

POLICY BRIEF

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Territorializing Maritime Spaces: The Case of China¹

Valérie Niquet

The privatization or territorialization of maritime spaces, which threatens the scope of the United Nations Convention on the Law of the Sea (UNCLOS), is a phenomenon spreading to varying degrees under pressure from coastal states.² The offensive pursued by the People's Republic of China (PRC) since the 1980s is part of this general trend. The economic reforms initiated after the Maoist period (1949-1978) by Deng Xiaoping enabled the PRC to acquire an unprecedented naval projection capability and to gradually implement a strategy of asserting its power in its immediate maritime space, essentially the South and East China seas.

Until the mid-1980s and the efforts of Admiral Liu Huaqing to provide the PRC with an offshore capability, the Chinese navy, which did not exist in 1949 and which had long maintained a status far inferior to that of the People's Liberation Army (PLA), was limited to coastal capabilities. It then developed its projection capacity within the first island chain that closes access to the Pacific from Hokkaido to the Philippines.

The PRC's attention to the sea is thus relatively recent and corresponds to the rise of its economic power, which until now has been largely based on maritime transport. Despite this recent interest, however, China's posture is particularly aggressive. For the Chinese authorities, and even more so since 2012 and Xi Jinping's rise to power as head of the Communist Party and then of the State and the Central Military Commission, it is all about implementing a strategy of revenge, the Chinese dream of the "great rejuvenation of the Chinese nation." This dream is also expressed through irredentist claims to a maritime space, the control of which also plays the role of a marker of power: China must take revenge on

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¹ A second Policy Brief will be published, focusing on capabilities.

² Jean-François Pelliard, *La territorialisation des espaces maritimes: enjeux pour la France et vision prospective*, 09-03-2023, <https://fmes-france.org/la-territorialisation-des-espaces-maritimes-enjeux-pour-la-france-et-vision-prospective/>.

the Western (and Japanese) powers that came from the sea, but also on its own past as a weakened continental power that, after Zheng He's expeditions in the first quarter of the 15th century, chose to scuttle its navy and turn its back on the ocean at a time when the West, on the contrary, set out to conquer the world with great maritime expeditions. For reasons of prestige linked to the legitimization of the Communist Party, China is also trying to impose a return to a highly fantasized notion of imperial rule of all "under the sky," based on a tributary system that would be imposed on all of Beijing's neighbors. The analysis of this tributary system of *Tianxia* (天下) has seen a resurgence of interest in China since the 2000s.³ Reflecting this hierarchical view of the world with China at its center, Foreign Minister Yang Jiechi told the ASEAN Regional Forum in Hanoi in 2010: "China is a big country and you are small countries; that's a fact."⁴

China's determination to assert its power includes an attempt to territorialize its near seas. This is not a strategy of exclusive influence, as the Monroe Doctrine may have been for the United States, but rather an assertion of full sovereignty over these maritime areas, with security implications that extend far beyond the region. The issues of sovereignty, economic interests related to fishing and the exploitation of fishery resources, and power are therefore particularly complex and destabilizing. The PRC has fortified itself with an equally complex arsenal to deal with these issues, ranging from

a very broad interpretation of UNCLOS, which can go so far as to question its legitimacy, to "lawfare," one of the "three warfares" theorized by Chinese strategists, which has resulted in the adoption of several important legislative and administrative texts on the law of the sea.⁵

An extensive interpretation of UNCLOS

China signed the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 and ratified it in 1996, two years after the Convention entered into force, with a reservation clause on sovereignty issues. It was this reservation clause that allowed the PRC to deny the legitimacy of the Hague Arbitral Tribunal when the Philippines presented a case against China regarding the South China Sea in 2013 and to reject its conclusions in 2016.⁶

Beijing's interpretation remains vague, though, allowing it to adapt its claims to opportunities and the actual balance of power. Nevertheless, the PRC considers the disputed maritime features in the South China Sea to be areas of full sovereignty, contrary to the principles of UNCLOS. If we follow the Chinese claims, more than 80% of the South China Sea would be territorialized in favor of the PRC within a line of 9 or 10 or 11 points, the number of which has varied with time and circumstance.

In the South China Sea, China is also attempting to impose the principle of an archipelagic state on what it unilaterally

3 Yun Tang, "The State of the Field Report X: Contemporary Chinese Studies of *Tianxia* (All-Under-Heaven)," 30-06-2023, <https://link.springer.com/article/10.1007/s11712-023-09896-6>; Zhang Feng, "The *Tianxia* System: World Order in a Chinese Utopia," 03-2023, *China Heritage Quarterly*, http://www.chinaheritagequarterly.org/tien-hsia.php?searchterm=021_utopia.inc&issue=021.

4 Gordon G. Chang, "China's Conception of the World and Model of Global Governance," https://www.hoover.org/sites/default/files/gordon_chang_paper.pdf

5 Tara Davenport, "Lawfare' in the South China Sea disputes," 01-04-2022, <https://www.lowyinstitute.org/the-interpreter/lawfare-south-china-sea-disputes>; Michael Clarke, "China's Application of the Three Warfares in the South China Sea and Xinjiang," 01-2019, https://nsc.crawford.anu.edu.au/sites/default/files/publication/nsc_crawford_anu_edu_au/2019-05/chinas_app_of_the_3_warfares_in_xj_and_scs.pdf, 01-2019.

6 *The South China Sea Arbitration*, <https://pca-cpa.org/en/cases/7/>.

defines as its territorial sea around features not recognized as islands giving rights to territorial waters or an exclusive economic zone (EEZ).

The PRC has also relied on Article IV of UNCLOS, which applies only to States recognized as archipelagic, to apply the straight-line principle in defining the baselines around the features it claims, thereby greatly expanding the territory in question. Similarly, against the advice of the arbitral tribunal in *The Hague*, China has attempted to impose rights attached to islands on rocks or features that are often covered by water and otherwise artificially created by land reclamation and infrastructure construction.⁷ China has artificialized the seven features it controls in the Spratly archipelago, increasing its territory by more than 3,200 acres (13 km²), and has built various types of military and civilian infrastructure in the Paracels.⁸

The definitions of territorial waters and adjacent waters are also crucial because the PRC, again in a very broad interpretation of UNCLOS, does not recognize the right of innocent passage of foreign vessels in its territorial and adjacent waters and requires such vessels to register.⁹

The PRC also uses the controversial concept of “historical rights” to bolster the legitimacy of its territorial claims. In reality, this concept, particularly when it comes to defining historical fishing zones, only applies to areas defined as bays and requires the consent of the neighboring countries. According to UNCLOS, it cannot be used for territorial claims to vast maritime areas in international waters far from

the coasts of the country claiming these rights.

At the same time, the PRC uses the concept of “history” to lay claim to the Japanese Senkaku archipelago. Beijing bases its claim on the fact that, during the Ming dynasty (1368-1644), the archipelago was used by ships as a navigational point, and that, according to Beijing, is the basis for why the archipelago should have been returned by Japan to the Republic of China in 1945, along with Taiwan. In 2012, Beijing’s White Paper on the Diaoyu Islands proclaimed in its preamble: “Diaoyu Dao is China’s inherent territory in all historical, geographical and legal respects, as well as traditional fishing grounds.”¹⁰ China’s main goal is also to erase the fact that, until recently, in the early 1970s, the PRC had not made any specific claim to the archipelago.¹¹

In the East China Sea, the PRC is also using the argument of its continental shelf to claim an EEZ up to the Okinawa Trough.¹² China has built several platforms to explore and exploit the natural gas reserves of the Chunxiao (Shirakaba) field at the limits of the median line separating the EEZs of Japan and the PRC, which are not officially recognized by Beijing, and is trying to push its advantage in a variety of ways, depending on the reactions of Tokyo and the international community. These claims also became an adjustment variable in relations between the PRC and Japan.

Finally, in the Taiwan Strait, China has since 2022 rejected the principle of international waters off an island that Beijing considers part of Chinese territory. On June 13, 2022, the

7 *Idem*

8 <https://amti.csis.org/island-tracker/china/>

9 中华人民共和国领海及毗连区法 (Law of the PRC on the Territorial Sea and the Contiguous Zone) , 25-02-1992, www.gov.cn/gongbao/shuyu/1992/gwyb199203.pdf.

10 *Diaoyu Dao, an inherent territory of China*, 10-09-2012, https://english.www.gov.cn/archive/white_paper/2014/08/23/content_281474983043212.htm.

11 In an atlas published in the PRC in the 1950s, the Senkakus are attributed to Japan.

12 “China submits outer limit of continental shelf in East China Sea to the United Nations,” *Xinhua News*, 05-11-2012.

spokesman of the Chinese Ministry of Foreign Affairs said about the Taiwan Strait: “There is no such thing as international waters in the Law of the Sea; the countries concerned claim that the waters of the Strait are international waters; their intention is to find excuses to manipulate the Taiwan issue.”¹³

Waging “lawfare” to enforce Beijing’s maritime territorial claims

In support of all these claims, which go beyond the limits set by UNCLOS, China has enacted an arsenal of laws and regulations that theoretically enables it to act by force and exercise control over a vast area improperly defined as “territorial waters.” This arsenal and the PRC’s attempts to utilize it have very worrying implications for the freedom of navigation, despite Beijing’s claims that China has never restricted or attempted to restrict the freedom of movement of civilian vessels, particularly in the South China Sea. These threats also affect the freedom to explore and exploit oil, gas, and fishery resources in areas that Beijing unilaterally claims as its own. Incidents have multiplied, with Malaysia over disputed fishing zones, with Vietnam, whose oil exploration activities have been challenged on several occasions since 2014, and with the Philippines. China has been constantly on guard off Scarborough Atoll since 1995 to prevent Philippine fishing boats from entering the lagoon and has set up a net to physically block passage.¹⁴

The 1992 Law on the Territorial Sea and the Contiguous Zone

The law promulgated by the National People’s Congress on February 25, 1992, is the bedrock of the legislative edifice that the PRC has gradually built to legitimize its ambitions. Right from Article 1, the tone is one of command and will to control, with uses of the Chinese character *quan* (权): “The law is for the PRC to exercise sovereignty (*zhuquan* [主权]) over its territorial sea and control (管 治 权) over its contiguous zone and safeguard its national security and maritime rights and interests.”¹⁵ The law defines Chinese territorial waters as the mainland, the coastal islands, Taiwan and all the islands belonging to it, as well as the Diaoyu Islands, Penghu, Dongsha, Xisha, Zhongsha, Nansha and other islands belonging to the PRC. The vagueness of this last addition allows the PRC to extend further claims southward, in particular towards the Natuna Islands (Indonesia) or Malaysia’s exclusive economic zone, where several incidents have already occurred.¹⁶ The law restricts innocent passage through these vast territorial waters. Article 11 states: “All international organizations, foreign organizations and individuals shall obtain permission from the People’s Republic of China to conduct scientific research, marine operations and other activities in the territorial waters of the People’s Republic of China.” According to Beijing, this covers all the areas defined above, paving the way for numerous incidents as the projection capabilities of the Chinese coast guard and navy (PLAN) are strengthened.

13 国际海洋法上根本没有国际水域, 13-06-2022, <https://news.sina.cn/gn/2022-06-13/detail-imizirau8185090.d.html>.

14 In September 2023, the Philippines Coast Guard succeeded in cutting the net; “PCG removes hazardous floating barrier in compliance with presidential instructions”, <https://coastguard.gov.ph/index.php/news/11-news/5345-pcg-removes-hazardous-floating-barrier-in-compliance-with-presidential-instruction-2>, 26-09-2023

15 Law of the PRC on the Territorial Sea and the Contiguous Zone, op. cit.

16 Angelina Tan, *Understanding Chinese Behavior: Opportunities for Malaysia-Japan Cooperation in the South China Sea*, 24-10-2023, https://www.jiia-jic.jp/en/news/mt_items/2023-10-24_3.pdf.

The 1998 Exclusive Economic Zone and Continental Shelf Law

The Law on the Exclusive Economic Zone and the Continental Shelf of the People’s Republic of China, adopted on June 26, 1998, complements the 1992 law in defining the areas that the PRC seeks to control.¹⁷ In the 1998 Law, the continental shelf extending to its outer limits takes precedent over the 200-mile principle that generally defines a state’s EEZ. In Articles 3 and 4, Beijing defends the principle of the full sovereign rights of a coastal state, in this case China, over its EEZ and continental shelf. It is specified that all international organizations, foreign organizations, and individuals must obtain permission from Beijing to explore, exploit or conduct research in areas defined as its EEZ or its continental shelf as defined solely by Beijing. With respect to Japan, Beijing claims that the EEZ extends to the Okinawa Trough and that it alone may authorize any exploitation of oil and gas resources in the East China Sea. Finally, Beijing claims authority over, and control of, the laying of pipelines and cables in its EEZ or on its continental shelf.

Status of the Taiwan Strait

In another extension of Chinese ambitions, China has challenged the universally accepted principle of international waters in the Taiwan Strait (see above), paving the way for a potential multiplication of incidents with foreign civilian or military vessels.

These legislative efforts, which underpin Beijing’s legal war, are accompanied by administrative measures with the same objective.

China’s Maritime Expansion Strategy: Administrative Measures

In 2007, the PRC created the Sansha administrative unit, which includes the Paracel (Xisha), Spratly (Nansha), and Zhongsha archipelagos. This entity is part of Hainan Province, and its capital was established on Woody Island (Yongxing) in the Paracels in 2012. Once again, the purpose is to “legitimize” a de facto situation and to try to bolster Chinese claims by asserting continuous administration, regardless of the legitimacy of this administration and the protests of the wronged states, first and foremost Vietnam and the Philippines. The PRC also organizes “tourist” trips, again essentially to back up its claims with effective administration under international law.

In 2013, the PRC also established an Air Defense Identification Zone (ADIZ) over the East China Sea that largely encroaches on the ADIZs of neighboring states, including Japan and South Korea. Most importantly, contrary to usage, the PRC claims to impose a reporting requirement on all aircraft crossing the zone, rather than only on those bound for Chinese territory.

The Maritime Traffic Safety Law of 2021

Stepping up the pressure tactics used by the PRC to enforce its territorial claims in the China Sea, the PRC also passed a new Maritime Safety Law on September 1, 2021, consisting of 122 articles.¹⁸ Under this law, five types of vessels (submarines, oil and LNG tankers, nuclear-powered vessels, vessels transporting radioactive material and “any vessels that may endanger maritime safety”) must declare their identity, cargo, origin and destination, and intermediate ports when entering China’s territorial waters, which, as we have seen, are

17 Law on the Exclusive Economic Zone and the Continental Shelf of the People’s Republic of China, 26-06-1998, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92660/108053/F-2106185583/CHN92660#:~:text=Article%20%20The%20exclusive%20economic,the%20territorial%20sea%20is%20measured.>

18 Maritime Traffic Safety Law of the PRC, 01-09-2021, <http://www.asianlii.org/cn/legis/cen/laws/mts239/>.

very broadly defined. They must also accept Chinese pilots. China Coast Guard forces have the right to use their weapons and all other means against foreign vessels that have entered illegally (according to Beijing) and refuse to leave territorial waters, as unilaterally defined by the PRC. Such actions are regularly taken by Chinese forces against Philippine fishing vessels or oil exploration vessels from Vietnam or other countries, using water cannons and attempting to ram “hostile” vessels at the risk of sinking them.¹⁹

Despite this plethora of laws, regulations, and unrecognized concepts such as “historical rights,” China deliberately keeps its claims vague. This vagueness is partly the result of a gradual adaptation of Chinese law, which seeks to conform to international law while maintaining maximum leeway to preserve China’s positions, in a balancing act between the desire to appear as a “responsible” great power and the superior objective not to compromise the country’s “core interests” in the China Sea. The ambiguity also stems from postures that can vary widely depending on the circumstances and Beijing’s interests. In the Arctic, for example, China is trying to impose the concept of a “quasi-Arctic” state (近北极国家), which allows it to challenge the rights of littoral states, including Russia, while defending these rights to the hilt in its own case in the China Sea. The concept of a “Pacific riparian” state has also allowed China to use the pretext of the release of treated water from Fukushima into the Pacific to impose an embargo on Japanese maritime products. In all cases, the only criterion taken into account is not international maritime law – although this can also be used – but Beijing’s interests and the balance of power.

Today, China is the most systematic actor attempting to impose abusive territorialization on a maritime space it unilaterally defines as sovereign. To do so, it uses a variety of means in

accordance with the “three warfares” principle – legal, psychological, and information warfare – as well as pressure to try to change international norms to its advantage. Unilaterally changing the status quo by imposing administrative measures in an attempt to establish a de facto situation is also part of this arsenal, at the risk of multiplying incidents, in the Taiwan Strait and in the East and South China seas, not only with all its neighbors but also with external actors that enforce the right of freedom of navigation, including France, which is regularly present in the South China Sea as well as in the Taiwan Strait.

¹⁹ The latest incidents occurred with the Philippines in October 2023.