explicit records of the Chinese fishermen living and working on Nansha Qundao.
16. The French magazine *Le Monde Colonial Illustré* published in September 1933 contains the following records: Only Chinese people (Hainan natives) lived on the nine islands of Nansha Qundao and there were no people from other countries. Seven were on Nanzi Dao (South West Cay), two of them were children. Five lived on Zhongye Dao (Thitu Island); four lived on Nanwei Dao (Spratly Island), one person more over that of 1930. There were worship stands, thatched cottages and wells left by the Chinese on Nanyao Dao (Loaita Island). No one was sighted on Taiping Dao (Itu Aba Island), but a tablet scripted with Chinese characters was found, which said that, in that magazine’s rendition, “*Moi, Ti Mung, patron de jonque, suis venu ici à la pleine lune de mars pour vous porter des aliments. Je n’ai trouvé personne, je laisse le riz à l’abri des pierres et je pars.*” Traces were also found of fishermen living on the other

islands. This magazine also records that there are abundant vegetation, wells providing drinking water, coconut palms, banana trees, papaya trees, pineapples, green vegetables and potatoes as well as poultry on Taiping Dao, Zhongye Dao, Nanwei Dao and other islands, and that these islands are habitable.

17. Japanese literature *Boufuu No Shima* (Stormy Island) published in 1940 as well as *The Asiatic Pilot*, Vol. IV, published by the United States Hydrographic Office in 1925 also have accounts about Chinese fishermen who lived and worked on Nansha Qundao.
18. China is the first to have continuously exercised authority over Nanhai Zhudao and relevant maritime activities. In history, China has exercised jurisdiction in a continuous, peaceful and effective manner over Nanhai Zhudao and in relevant waters through measures such as establishment of administrative setups, naval patrols, resources development, astronomical observation and geographical survey.
19. For instance, in the Song Dynasty, China established a post of *Jing Lie An Fu Shi* (Imperial Envoy for Management and Pacification) in the regions now known as Guangdong and Guangxi to govern the southern territory. It is mentioned in Zeng Gongliang's *Wujing Zongyao* (Outline Record of Military Affairs) that, in order to strengthen defense in the South China Sea, China established naval units to conduct patrols therein. In the Qing Dynasty, Ming Yi's *Qiongzhou Fuzhi* (Chronicle of Qiongzhou Prefecture), Zhong Yuandi's *Yazhou Zhi* (Chronicle of Yazhou Prefecture) and others all listed "Shitang" and "Changsha" under the items of "maritime defense".
20. Many of China's local official records, such as *Guangdong Tong Zhi* (General Chronicle of Guangdong), *Qiongzhou Fu Zhi* (Chronicle of Qiongzhou Prefecture) and *Wanzhou Zhi* (Chronicle of Wanzhou), contain in the section on "territory" or "geography, mountains and waters" a statement that "Wanzhou covers 'Qianlichangsha' and 'Wanlishitang'" or something similar.
21. The successive Chinese governments have marked Nanhai Zhudao as Chinese territory on official maps, such as the 1755 *Tian Xia Zong Yu Tu*

(General Map of Geography of the All-under-heaven) of the *Huang Qing Ge Zhi Sheng Fen Tu* (Map of the Provinces Directly under the Imperial Qing Authority), the 1767 *Da Qing Wan Nian Yi Tong Tian Xia Tu* (Map of the Eternally Unified All-under-heaven of the Great Qing Empire), the 1810 *Da Qing Wan Nian Yi Tong Di Li Quan Tu* (Map of the Eternally Unified Great Qing Empire) and the 1817 *Da Qing Yi Tong Tian Xia Quan Tu* (Map of the Unified All-under-heaven of the Great Qing Empire).

22. Historical facts show that the Chinese people have all along taken Nanhai Zhudao and relevant waters as a ground for living and production, where they have engaged in exploration and exploitation activities in various forms. The successive Chinese governments have exercised jurisdiction over Nanhai Zhudao in a continuous, peaceful and effective manner. In the course of history, China has established sovereignty over Nanhai Zhudao and relevant rights and interests in the South China Sea. The Chinese people have long been the master of Nanhai Zhudao.

**ii. China has always been resolute in upholding its territorial sovereignty and maritime rights and interests in the South China Sea**

23. China's sovereignty over Nanhai Zhudao had never been challenged before the 20<sup>th</sup> century. When France and Japan invaded and illegally occupied by force some islands and reefs of China's Nansha Qundao in the 1930s and 1940s, the Chinese people rose to fight back strenuously and the Chinese government took a series of measures to defend China's sovereignty over Nansha Qundao.
24. In 1933, France invaded some islands and reefs of Nansha Qundao and declared "occupation" of them in an announcement published in *Journal Officiel*, creating the "Incident of the Nine Islets". The French aggression triggered strong reactions and large scale protests from all walks of life across China. The Chinese fishermen living on Nansha Qundao also took on-site resistance against the French aggression. Chinese fishermen Fu Hongguang, Ke Jiayu, Zheng Landing and others cut down the posts flying French flags on Taiping Dao, Beizi Dao, Nanwei Dao, Zhongye Dao and others.

25. Shortly after this Incident happened, the Chinese Ministry of Foreign Affairs made clear through its spokesperson, referring to the relevant islands of Nansha Qundao, that “no other people but Chinese fishermen live on the islands and they are recognized internationally as Chinese territory”. The Chinese government made strong representations to the French government against its aggression. And in response to the French attempt to trick Chinese fishermen into hanging French flags, the government of Guangdong Province instructed that administrators of all counties should issue public notice forbidding all Chinese fishing vessels operating in Nansha Qundao and relevant waters from hanging foreign flags, and Chinese national flags were distributed to them to be hung on Chinese fishing vessels.
26. China’s Committee for the Examination for the Land and Sea Maps, which was composed of representatives of the Ministry of Foreign Affairs, Ministry of the Interior, Ministry of the Navy and other institutions, reviewed and approved the names of individual islands, reefs, banks and shoals of Nanhai Zhudao, compiled and published *Zhong Guo Nan Hai Ge Dao Yu Tu* (Map of the South China Sea Islands of China) in 1935.
27. Japan invaded and illegally occupied Nanhai Zhudao during its war of aggression against China. The Chinese people fought heroically against the Japanese aggression. With the advance of the World’s Anti-Fascist War and the Chinese People’s War of Resistance against Japanese Aggression, China, the United States and the United Kingdom solemnly demanded in the *Cairo Declaration* in December 1943 that all the territories Japan had stolen from the Chinese shall be restored to China. In July 1945, China, the United States and the United Kingdom issued the *Potsdam Proclamation*. That Proclamation explicitly declares in Article 8: “The terms of the *Cairo Declaration* shall be carried out.”
28. In August 1945, Japan announced its acceptance of the *Potsdam Proclamation* and its unconditional surrender. In November and December 1946, the Chinese government dispatched Colonel Lin Zun and other senior military and civil officials to Xisha Qundao and Nansha Qundao to resume exercise of authority over these Islands, with commemorative ceremonies held, sovereignty markers re-erected, and troops garrisoned. These officials arrived at these islands on four

warships, namely Yongxing, Zhongjian, Taiping and Zhongye. Subsequently, the Chinese government renamed four islands of Xisha Qundao and Nansha Qundao after the names of those four warships.

29. In March 1947, the Chinese government established on Taiping Dao Nansha Qundao Office of Administration and placed it under the jurisdiction of Guangdong Province. China also set up a meteorological station and a radio station on Taiping Dao, which started broadcasting meteorological information in June of that year.
30. On the basis of a new round of geographical survey of Nanhai Zhudao, the Chinese government commissioned in 1947 the compilation of *Nan Hai Zhu Dao Di Li Zhi Lie* (A Brief Account of the Geography of the South China Sea Islands), reviewed and approved *Nan Hai Zhu Dao Xin Jiu Ming Cheng Dui Zhao Biao* (Comparison Table on the Old and New Names of the South China Sea Islands), and drew *Nan Hai Zhu Dao Wei Zhi Tu* (Location Map of the South China Sea Islands) on which the dotted line is marked. In February 1948, the Chinese government officially published *Zhong Hua Min Guo Xing Zheng Qu Yu Tu* (Map of the Administrative Districts of the Republic of China) including *Nan Hai Zhu Dao Wei Zhi Tu* (Location Map of the South China Sea Islands).
31. In June 1949, the Chinese government promulgated *Hai Nan Te Qu Xing Zheng Zhang Guan Gong Shu Zu Zhi Tiao Li* (Regulations on the Organization of the Office of the Chief Executive of the Hainan Special District), which placed Hainan Dao, Dongsha Qundao, Xisha Qundao, Zhongsha Qundao, Nansha Qundao and some other islands under the jurisdiction of the Hainan Special District.
32. Since its founding on 1 October 1949, the People's Republic of China has repeatedly reiterated and further upheld its sovereignty over Nanhai Zhudao and relevant rights and interests in the South China Sea by measures such as adopting legislations, establishing administration and making diplomatic representations. China has never ceased carrying out activities such as patrolling and law enforcement, resources development and scientific survey on Nanhai Zhudao and in the South China Sea.
33. In August 1951, Foreign Minister Zhou Enlai, in his *Statement on the*

*United States-British Draft Peace Treaty with Japan and the San Francisco Conference*, pointed out that “as a matter of fact, just like all the Nan Sha Islands, Chung Sha Islands and Tung Sha Islands, Si Sha Islands (the Paracel Islands) and Nan Wei Island (Spratly Island) have always been China’s territory, occupied by Japan for some time during the war of aggression waged by Japanese imperialism, they were all taken over by the then Chinese Government, following Japan’s surrender”, “Whether or not the United States-British Draft Treaty contains provisions on this subject and no matter how these provisions are worded, the inviolable sovereignty of the People’s Republic of China over Nan Wei Island (Spratly Island) and Si Sha Islands (the Paracel Islands) will not be in any way affected.”

34. In September 1958, China promulgated the *Declaration of the Government of the People’s Republic of China on China’s Territorial Sea*, explicitly providing that the breadth of China’s territorial sea shall be twelve nautical miles, that the straight baselines method shall be employed to determine the baselines of territorial sea and that such provisions shall apply to all territories of the People’s Republic of China, including “Dongsha Qundao, Xisha Qundao, Zhongsha Qundao, Nansha Qundao and all the other islands belonging to China”.
35. In March 1959, the Chinese government set up, on Yongxing Dao of Xisha Qundao, the Office of Xisha Qundao, Nansha Qundao and Zhongsha Qundao. In March 1969, the Office was renamed the Revolutionary Committee of Xisha Qundao, Zhongsha Qundao and Nansha Qundao of Guangdong Province. In October 1981, the name of the Office of Xisha Qundao, Nansha Qundao and Zhongsha Qundao was restored.
36. In April 1983, China Committee on Geographical Names was authorized to publish 287 standard geographical names for part of Nanhai Zhudao.
37. In May 1984, the Sixth National People’s Congress decided at its Second Session to establish the Hainan Administrative District with jurisdiction over Xisha Qundao, Nansha Qundao and Zhongsha Qundao and the relevant maritime areas, among others.

38. In April 1988, the Seventh National People's Congress decided at its First Session to establish Hainan Province with jurisdiction over Xisha Qundao, Nansha Qundao and Zhongsha Qundao and the relevant maritime areas, among others.
39. In February 1992, China promulgated the *Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone*, establishing China's basic system of territorial sea and contiguous zone. This Law explicitly states: "The land territory of the People's Republic of China includes [...] Dongsha Qundao; Xisha Qundao; Zhongsha Qundao; Nansha Qundao; as well as all the other islands belonging to the People's Republic of China." In May 1996, the Standing Committee of the Eighth National People's Congress made the decision at its Nineteenth Session to ratify UNCLOS, and at the same time declared that, "The People's Republic of China reaffirms its sovereignty over all its archipelagoes 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."
40. In May 1996, the Chinese government announced the baselines of the part of the territorial sea adjacent to the mainland which are composed of all the straight lines joining the 49 adjacent base points from Gaojiao of Shandong to Junbijiao of Hainan Dao, as well as the baselines of the territorial sea adjacent to Xisha Qundao which are composed of all the straight lines joining the 28 adjacent base points, and declared it would announce the remaining baselines of the territorial sea at another time.
41. In June 1998, China promulgated the *Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf*, establishing China's basic system of exclusive economic zone and continental shelf. This Law explicitly states: "The provisions in this Law shall not affect the historic rights that the People's Republic of China enjoys."
42. In June 2012, the State Council approved the abolition of the Office of Xisha Qundao, Nansha Qundao and Zhongsha Qundao and the simultaneous establishment of prefecture-level Sansha City with jurisdiction over Xisha Qundao, Nansha Qundao and Zhongsha Qundao

and the relevant waters.

43. China attaches great importance to ecological and fishery resource preservation in the South China Sea. In 1999, China began to enforce summer fishing moratorium in the South China Sea and has done so since that time. By the end of 2015, China had established six national aquatic biological nature reserves and six such reserves at provincial level, covering a total area of 2.69 million hectares, as well as seven national aquatic germplasm resources conservation areas with a total area of 1.28 million hectares.
44. Since the 1950s, the Taiwan authorities of China have maintained a military presence on Taiping Dao of Nansha Qundao. For a long time, they have also maintained civil service and administration bodies and carried out natural resources development on the island.

**iii. China's sovereignty over Nanhai Zhudao is widely acknowledged in the international community**

45. After the end of the Second World War, China recovered and resumed the exercise of sovereignty over Nanhai Zhudao. Many countries recognize that Nanhai Zhudao are part of China's territory.
46. In 1951, it was decided at the San Francisco Peace Conference that Japan would renounce all right, title and claim to Nansha Qundao and Xisha Qundao. In 1952, the Japanese government officially stated that it had renounced all right, title, and claim to Taiwan, Penghu, as well as Nansha Qundao and Xisha Qundao. In the same year, Xisha Qundao and Nansha Qundao, which Japan renounced under the *San Francisco Peace Treaty*, together with Dongsha Qundao and Zhongsha Qundao, were all marked as belonging to China on the 15<sup>th</sup> map, Southeast Asia, of the *Standard World Atlas* recommended by the then Japanese Foreign Minister Katsuo Okazaki with his signature.
47. In October 1955, the International Civil Aviation Organization held a conference in Manila, which was attended by representatives from the United States, the United Kingdom, France, Japan, Canada, Australia, New Zealand, Thailand, the Philippines, the authorities from South

Vietnam and China's Taiwan authorities. The Filipino and French representatives served as chair and vice chair respectively. It was requested in Resolution No. 24 adopted at the conference that China's Taiwan authorities should enhance meteorological observation on Nansha Qundao, and no opposition or reservation was registered.

48. On 4 September 1958, the Chinese government promulgated the *Declaration of the Government of the People's Republic of China on China's Territorial Sea*, proclaiming a twelve-nautical-mile territorial sea breadth, and stipulating that, "This provision applies to all territories of the People's Republic of China, including [...] Dongsha Qundao, Xisha Qundao, Zhongsha Qundao, Nansha Qundao, and all other islands belonging to China." On 14 September, Prime Minister Pham Van Dong of the Vietnamese government sent a diplomatic note to Zhou Enlai, Premier of the State Council of China, solemnly stating that "the government of the Democratic Republic of Vietnam recognizes and supports the declaration of the government of the People's Republic of China on its decision concerning China's territorial sea made on 4 September 1958" and "the government of the Democratic Republic of Vietnam respects this decision."
49. In August 1956, First Secretary Donald E. Webster of the United States institution in Taiwan made an oral request to China's Taiwan authorities for permission for the United States military personnel to conduct geodetic survey in Huangyan Dao, Shuangzi Qunjiao, Jinghong Dao, Hongxiu Dao and Nanwei Dao of Zhongsha Qundao and Nansha Qundao. China's Taiwan authorities later approved the above request.
50. In December 1960, the United States government sent a letter to China's Taiwan authorities to "request permission be granted" for its military personnel to carry out survey at Shuangzi Qunjiao, Jinghong Dao and Nanwei Dao of Nansha Qundao. China's Taiwan authorities approved this application.
51. In 1972, Japan reiterated its adherence to the terms of Article 8 of the *Potsdam Proclamation* in the *Joint Communiqué of the Government of the People's Republic of China and the Government of Japan*.

52. It was reported by AFP that, on 4 February 1974, the then Indonesian Foreign Minister Adam Malik stated that, “*si nous regardons les cartes actuelles, elles montrent que les deux archipels des Paracels [Xisha Qundao] et des Spratleys [Nansha Qundao] appartiennent à la Chine*”, and that because we recognize the existence of only one China, “*cela signifie que, pour nous, ces archipels appartiennent à la République populaire de Chine*”.
53. The 14<sup>th</sup> Assembly of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, held from 17 March to 1 April 1987, deliberated on the *Global Sea-Level Observing System Implementation Plan 1985-1990* (IOC/INF-663 REV) submitted by the Commission’s Secretariat. The Plan integrated Xisha Qundao and Nansha Qundao into the Global Sea-Level Observing System, and explicitly listed these two Islands under “People’s Republic of China”. For the implementation of this Plan, the Chinese government was commissioned to build five marine observation stations, including one on Nansha Qundao and one on Xisha Qundao.
54. Nanhai Zhudao have long been widely recognized by the international community as part of China’s territory. The encyclopedias, yearbooks and maps published in many countries mark Nansha Qundao as belonging to China. For example this is done in, among others, the 1960 *Worldmark Encyclopedia of the Nations* by the Worldmark Press published in the United States, the 1966 *New China Yearbook* by the Far Eastern Booksellers published in Japan; the *Welt-Atlas* published in 1957, 1958 and 1961 in the Federal Republic of Germany, the 1958 *Atlas Zur Erd-Und Länderkunde* and the 1968 *Haack Großer Weltatlas* published in the German Democratic Republic, the *Atlas Mira* from 1954 to 1959 and the 1957 *Administrativno-territorialnoe Delenie Zarubezhnyh Stran* published in the Soviet Union, the 1959 *Világtlasz* and the 1974 *Képes Politikai és Gazdasági Világtlasz* published in Hungary, the 1959 *Malý Atlas Světa* published in Czechoslovakia, the 1977 *Atlas Geografic Scolar* published in Romania, the 1965 *Atlas international Larousse politique et économique*, the 1969 *Atlas moderne Larousse* published by Libraire Larousse in France, the maps in the 1972 and 1983 *World Encyclopedia*, the 1985 *Grand Atlas World* by Heibon Sha, and the 1980 *Sekai to Sono Kunikuni* published by Japan Geographic Data Center in Japan.

## **II. Origin of the Relevant Disputes Between China and the Philippines in the South China Sea**

55. The core of the relevant disputes between China and the Philippines in the South China Sea lies in the territorial issues caused by the Philippines' invasion and illegal occupation of some islands and reefs of China's Nansha Qundao. In addition, with the development of the international law of the sea, a maritime delimitation dispute also arose between the two states regarding certain sea areas of the South China Sea.

### **i. The Philippines' invasion and illegal occupation caused disputes with China over some islands and reefs of Nansha Qundao**

56. The territory of the Philippines is defined by a series of international treaties, including the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain* (the Treaty of Paris), the 1900 *Treaty between the United States of America and the Kingdom of Spain for Cession of Outlying Islands of the Philippines* (the Treaty of Washington), and the 1930 *Convention between His Majesty in Respect of the United Kingdom and the President of the United States regarding the Boundary between the State of North Borneo and the Philippine Archipelago*.

57. The Philippines' territory so defined has nothing to do with China's Nansha Qundao.

58. In the 1950s, the Philippines attempted to take moves on China's Nansha Qundao but eventually stopped because of China's firm opposition. In May 1956, Tomás Cloma, a Filipino, organized a private expedition to some islands and reefs of Nansha Qundao and unlawfully named them "Freedomland". Afterwards, Philippine Vice President and Foreign Minister Carlos Garcia expressed support for Cloma's activities. In response, the spokesperson of the Chinese Foreign Ministry issued a stern statement on 29 May, pointing out that Nansha Qundao "has always been a part of China's territory. The People's Republic of China has indisputable sovereignty over these islands [...] and will never tolerate the infringement of its sovereignty by any country with any means and under any excuse." At the same time, China's Taiwan authorities sent troops to patrol Nansha Qundao and resumed stationing troops on Taiping Dao.

Afterward, the Philippine Department of Foreign Affairs said that the government of the Philippines did not know about Cloma's activities or give him the consent before he took his moves.

59. Starting in the 1970s, the Philippines invaded and illegally occupied by force some islands and reefs of China's Nansha Qundao and raised illegal territorial claims. The Philippines invaded and illegally occupied Mahuan Dao and Feixin Dao in August and September 1970, Nanyao Dao and Zhongye Dao in April 1971, Xiyue Dao and Beizi Dao in July 1971, Shuanghuang Shazhou in March 1978 and Siling Jiao in July 1980. In June 1978, Philippine President Ferdinand Marcos signed Presidential Decree No. 1596, which designated some islands and reefs of China's Nansha Qundao and large areas of their surrounding waters as "Kalayaan Island Group" ("Kalayaan" in Tagalog means "Freedom"), set up "Municipality of Kalayaan" and illegally included them in the Philippine territory.
60. The Philippines has also enacted a series of national laws to lay its own claims of territorial sea, exclusive economic zone and continental shelf, part of which conflicted with China's maritime rights and interests in the South China Sea.
61. The Philippines has concocted many excuses to cover up its invasion and illegal occupation of some islands and reefs of China's Nansha Qundao in order to pursue its territorial pretensions. For instance, it claims that: "Kalayaan Island Group" is not part of Nansha Qundao but *terra nullius*; Nansha Qundao became "trust territory" after the end of the Second World War; the Philippines has occupied Nansha Qundao because of "contiguity or proximity" and out of "national security" considerations; "some islands and reefs of Nansha Qundao are located in the exclusive economic zone and continental shelf of the Philippines"; the Philippines' "effective control" over the relevant islands and reefs has become the "*status quo*" that cannot be changed.

## **ii. The Philippines' illegal claim has no historical or legal basis**

62. The Philippines' territorial claim over part of Nansha Qundao is groundless from the perspectives of either history or international law.

63. First, Nansha Qundao has never been part of the Philippine territory. The territorial scope of the Philippines has already been defined by a series of international treaties. The United States, administrator of the Philippines at the relevant time, was clearly aware of these facts. On 12 August 1933, ex-Senator Isabelo de los Reyes of the United States-governed Philippines wrote a letter to Governor-General Frank Murphy in an attempt to claim that some Nansha islands formed part of the Philippine Archipelago on the ground of geographical proximity. That letter was referred to the Department of War and the Department of State. On 9 October, the United States Secretary of State replied that, “These islands [...] lie at a considerable distance outside the limits of the Philippine Islands which were acquired from Spain in 1898”. In May 1935, the United States Secretary of War George Dern wrote a letter to Secretary of State Cordell Hull, seeking the views of the State Department on the “validity and propriety” of the Philippines’ territorial claims over some islands of Nansha Qundao. A memorandum of the Office of Historical Adviser in the State Department, signed by S.W. Boggs, pointed out that, “There is, of course, no basis for a claim on the part of the United States, as islands constituting part of the Philippine Archipelago”. On 20 August, Secretary Hull officially replied in writing to Secretary Dern, stating that, “the islands of the Philippine group which the United States acquired from Spain by the treaty of 1898, were only those within the limits described in Article III”, and that, referring to the relevant Nansha islands, “It may be observed that [...] no mention has been found of Spain having exercised sovereignty over, or having laid claim to, any of these islands”. All these documents prove that the Philippines’ territory never includes any part of Nansha Qundao, a fact that has been recognized by the international community, including the United States.
64. Second, the claim that “Kalayaan Island Group” is “*terra nullius*” discovered by the Philippines is groundless. The Philippines claims that its nationals “discovered” the islands in 1956, and uses this as an excuse to single out some islands and reefs of China’s Nansha Qundao and name them “Kalayaan Island Group”. This is an attempt to create confusion over geographical names and concepts, and dismember China’s Nansha Qundao. As a matter of fact, the geographical scope of Nansha Qundao is clear, and the so-called “Kalayaan Island Group” is part of China’s

Nansha Qundao. Nansha Qundao has long been an integral part of China's territory and is by no means "*terra nullius*".

65. Third, Nansha Qundao is not "trust territory" either. The Philippines claims that after the Second World War, Nansha Qundao became "trust territory", the sovereignty over which was undetermined. This claim finds no support in law or reality. The post-War trust territories were all specifically listed in relevant international treaties or the documents of the United Nations Trusteeship Council. Nansha Qundao was never included in them and was thus not trust territory at all.
66. Fourth, neither "contiguity or proximity" nor national security is a basis under international law for acquiring territory. Many countries have territories far away from their metropolitan areas, in some cases even very close to the shores of other countries. When exercising colonial rule over the Philippines, the United States had a dispute with the Netherlands regarding sovereignty over an island which is close to the Philippine Archipelago, and the United States' claim on the basis of contiguity was ruled as having no foundation in international law. Furthermore, it is just absurd to invade and occupy the territory of other countries on the ground of national security.
67. Fifth, the Philippines claims that some islands and reefs of China's Nansha Qundao are located within its exclusive economic zone and continental shelf and therefore should fall under its sovereignty or form part of its continental shelf. This is an attempt to use maritime jurisdiction provided for under UNCLOS to deny China's territorial sovereignty. This runs directly counter to the "land dominates the sea" principle, and goes against the purpose of UNCLOS, as stated in its preamble, to "establish [...] with due regard for the sovereignty of all States, a legal order for the seas and ocean". Therefore, a coastal state can only claim maritime jurisdiction under the precondition of respecting the territorial sovereignty of another state. No state can extend its maritime jurisdiction to an area under the sovereignty of another; still less can it use such jurisdiction as an excuse to deny another state's sovereignty or even to infringe upon its territory.
68. Sixth, the Philippines' so-called "effective control" on the basis of its

illegal seizure is null and void. The international community does not recognize “effective control” created through occupation by force. The Philippines’ “effective control” is mere occupation by naked use of force of some islands and reefs of China’s Nansha Qundao. Such occupation violates the *Charter of the United Nations* and the basic norms governing international relations and is unequivocally prohibited by international law. This so-called “effective control” based on illegal seizure cannot change the basic fact that Nansha Qundao is China’s territory. China firmly opposes any attempt to treat the seizure of some islands and reefs of China’s Nansha Qundao as a so-called “*fait accompli*” or “*status quo*”. China will never recognize such a thing.

### **iii. The development of the international law of the sea gave rise to the dispute between China and the Philippines over maritime delimitation**

69. With the formulation and entering into effect of UNCLOS, the relevant disputes between China and the Philippines in the South China Sea have gradually intensified.
70. Based on the practice of the Chinese people and the Chinese government in the long course of history and the position consistently upheld by successive Chinese governments, and pursuant to China’s national law and under international law, including the 1958 *Declaration of the Government of the People’s Republic of China on China’s Territorial Sea*, the 1992 *Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone*, the 1996 *Decision of the Standing Committee of the National People’s Congress of the People’s Republic of China on the Ratification of the United Nations Convention on the Law of the Sea*, the 1998 *Law of the People’s Republic of China on the Exclusive Economic Zone and the Continental Shelf*, and the 1982 *United Nations Convention on the Law of the Sea*, China has, based on Nanhai Zhudao, internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf. In addition, China has historic rights in the South China Sea.
71. The Philippines proclaimed its internal waters, archipelagic waters, territorial sea, exclusive economic zone and continental shelf according to, among others, the Philippines’ Republic Act No. 387 of 1949, Republic

Act No. 3046 of 1961, Republic Act No. 5446 and Presidential Proclamation No. 370 of 1968, Presidential Decree No. 1599 of 1978, and Republic Act No. 9522 of 2009.

72. In the South China Sea, China and the Philippines are states possessing land territory with opposite coasts, the distance between which is less than 400 nautical miles. The maritime areas claimed by the two states overlap, giving rise to a dispute over maritime delimitation.

### **III. China and the Philippines Have Reached Consensus on Settling Their Relevant Disputes in the South China Sea**

73. China firmly upholds its sovereignty over Nanhai Zhudao, resolutely opposes the Philippines' invasion and illegal occupation of China's islands and reefs, and resolutely opposes the unilateral acts taken by the Philippines on the pretext of enforcing its own claims to infringe China's rights and interests in waters under China's jurisdiction. Still, in the interest of sustaining peace and stability in the South China Sea, China has exercised great restraint, stayed committed to peacefully settling the disputes with the Philippines in the South China Sea, and made tireless efforts to this end. China has conducted consultations with the Philippines on managing maritime differences and promoting practical maritime cooperation, and the two sides have reached important consensus on settling through negotiation relevant disputes in the South China Sea and properly managing relevant disputes.

#### **i. It is the consensus and commitment of China and the Philippines to settle through negotiation their relevant disputes in the South China Sea**

74. China has dedicated itself to fostering friendly relations with all countries on the basis of the Five Principles of Peaceful Coexistence, namely, mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence.

75. In June 1975, China and the Philippines normalized their relations, and in the joint communiqué for that purpose, the two governments agreed to settle all disputes by peaceful means without resorting to the threat or use of force.

76. In fact, China's initiative of "pursuing joint development while shelving disputes" regarding the South China Sea issue was first addressed to the Philippines. In a June 1986 meeting with Philippine Vice President Salvador Laurel, Chinese leader Deng Xiaoping pointed out that Nansha Qundao belongs to China, and when referring to the matter of differences, stated that, "This issue can be shelved for now. Several years later, we can sit down and work out a solution that is acceptable to all in a calm manner.

We shall not let this issue stand in the way of our friendly relations with the Philippines and with other countries.” In April 1988, when meeting with Philippine President Corazón Aquino, Deng Xiaoping reiterated that “with regard to the issue concerning Nansha Qundao, China has the biggest say. Nansha Qundao has been part of China’s territory throughout history, and no one has ever expressed objection to this for quite some time”; and “For the sake of the friendship between our two countries, we can shelve the issue for now and pursue joint development”. Since then, when handling the relevant South China Sea issue and developing bilateral ties with other littoral countries around the South China Sea, China has all along acted in keeping with Deng Xiaoping’s idea: “sovereignty belongs to China, disputes can be shelved, and we can pursue joint development”.

77. Since the 1980s, China has put forward a series of proposals and initiatives for managing and settling through negotiation disputes with the Philippines in the South China Sea and reiterated repeatedly its sovereignty over Nansha Qundao, its position on peacefully settling the relevant disputes and its initiative of “pursuing joint development while shelving disputes”. China has expressed its clear opposition to intervention by outside forces and attempts to multilateralize the South China Sea issue and emphasized that the relevant disputes should not affect bilateral relations.
78. In July 1992, the 25<sup>th</sup> ASEAN Foreign Ministers Meeting held in Manila adopted the *ASEAN Declaration on the South China Sea*. China expressed appreciation for relevant principles outlined in that Declaration. China stated that it has all along stood for peacefully settling through negotiation the territorial issues relating to part of Nansha Qundao and opposed the use of force, and is ready to enter into negotiation with countries concerned on implementing the principle of “pursuing joint development while shelving disputes” when conditions are ripe.
79. In August 1995, China and the Philippines issued the *Joint Statement between the People’s Republic of China and the Republic of the Philippines concerning Consultations on the South China Sea and on Other Areas of Cooperation* in which they agreed that “[d]isputes shall be settled by the countries directly concerned” and that “a gradual and

progressive process of cooperation shall be adopted with a view to eventually negotiating a settlement of the bilateral disputes.” Subsequently, China and the Philippines reaffirmed their consensus on settling the South China Sea issue through bilateral negotiation and consultation in a number of bilateral documents, such as the March 1999 *Joint Statement of the China-Philippines Experts Group Meeting on Confidence-Building Measures* and the May 2000 *Joint Statement between the Government of the People’s Republic of China and the Government of the Republic of the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century*.

80. In November 2002, China and the ten ASEAN Member States signed the DOC in which the parties solemnly “undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea”.
81. Afterwards, China and the Philippines reaffirmed this solemn commitment they had made in the DOC in a number of bilateral documents, such as the September 2004 *Joint Press Statement between the Government of the People’s Republic of China and the Government of the Republic of the Philippines* and the September 2011 *Joint Statement between the People’s Republic of China and the Republic of the Philippines*.
82. The relevant provisions in all the aforementioned bilateral instruments and the DOC embody the following consensus and commitment between China and the Philippines on settling the relevant disputes in the South China Sea: first, the relevant disputes shall be settled between sovereign states directly concerned; second, the relevant disputes shall be peacefully settled through negotiation and consultation on the basis of equality and mutual respect; and third, sovereign states directly concerned shall “eventually negotiat[e] a settlement of the bilateral disputes” in accordance with universally recognized principles of international law, including the 1982 UNCLOS.

83. By repeatedly reaffirming negotiations as the means for settling relevant disputes, and by repeatedly emphasizing that negotiations be conducted by sovereign states directly concerned, the above-mentioned provisions obviously have produced the effect of excluding any means of third party settlement. In particular, the 1995 Joint Statement provides for “eventually negotiating a settlement of the bilateral disputes”. The term “eventually” in this context clearly serves to emphasize that “negotiations” is the only means the parties have chosen for dispute settlement, to the exclusion of any other means including third party settlement procedures. The above consensus and commitment constitutes an agreement between the two states excluding third-party dispute settlement as a way to settle relevant disputes in the South China Sea between China and the Philippines. This agreement must be observed.

**ii. It is the consensus of China and the Philippines to properly manage relevant disputes in the South China Sea**

84. It is China’s consistent position that, the relevant parties should establish and improve rules and mechanisms, and pursue practical cooperation and joint development, so as to manage disputes in the South China Sea, and to foster a good atmosphere for their final resolution.

85. Since the 1990s, China and the Philippines have reached the following consensus on managing their disputes: first, they will exercise restraint in handling relevant disputes and refrain from taking actions that may lead to an escalation; second, they will stay committed to managing disputes through bilateral consultation mechanisms; third, they commit themselves to pursuing practical maritime cooperation and joint development; and fourth, the relevant disputes should not affect the healthy growth of bilateral relations and peace and stability in the South China Sea region.

86. In the DOC, China and the Philippines also reached the following consensus: to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability; to intensify efforts, pending the peaceful settlement of territorial and jurisdictional disputes, to seek ways, in the spirit of cooperation and understanding, to build trust and confidence; and to explore or undertake cooperative activities including marine environmental protection, marine scientific

research, safety of navigation and communication at sea, search and rescue operation and combating transnational crime.

87. China and the Philippines have made some progress in managing their differences and conducting practical maritime cooperation.
88. During the first China-Philippines Experts Group Meeting on Confidence-Building Measures held in March 1999, the two sides issued a joint statement, pointing out that, “the two sides agreed that the dispute should be peacefully settled through consultation in accordance with the generally-accepted principles of international law including the United Nations Convention on the Law of the Sea, [... and to] exercise self-restraint and not to take actions that might escalate the situation.”
89. In the *Joint Press Statement of the Third China-Philippines Experts Group Meeting on Confidence-Building Measures* released in April 2001, it is stated that, “the two sides noted that the bilateral consultation mechanism to explore ways of cooperation in the South China Sea has been effective. The series of understanding and consensus reached by the two sides have played a constructive role in the maintenance of the sound development of China-Philippines relations and peace and stability of the South China Sea area.”
90. In September 2004, in the presence of the leaders of China and the Philippines, China National Offshore Oil Corporation (CNOOC) and Philippine National Oil Company (PNOC) signed the *Agreement for Joint Marine Seismic Undertaking in Certain Areas in the South China Sea*. In March 2005, national oil companies from China, the Philippines and Vietnam signed, with the consent of both China and the Philippines, the *Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea*. It was agreed that during an agreement term of three year-period, these oil companies should collect and process certain amount of 2D and/or 3D seismic lines in the agreement area covering about 143,000 square kilometers, re-process certain amount of existing 2D seismic lines, and study and assess the oil resources in the area. The *2007 Joint Statement of the People’s Republic of China and the Republic of the Philippines* states that, “both sides agree that the tripartite joint marine seismic undertaking in the South China Sea

serves as a model for cooperation in the region. They agreed that possible next steps for cooperation among the three parties should be explored to bring collaboration to a higher level and increase the momentum of trust and confidence in the region.”

91. Regrettably, due to the lack of willingness for cooperation from the Philippine side, the China-Philippines Experts Group Meeting on Confidence-Building Measures has stalled, and the China-Philippines-Vietnam tripartite marine seismic undertaking has failed to move forward.

#### **IV. The Philippines Has Repeatedly Taken Moves that Complicate the Relevant Disputes**

92. Since the 1980s, the Philippines has repeatedly taken moves that complicate the relevant disputes.

##### **i. The Philippines attempts to entrench its illegal occupation of some islands and reefs of China's Nansha Qundao**

93. In China's Nansha Qundao, the Philippines started in the 1980s to build military facilities on some islands and reefs it has invaded and illegally occupied. In the 1990s, the Philippines continued to build airfields and naval and air force facilities on these illegally-occupied islands and reefs; centered on Zhongye Dao, the construction has extended to other islands and reefs, with runways, military barracks, docks and other facilities built and renovated, so as to accommodate heavy transport planes, fighter jets and more and larger vessels. Furthermore, the Philippines made deliberate provocations by frequently sending its military vessels and aircraft to intrude into Wufang Jiao, Xian'e Jiao, Xinyi Jiao, Banyue Jiao and Ren'ai Jiao of China's Nansha Qundao, and destroyed survey markers set up by China.

94. Still worse, on 9 May 1999, the Philippines sent BRP *Sierra Madre* (LT-57), a military vessel, to intrude into China's Ren'ai Jiao and illegally ran it aground on the pretext of "technical difficulties". China immediately made solemn representations to the Philippines, demanding the immediate removal of that vessel. But the Philippines claimed that the vessel could not be towed away for "lack of parts".

95. Over this matter, China has repeatedly made representations to the Philippines and renewed the same demand. For instance, in November 1999, the Chinese Ambassador to the Philippines met with Secretary of Foreign Affairs Domingo Siazon and Chief of the Presidential Management Staff Leonora de Jesus to make another round of representations. Many times the Philippines promised to tow away the vessel, but it has taken no action.

96. In September 2003, upon the news that the Philippines was preparing to

build facilities around that military vessel illegally run aground at Ren'ai Jiao, China lodged immediate representations. The Philippine Acting Secretary of Foreign Affairs Franklin Ebdalin responded that the Philippines had no intention to construct facilities on Ren'ai Jiao and that, as a signatory to the DOC, the Philippines had no desire to and would not be the first to violate the Declaration.

97. But the Philippines did not fulfill its undertaking to tow away that vessel. Instead, it made even worse provocations. In February 2013, cables were lined up around that grounded vessel and people on board bustled around, making preparations for the construction of permanent facilities. In response to China's repeated representations, the Philippine Secretary of National Defense Voltaire Gazmin claimed that the Philippines was simply resupplying and repairing the vessel, and promised that no facilities would be built on Ren'ai Jiao.
98. On 14 March 2014, the Philippine Department of Foreign Affairs issued a statement openly declaring that the vessel it ran aground at Ren'ai Jiao was placed there as a permanent Philippine government installation. This was an apparent attempt to provide an excuse for its continued refusal to fulfill its undertaking to tow away that vessel in order to illegally seize Ren'ai Jiao. China immediately responded that it was shocked by this statement and reiterated that it would never allow the Philippines to seize Ren'ai Jiao by any means.
99. In July 2015, the Philippines stated publicly that the so-called maintenance repair was being done to fortify the vessel.
100. To sum up, by running aground its military vessel at Ren'ai Jiao, then promising repeatedly to tow it away but breaking that promise repeatedly and even fortifying it, the Philippines has proven itself to be the first to openly violate the DOC.
101. Over the years, the Philippines has invaded and illegally occupied some islands and reefs of China's Nansha Qundao and constructed various military facilities thereupon in an attempt to establish a *fait accompli* of permanent occupation. These moves have grossly violated China's sovereignty over the relevant islands and reefs of Nansha Qundao and

violated the *Charter of the United Nations* and basic norms of international law.

**ii. The Philippines has increasingly intensified its infringement of China's maritime rights and interests**

102. Since the 1970s, the Philippines, asserting its unilateral claims, has intruded into, among others, the maritime areas of Liyue Tan and Zhongxiao Tan of China's Nansha Qundao to carry out illegal oil and gas exploratory drilling, including listing the relevant blocks for bidding.
103. Since 2000, the Philippines has expanded the areas for bidding, intruding into larger sea areas of China's Nansha Qundao. A large span of sea areas of China's Nansha Qundao was designated as bidding blocks by the Philippines in 2003. During the fifth "Philippine Energy Contracting Round" launched in May 2014, four of the bidding blocks on offer reached into relevant sea areas of China's Nansha Qundao.
104. The Philippines has repeatedly intruded into relevant waters of China's Nansha Qundao, harassing and attacking Chinese fishermen and fishing boats conducting routine fishing operations. Currently available statistics show that from 1989 to 2015, 97 incidents occurred in which the Philippines infringed upon the safety, life and property of Chinese fishermen: 8 involving shooting, 34 assault and robbery, 40 capture and detention, and 15 chasing. These incidents brought adverse consequences to close to 200 Chinese fishing vessels and over 1,000 Chinese fishermen. In addition, the Philippines treated Chinese fishermen in a violent, cruel and inhumane manner.
105. Philippine armed personnel often use excessive force against Chinese fishermen in utter disregard of the safety of their lives. For example, on 27 April 2006, one armed Philippine fishing vessel intruded into Nanfang Qiantan of China's Nansha Qundao and attacked Chinese fishing boat *Qiongqionghai 03012*. One Philippine armed motor boat carrying four gunmen approached that Chinese fishing boat. Immediately these gunmen fired several rounds of bullets at the driving panel, killing Chen Yichao and three other Chinese fishermen on the spot, severely wounding two others and causing minor injuries to another. Subsequently a total of 13

gunmen forced their way onboard the Chinese fishing boat and seized satellite navigation and communication equipment, fishing equipment and harvests and other items.

106. The Philippines has repeatedly infringed China's maritime rights and interests in an attempt to expand and entrench its illegal claims in the South China Sea. These actions have grossly violated China's sovereignty and rights and interests in the South China Sea. By doing so, the Philippines has seriously violated its own commitment made under the DOC to exercise self-restraint in the conduct of activities that would complicate or escalate disputes. By firing upon Chinese fishing boats and fishermen, illegally seizing and detaining Chinese fishermen, giving them inhumane treatment and robbing them of their property, the Philippines has gravely infringed upon the personal and property safety and the dignity of Chinese fishermen and blatantly trampled on their basic human rights.

### **iii. The Philippines also has territorial pretensions on China's Huangyan Dao**

107. The Philippines also has territorial pretensions on China's Huangyan Dao and attempted to occupy it illegally.

108. Huangyan Dao is China's inherent territory, over which China has continuously, peacefully and effectively exercised sovereignty and jurisdiction.

109. Before 1997, the Philippines had never challenged China's sovereignty over Huangyan Dao, nor had it laid any territorial claim to it. On 5 February 1990, Philippine Ambassador to Germany Bienvenido A. Tan, Jr. stated in a letter to German HAM radio amateur Dieter Löffler that, "According to the Philippine National Mapping and Resource Information Authority, the Scarborough Reef or Huangyan Dao does not fall within the territorial sovereignty of the Philippines."

110. A "*Certification of Territorial Boundary of the Republic of the Philippines*", issued by the Philippine National Mapping and Resource Information Authority on 28 October 1994, stated that "the territorial

boundaries and sovereignty of the Republic of the Philippines are established in Article III of the *Treaty of Paris* signed on December 10, 1898”, and confirmed that the “Territorial Limits shown in the official Map No. 25 issued by the Department of Environment and Natural Resources through the National Mapping and Resource Information Authority, are fully correct and show the actual status”. As described above, the *Treaty of Paris* and other two treaties define the territorial limits of the Philippines, and China’s Huangyan Dao clearly lies outside those limits. Philippine Official Map No. 25 reflects this. In a letter dated 18 November 1994 to the American Radio Relay League, Inc., the Philippine Amateur Radio Association, Inc. wrote that, “one very important fact remains, the national agency concerned had stated that based on Article III of the *Treaty of Paris* signed on December 10, 1898, Scarborough Reef lies just outside the territorial boundaries of the Philippines”.

111. In April 1997, the Philippines turned its back on its previous position that Huangyan Dao is not part of the Philippine territory. The Philippines tracked, monitored and disrupted an international radio expedition on Huangyan Dao organized by the Chinese Radio Sports Association. In disregard of historical facts, the Philippines laid its territorial claim to Huangyan Dao on the grounds that it is located within the 200-nautical-mile exclusive economic zone claimed by the Philippines. In this regard, China made representations several times to the Philippines, pointing out explicitly that Huangyan Dao is China’s inherent territory and that the Philippines’ claim is groundless, illegal and void.
112. On 17 February 2009, the Philippine Congress passed Republic Act No. 9522. That act illegally includes into the Philippines’ territory China’s Huangyan Dao and some islands and reefs of Nansha Qundao. China immediately made representations to the Philippines and issued a statement, reiterating China’s sovereignty over Huangyan Dao, Nansha Qundao and the adjacent waters, and declaring in explicit terms that any territorial claim over them made by any other country is illegal and void.
113. On 10 April 2012, the Philippines’ naval vessel BRP *Gregorio del Pilar* (PF-15) intruded into the adjacent waters of China’s Huangyan Dao, illegally seized Chinese fishermen and fishing boats operating there and

treated the fishermen in a grossly inhumane manner, thus deliberately causing the Huangyan Dao Incident. In response to the Philippines' provocation, China immediately made multiple strong representations to Philippine officials in Beijing and Manila to protest the Philippines' violation of China's territorial sovereignty and harsh treatment of Chinese fishermen, and demanded that the Philippines immediately withdraw all its vessels and personnel. The Chinese government also promptly dispatched China Maritime Surveillance and China Fisheries Law Enforcement vessels to Huangyan Dao to protect China's sovereignty and rescue the Chinese fishermen. In June 2012, after firm representations repeatedly made by China, the Philippines withdrew relevant vessels and personnel from Huangyan Dao.

114. The Philippines' claim of sovereignty over China's Huangyan Dao is completely baseless under international law. The illegal claim that "Huangyan Dao is within the Philippines' 200-nautical-mile exclusive economic zone so it is Philippine territory" is a preposterous and deliberate distortion of international law. By sending its naval vessel to intrude into Huangyan Dao's adjacent waters, the Philippines grossly violated China's territorial sovereignty, the *Charter of the United Nations* and fundamental principles of international law. By instigating mass intrusion of its vessels and personnel into waters of Huangyan Dao, the Philippines blatantly violated China's sovereignty and sovereign rights therein. The Philippines' illegal seizure of Chinese fishermen engaged in normal operations in waters of Huangyan Dao and the subsequent inhumane treatment of them are gross violations of their dignity and human rights.

#### **iv. The Philippines' unilateral initiation of arbitration is an act of bad faith**

115. On 22 January 2013, the then government of the Republic of the Philippines unilaterally initiated the South China Sea arbitration. In doing so, the Philippines has turned its back on the consensus reached and repeatedly reaffirmed by China and the Philippines to settle through negotiation the relevant disputes in the South China Sea and violated its own solemn commitment in the DOC. Deliberately packaging the relevant disputes as mere issues concerning the interpretation or

application of UNCLOS while knowing full well that territorial disputes are not subject to UNCLOS and that maritime delimitation disputes have been excluded from the UNCLOS compulsory dispute settlement procedures by China's 2006 declaration, the Philippines has wantonly abused the UNCLOS dispute settlement procedures. This initiation of arbitration aims not to settle its disputes with China, but to deny China's territorial sovereignty and maritime rights and interests in the South China Sea. This course of conduct is taken out of bad faith.

116. First, by unilaterally initiating arbitration, the Philippines has violated its standing agreement with China to settle the relevant disputes through bilateral negotiation. In relevant bilateral documents, China and the Philippines have agreed to settle through negotiation their disputes in the South China Sea and reaffirmed this agreement many times. China and the Philippines made solemn commitment in the DOC to settle through negotiation relevant disputes in the South China Sea, which has been repeatedly affirmed in bilateral documents. The above bilateral documents between China and the Philippines and relevant provisions in the DOC are mutually reinforcing and constitute an agreement in this regard between the two states. By this agreement, they have chosen to settle the relevant disputes through negotiation and to exclude any third party procedure, including arbitration. *Pacta sunt servanda*. This fundamental norm of international law must be observed. The Philippines' breach of its own solemn commitment is a deliberate act of bad faith. Such an act does not generate any right for the Philippines, nor does it impose any obligation on China.
117. Second, by unilaterally initiating arbitration, the Philippines has violated China's right to choose means of dispute settlement of its own will as a state party to UNCLOS. Article 280 of Part XV of UNCLOS stipulates: "Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice." Article 281 of UNCLOS provides: "If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and

the agreement between the parties does not exclude any further procedure”. Given that China and the Philippines have made an unequivocal choice to settle through negotiation the relevant disputes, the compulsory third-party dispute settlement procedures under UNCLOS do not apply.

118. Third, by unilaterally initiating arbitration, the Philippines has abused the UNCLOS dispute settlement procedures. The essence of the subject-matter of the arbitration initiated by the Philippines is an issue of territorial sovereignty over some islands and reefs of Nansha Qundao, and the resolution of the relevant matters also constitutes an integral part of maritime delimitation between China and the Philippines. Land territorial issues are not regulated by UNCLOS. In 2006, pursuant to Article 298 of UNCLOS, China made an optional exceptions declaration excluding from the compulsory dispute settlement procedures of UNCLOS disputes concerning, among others, maritime delimitation, historic bays or titles, military and law enforcement activities. Such declarations made by about 30 states, including China, form an integral part of the UNCLOS dispute settlement mechanism. By camouflaging its submissions, the Philippines deliberately circumvented the optional exceptions declaration made by China and the limitation that land territorial disputes are not subject to UNCLOS, and unilaterally initiated the arbitration. This course of conduct constitutes an abuse of the UNCLOS dispute settlement procedures.

119. Fourth, in order to push forward the arbitral proceedings, the Philippines has distorted facts, misinterpreted laws and concocted a pack of lies:

— The Philippines, fully aware that its submissions concern China’s territorial sovereignty in the South China Sea, and that territorial issue is not subject to UNCLOS, deliberately mischaracterizes and packages the relevant issue as those concerning the interpretation or application of UNCLOS;

— The Philippines, fully aware that its submissions concern maritime delimitation, and that China has made an declaration, pursuant to Article 298 of UNCLOS, excluding disputes concerning, among others, maritime delimitation from the UNCLOS third-party dispute settlement procedures, intentionally detaches the diverse factors that shall be taken into consideration in the process of a maritime delimitation and treat them in

an isolated way, in order to circumvent China's optional exceptions declaration;

— The Philippines deliberately misrepresents certain consultations with China on maritime affairs and cooperation, all of a general nature, as negotiations over the subject-matters of the arbitration, and further claims that bilateral negotiations therefore have been exhausted, despite the fact that the two states have never engaged in any negotiation on those subject-matters;

— The Philippines claims that it does not seek a determination of any territorial issue or a delimitation of any maritime boundary, and yet many times in the course of the arbitral proceedings, especially during the oral hearings, it denies China's territorial sovereignty and maritime rights and interests in the South China Sea;

— The Philippines turns a blind eye to China's consistent position and practice on the South China Sea issue, and makes a completely false assertion that China lays an exclusive claim of maritime rights and interests to the entire South China Sea;

— The Philippines exaggerates Western colonialists' role in the South China Sea in history and denies the historical facts and corresponding legal effect of China's longstanding exploration, exploitation and administration in history of relevant waters of the South China Sea;

— The Philippines puts together some remotely relevant and woefully weak pieces of evidence and makes far-fetched inferences to support its submissions;

— The Philippines, in order to make out its claims, arbitrarily interprets rules of international law, and resorts to highly controversial legal cases and unauthoritative personal opinions in large quantity.

120. In short, the Philippines' unilateral initiation of arbitration contravenes international law including the UNCLOS dispute settlement mechanism. The Arbitral Tribunal in the South China Sea arbitration established at the Philippines' unilateral request has, *ab initio*, no jurisdiction, and awards rendered by it are null and void and have no binding force. China's territorial sovereignty and maritime rights and interests in the South China Sea shall under no circumstances be affected by those awards. China does not accept or recognize those awards. China opposes and will never accept any claim or action based on those awards.

## **V. China's Policy on the South China Sea Issue**

121. China is an important force for maintaining peace and stability in the South China Sea. It abides by the purposes and principles of the *Charter of the United Nations* and is committed to upholding and promoting international rule of law. It respects and acts in accordance with international law. While firmly safeguarding its territorial sovereignty and maritime rights and interests, China adheres to the position of settling disputes through negotiation and consultation and managing differences through rules and mechanisms. China endeavors to achieve win-win outcomes through mutually beneficial cooperation, and is committed to making the South China Sea a sea of peace, cooperation and friendship.

122. China is committed to maintaining peace and stability in the South China Sea with other countries in the region and upholding the freedom of navigation and overflight in the South China Sea enjoyed by other countries under international law. China urges countries outside this region to respect the efforts in this regard by countries in the region and to play a constructive role in maintaining peace and stability in the South China Sea.

### **i. On the territorial issues concerning Nansha Qundao**

123. China is firm in upholding its sovereignty over Nanhai Zhudao and their surrounding waters. Some countries have made illegal territorial claims over and occupied by force some islands and reefs of Nansha Qundao. These illegal claims and occupation constitute gross violations of the *Charter of the United Nations* and basic norms governing international relations. They are null and void. China consistently and resolutely opposes such actions and demands that relevant states stop their violation of China's territory.

124. China has spared no efforts to settle, on the basis of respecting historical facts, relevant disputes with the Philippines and other countries directly concerned, through negotiation in accordance with international law.

125. It is universally recognized that land territorial issues are not regulated by UNCLOS. Thus, the territorial issue in Nansha Qundao is not subject to UNCLOS.

## **ii. On maritime delimitation in the South China Sea**

126. China maintains that the issue of maritime delimitation in the South China Sea should be settled equitably through negotiation with countries directly concerned in accordance with international law, including UNCLOS. Pending the final settlement of this issue, all relevant parties must exercise self-restraint in the conduct of activities that may complicate or escalate disputes and affect peace and stability.

127. When ratifying UNCLOS in 1996, China stated that, “The People’s Republic of China will effect, through consultations, the delimitation of the boundary of the maritime jurisdiction with the States with coasts opposite or adjacent to China respectively on the basis of international law and in accordance with the principle of equitability.” China’s positions in this regard are further elaborated in the *1998 Law of the People’s Republic of China on the Exclusive Economic Zone and the Continental Shelf*. This Law provides that, “The People’s Republic of China shall determine the delimitation of its exclusive economic zone and continental shelf in respect of the overlapping claims by agreement with the states with opposite or adjacent coasts, in accordance with the principle of equitability and on the basis of international law”, and that, “The provisions in this law shall not affect the historical rights that the People’s Republic of China has been enjoying ever since the days of the past”.

128. China does not accept any unilateral action attempting to enforce maritime claims against China. Nor does China recognize any action that may jeopardize its maritime rights and interests in the South China Sea.

## **iii. On the ways and means of dispute settlement**

129. Based on an in-depth understanding of international practice and its own rich practice, China firmly believes that no matter what mechanism or means is chosen for settling disputes between any countries, the consent

of states concerned should be the basis of that choice, and the will of sovereign states should not be violated.

130. On issues concerning territory and maritime delimitation, China does not accept any means of dispute settlement imposed on it, nor does it accept any recourse to third-party settlement. On 25 August 2006, China deposited, pursuant to Article 298 of UNCLOS, with the Secretary-General of the United Nations a declaration, stating 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”. This explicitly excludes from UNCLOS compulsory dispute settlement procedures disputes concerning maritime delimitation, historic bays or titles, military and law enforcement activities, and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the *Charter of the United Nations*.

131. Since its founding, the People’s Republic of China has signed boundary treaties with 12 of its 14 land neighbors through bilateral negotiations and consultations in a spirit of equality and mutual understanding, and about 90% of China’s land boundaries have been delimited and demarcated. China and Vietnam have delimited through negotiations the boundary between their territorial seas, exclusive economic zones and continental shelves in the Beibu Bay. China’s sincerity in settling disputes through negotiation and its unremitting efforts made in this respect are known to all. It is self-evident that negotiation directly reflects the will of states. The parties directly participate in the formulation of the result. Practice demonstrates that a negotiated outcome will better gain the understanding and support of the people of countries concerned, will be effectively implemented and will be durable. Only when an agreement is reached by parties concerned through negotiation on an equal footing can a dispute be settled once and for all, and this will ensure the full and effective implementation of the agreement.

#### **iv. On managing differences and engaging in practical maritime cooperation in the South China Sea**

132. In keeping with international law and practice, pending final settlement of maritime disputes, the states concerned should exercise restraint and make every effort to enter into provisional arrangements of a practical nature, including establishing and improving dispute management rules and mechanisms, engaging in cooperation in various sectors, and promoting joint development while shelving differences, so as to uphold peace and stability in the South China Sea region and create conditions for the final settlement of disputes. Relevant cooperation and joint development are without prejudice to the final delimitation.
133. China works actively to promote the establishment of bilateral maritime consultation mechanisms with relevant states, explores joint development in areas such as fishery, oil and gas, and champions the active exploration by relevant countries in establishing a cooperation mechanism among the South China Sea coastal states in accordance with relevant provisions of UNCLOS.
134. China is always dedicated to working with ASEAN Member States to fully and effectively implement the DOC and actively promote practical maritime cooperation. Together the Parties have already achieved “Early Harvest Measures”, including the “Hotline Platform on Search and Rescue among China and ASEAN Member States”, the “Senior Officials’ Hotline Platform in Response to Maritime Emergencies among Ministries of Foreign Affairs of China and ASEAN Member States”, as well as the “Table-top Exercise of Search and Rescue among China and ASEAN Member States”.
135. China consistently maintains that the Parties should push forward consultations on a “Code of Conduct” (COC) under the framework of full and effective implementation of the DOC, with a view to achieving an early conclusion on the basis of consensus. In order to properly manage risks at sea, pending the final conclusion of a COC, China proposed the adoption of “Preventive Measures to Manage Risks at Sea”. This proposal has been unanimously accepted by all ASEAN Member States.

#### **v. On freedom and safety of navigation in the South China Sea**

136. China is committed to upholding the freedom of navigation and overflight

enjoyed by all states under international law, and ensuring the safety of sea lanes of communication.

137. The South China Sea is home to a number of important sea lanes, which are among the main navigation routes for China's foreign trade and energy import. Ensuring freedom of navigation and overflight and safety of sea lanes in the South China Sea is crucial to China. Over the years, China has worked with ASEAN Member States to ensure unimpeded access to and safety of the sea lanes in the South China Sea and made important contribution to this collective endeavor. The freedom of navigation and overflight enjoyed by all states in the South China Sea under international law has never been a problem.
138. China has actively provided international public goods and made every effort to provide services, such as navigation and navigational aids, search and rescue, as well as sea conditions and meteorological forecast, through capacity building in various areas, so as to uphold and promote the safety of sea lanes in the South China Sea.
139. China maintains that, when exercising freedom of navigation and overflight in the South China Sea, relevant parties shall fully respect the sovereignty and security interests of coastal states and abide by the laws and regulations enacted by coastal states in accordance with UNCLOS and other rules of international law.

#### **vi. On jointly upholding peace and stability in the South China Sea**

140. China maintains that peace and stability in the South China Sea should be jointly upheld by China and ASEAN Member States.
141. China pursues peaceful development and adheres to a defense policy that is defensive in nature. China champions a new security vision featuring mutual trust, mutual benefit, equality and coordination, and pursues a foreign policy of building friendship and partnership with its neighbors and of fostering an amicable, secure and prosperous neighborhood based on the principle of amity, sincerity, mutual benefit and inclusiveness. China is a staunch force for upholding peace and stability and advancing cooperation and development in the South China Sea. China is committed

to strengthening good-neighborliness and promoting practical cooperation with its neighbors and regional organizations including ASEAN to deliver mutual benefit.

142. The South China Sea is a bridge of communication and a bond of peace, friendship, cooperation and development between China and its neighbors. Peace and stability in the South China Sea is vital to the security, development and prosperity of the countries and the well-being of the people in the region. To realize peace, stability, prosperity and development in the South China Sea region is the shared aspiration and responsibility of China and ASEAN Member States, and serves the common interests of all countries.

143. China will continue to make unremitting efforts to achieve this goal.