

POLICY BRIEF

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Scarborough Shoal, a textbook case of Chinese manipulation in the South Sea

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Despite having been actively disputed since 2012 by the Philippines and China, Scarborough Shoal has not generated many in-depth articles in the press, aside from coverage of the latest incidents. This may be due to the geophysical nature of this maritime feature, as it is mostly an invisible low-tide elevation, and the lack of significant developments over time, except for regular small-scale interactions between Filipino fishermen and the Chinese Coast Guard.

Nonetheless, this seemingly insignificant shoal off the coast of Luzon has had a dense history over the past centuries, making it an important topic to address. Shedding light on the current situation is crucial, as it helps demonstrate China's ever-growing and diversifying portfolio of asymmetric warfare methods and tactics¹ as well as its use against several ASEAN countries², including Indonesia, Malaysia, the Philippines and Vietnam. There is also much to be said about China's sincerity, as it claims to have had rights to Scarborough "Island" since the 13th century, but does not seem to have any tangible proof that it was ever present at the shoal.

Let's explore the geographic, historical, legal and diplomatic dimensions of the situation at Scarborough Shoal in order to better understand the ongoing developments and establish an objective comparison between Chinese and Filipino claims to sovereignty over this territory.

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- 1 The author, through his academic research, has identified 220 different methods of asymmetric warfare being used in and around the South China Sea as well as 600 individual examples
- 2 CSIS-ChinaPower has listed 73 standoff and confrontations at sea between 2010 and 2020, the list is available at <https://chinapower.csis.org/maritime-forces-destabilizing-asia/>

Geography and international law, two dimensions disregarded by China

Although China refers to Scarborough Shoal as an island, under the name of Huangyan Island, it is in fact an atoll³, and the largest in the South China Sea! Measuring nearly 18 kilometres by 10, or about 150 square kilometres, Scarborough Shoal is located about 200 kilometres from Luzon, while for China, both Hainan Island and Guangdong Province, are distant of it by nearly 1000 kilometres. Despite its large surface area, the atoll is largely submerged, and only a few rocky outgrowths protrude from the water at low tide, the highest of which is no more than 1.8 meters high and the largest of which can only accommodate about ten individuals in a precarious position.

As we can see, any sustainable human settlement seems compromised, at Scarborough Shoal as with most other features of the Spratly Islands, an area regularly battered by typhoons. But this does not prevent China from presenting the deserted maritime feature as an island and drawing on its maps a series of baselines⁴ linking it to several other submerged features, including Macclesfield Bank⁵, with the aim of establishing an exclusive economic zone beyond these same lines. However, it is on these same confetti of territories that China is trying - in defiance of international law - to create four “island groups” known as the four “Shas⁶”: a first group comprising the Paracels Archipelago, from North Reef to Bombay Reef and Triton

Island (*Xisha*); a second group made up of Macclesfield Bank, Saint Esprit Shoal, Helen Shoal, Constitution Shoal, Dreyer Banks and Scarborough Shoal (*Zhongsha*) ; a third group comprising Pratas Island and the North and South Vereker banks (*Dongsha*), and a fourth group encompassing the whole Spratly archipelago, including James Shoal, located 22 metres below sea level off the coast of Borneo, Louisa Reef, Vanguard Bank and Reed Bank (*Nansha*); four groups supposedly granting China an exclusive economic zone covering most of the South Sea, and gravely overlapping with its neighbours’ own exclusive economic zones.

International maritime law is clear; however, an island is a naturally formed maritime feature above water at high tide that can sustain human life⁷ and that can generate an economic activity of its own. Only by gathering all these conditions can a feature be called an “island” (instead of a rock) and generate an EEZ and a continental shelf, in addition to a territorial sea. Moreover, only archipelagic countries, such as the Philippines, Indonesia, and Pacific Island countries, have the right to draw archipelagic baselines, and only on the basis of islands, islets, and sandbanks above water at high tide and, within certain limits of proportionality, between land and sea (a maximum ratio of 9 to 1). Because Scarborough Shoal is a low-tide elevation, it cannot support human life or host any form of economic activity, and therefore it does not qualify as a legal “island” and, as

3 NUS-CIL, “South China Sea satellite mapping – Scarborough Shoal”, July 2016, <https://cil.nus.edu.sg/south-china-sea-satellite-mapping-project/scarborough-shoal/>

4 Jun TSURUTA, “China’s Baselines Around the Offshore Archipelago”, *The Diplomat*, September 26, 2023, <https://thediplomat.com/2023/09/chinas-baselines-around-the-offshore-archipelago/>

5 NUS-CIL, “South China Sea satellite mapping – Macclesfield Bank”, July 2016, <https://cil.nus.edu.sg/south-china-sea-satellite-mapping-project/macclesfield-bank/>

6 Julian Ku, Chris Mirasola, “The South China Sea and China’s “Four Sha” Claim: New Legal Theory, Same Bad Argument”, *Lawfare*, September 25, 2017, <https://www.lawfaremedia.org/article/south-china-sea-and-chinas-four-sha-claim-new-legal-theory-same-bad-argument>

7 TERASAKI Naomichi Hiro, “The Regime of Islands in International Conventions”, Sasakawa Peace Foundation, <https://www.spf.org/islandstudies/research/a00010.html>

a consequence, cannot generate an EEZ or a continental shelf, a position confirmed by the 2016 decision⁸ of the Permanent Court of Arbitration (PCA) in the dispute between the Philippines and China, even though China refuses to recognise it.

Indeed, the conclusions reached by the court included the fact that **1)** China's claims to historic rights over maritime areas within the "nine-dash line" lacked legal foundations, **2)** none of the maritime features in the Spratly Islands qualified as "islands" capable of generating an EEZ or continental shelf, **3)** China's activities, including massive land reclamation and interfering with Philippine fishing and petroleum exploration within its EEZ, violated the Philippines' sovereign rights, **4)** China's large-scale land reclamation and construction of artificial islands caused severe harm to the coral reef environment, breaching obligations to preserve and protect fragile ecosystems, and **5)** China's actions during the arbitration process, including the increase of its military presence, had aggravated the dispute between the parties.

The historical dimension, clearly in favour of the Philippines

From a historical perspective, maps are valuable, even though they are not the ultimate proof, as their value depends on several factors, including the technique used to create them, the amount and accuracy of data available to their creator, and the way the information is displayed. A map can also be biased, subjective or selective in what it represents giving a distorted projection, reflecting a temporal context, or being manipulated for propaganda or political purposes, in addition to including technical inaccuracies or cultural assumptions. Still, maps have the advantage of offering their creator's vision on a specific topic, such as land and maritime boundaries, whether perceived,

claimed by a country, or recognized by its neighbours.

If we compare Chinese claims with proven facts, China has not conducted topographical and hydrographic surveys in the South Sea until 1909 (1978 for Scarborough Shoal) and did not depict the latter on modern maps, with all the islands, islets, reefs, and sandbanks of the South Sea, until 1935. Similarly, all maps available until 1935, whether they were made under the empire or the republic, mentioned Hainan Island as the southernmost point of China. Both the 1935 map and a later copy from 1943 list the Paracel Islands and Triton Island as the southernmost point, but it was displaced again in 1947 to include the Spratly Islands, reaching James Shoal.

For their part, the Spanish and then American colonial authorities represented Scarborough Atoll on numerous maps, from the beginning of the 18th century to the contemporary period, including the "*Carta Hydrographica y Chorographica de las Islas Filipinas*" by Pedro Murillo Velarde (1734), but also on the map entitled "*Plano de la Navegacion*" drawn up by the Malaspina expedition (1792), the 1808 and 1875 editions of the "*Carta General del Archipelago Filipino*" (the last one being reused as such in 1901 by the American authorities), and the Philippine Census Atlas of 1939. The atoll was also the subject of numerous topographical and hydrographical surveys in 1800, 1820, and 1866.

As for the name of the atoll, the atoll was already named *Panacot* on the map drawn up by Velarde in 1734, then *Maroona Shoal* until the end of the 19th century, although it had already been renamed *Bajo de Masingloc* in 1808, then *Bajo Scarburo* in 1820. At the same time, the atoll adopted the name Scarborough Shoal on the international scene in reference to the stranding in 1748 of an East India Company vessel, the

⁸ CPA ruling (Philippines v. China), July 12, 2016, <https://pca-cpa.org/fr/cases/7/>

Scarborough. Nowadays, Scarborough Shoal is better known in the Philippines as Panatag Shoal and Bajo de Masingloc. China and Taiwan, for their part, call the atoll *Huáng Yán Dǎo* or “Yellow Rock Island” and *Minzhu Jiao* or “Democracy Reef”.

The Philippines, a country with a long-standing involvement in Scarborough Shoal

Additionally, many sovereign actions demonstrate the legitimacy of the Philippine government, whether it is the claim of the autonomous government (Commonwealth) of the Philippines on the atoll in 1937, its use as a target practice for the United States and the Philippine air forces between the 1950s and 1990s, the conduct of oceanographic surveys (1957), the erection of an 8-meter high mast bearing the Philippine flag in 1965, then that of a small lighthouse in 1992 (remaining in operation until 2009). A lighthouse that was planned to be replaced by a real lighthouse as early as 1995, a project for which several components began to be produced but which ultimately did not come to fruition. All these actions, demonstrating effective control by the government of the Philippines for several decades, were carried out without any protest from either China or Taiwan, with the notable exception of the grounding of the landing craft and “twin brother” of the BRP Sierra Madre (hull number LST-821), which ran aground at Second Thomas Shoal, the BRP Benguet (hull number LT-507), which ran aground the same year, in 1999, at Scarborough Shoal and which was eventually withdrawn under pressure from Beijing.

From a law enforcement standpoint, the Philippines has also been fighting against crime at sea, including smuggling by criminal organizations based in Hong Kong, Macao, and Taiwan, since the 1960s. Criminal networks

smuggled contraband through fishermen vessels transiting through Scarborough Shoal. The authorities have regularly patrolled the atoll and chased away traditional fishermen and smugglers, sometimes forcefully, leading to numerous arrests, seizures of vessels, and destruction of goods, again without the slightest protest from China or Taiwan, even during the raids that occurred between 1997 and 2001, which led, in addition to the arrests, to several injuries and even one death.

Diplomatically, the territorial limits of the Philippines have also been the subject of at least three treaties, none of which have been protested by China: the Treaty of Paris of 1898, the Treaty of Washington of 1900 and the Convention between the United States and the United Kingdom of 1930, the analysis of which leaves no doubt as to the reality of the legitimacy of the Philippines; as has been demonstrated by Justice Antonio Carpio. The Philippine government and parliament have also passed several decrees and voted several pieces of legislation, including Presidential Decrees 1596 and 1599 (both in 1978), which declared the Kalayaan Islands Group under national sovereignty and established a 200 nautical mile exclusive economic zone, pre-empting the negotiations then underway between 1973 and 1982 on the United Nations Convention on the Law of the Sea⁹ (or UNCLOS III).

It is thus possible to demonstrate that, throughout the 19th and first half of the 20th centuries, responsibility for rescuing shipwreck victims and assisting ships was the exclusive responsibility of the Spanish authorities, then the American authorities, before falling to the government of the Philippines, with occasional support from the United States and Japan.

9 Full text of UNCLOS, IMO, <https://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawofthesea.aspx>

China, a very recent player of questionable legitimacy

For their part, the Chinese authorities have not been able to present the slightest semblance of tangible and credible proof of their claims on the famous four “Shas” capable of demonstrating that it was China that explored, discovered, patrolled, named, and exploited the islands, islets, sandbanks, reefs, and shoals of the South China Sea. This lack of precision is also found in other cases, such as Taiwan, where the former Chinese ambassador to France, H.E. Lu Shaye, claimed that the island had been part of China since Jesus Christ¹⁰, even though the first significant migration took place between the 16th and the 17th centuries to meet the labour needs of European settlers.

If China had possessed precise maps of this vast maritime area - which has never been permanently inhabited - accounts by navigators, administrative documents, archaeological finds or traces of ancient buildings and infrastructures, even in a state of ruin, it is highly likely that it would have produced an exhaustive list of them. Another proof of the lack of credibility of the Chinese claims lies in the fact that the coordinates of the dashes drawn on the Chinese maps have never been communicated outside of China. China has also not yet been able to give a firm and definitive explanation of the scope of its claims within the ten-dash line, with the various players on the subject alternating between a dozen different versions.

To date, however, the only evidence presented by the Chinese authorities is limited to a fishermen’s manual, the ‘genglubu’,

imprecise old maps, some coins and pottery dating back several centuries and wrecks of Chinese ships, but in the Paracels archipelago, and the claim that a Chinese astrologer - Guo Shoujing¹¹ - built an observatory at Scarborough Shoal (or perhaps in the Paracels), which they themselves have been unable to find any trace of. Moreover, China has not built any infrastructure at Scarborough Shoal since it took control in 2012, not even navigational aids (buoys, lighthouses, markers), and has not carried out any rescue operations or combated crime at sea in and around the atoll since it was established in 1949, a demonstration of the real interest China takes in the atoll.

Even the names used by the Chinese authorities to designate the various islands, islets, sandbanks, reefs and shoals of the South China Sea have long been a simple Sinicization¹² of English names, notably from the work of the Chinese Committee for the Modernization of Maps of 1931 and it was only much later, in the 1980s and 1990s, that authentically Chinese names were given.

Conclusion

Faced with repeated aggressions by China in its exclusive economic zone, whether the creeping occupation of Mischief Reef Atoll from 1988 until its transformation into an air and naval base between 2014 and 2016, the capture by ruse of Scarborough Atoll in 2012, as well as the harassment of the coast guards stationed on the *BRP Sierra Madre* and of fishermen trying to carry out their activity, the Philippines has done its utmost to mitigate China and deescalate the situation. This included the negotiation from 1982 and the signature in 1995 of a bilateral

10 “The political interview of H.E. Lu Shaye, ambassador of China in France” (in French), LCI channel, April 24, 2023, https://www.youtube.com/watch?v=8XYDYf1gmtA&ab_channel=LCI

11 Born in 1231 in Xingtai, Guo Shoujing was an astronomer, an engineer and a mathematician of the Yuan dynasty that has built 27 space observatories all over China, including two in Hainan

12 Bill Hayton, “The Modern Origins of China’s South China Sea Claims”, Sage, March 2019

code of conduct, joining the Joint Marine Seismic Understanding¹³ (JMSU) in 2005, being a party to the 1992 ASEAN backed “Manila Declaration¹⁴” and playing a significant role in the ASEAN-China Code of Conduct negotiations, in addition to the establishment of the Bilateral Consultative Mechanism¹⁵ (BCM) and of a direct hotline.

None of which really provided the expected results in the end and in fact, as early as 1988, following the battle of Johnson South Reef against Vietnam, China started positioning sovereignty markers at all of the seven reefs it currently occupies in the Spratlys. This symbolic gesture has been rapidly followed, at Mischief Reef, with the erection of bamboo stilt structures in the late 1980s, by metal structures in the early 1990s, which China called “fishermen shelters¹⁶”, and by two permanent concrete stations in the second half of the 1990s, and ultimately the feature has been reclaimed and militarised, even though China was a signatory to the United Nations Convention on the Law of the Sea (UNCLOS) and bound by the Vienna convention on the law of treaties to respect the spirit of the treaty.

Since then, despite continued and worsening violence, breaches of trust and international and bilateral engagements, and even acts of piracy carried out by China, the Philippines has used all the legal means at its disposal, including referring the matter to international arbitration with the CPA, which rules in its favour in 2016,

while continuing to patrol the contested waters and to defend itself against China’s threats and accusatory remarks. Now that Scarborough Shoal remains occupied by China, all eyes seem to be focused on the new current hotspot, Second Thomas Shoal and three nearby maritime features: Whitsun Reef, Iroquois Reef and Sabina Shoal, all either put under siege or occupied by China’s naval assets, and it remains to be seen if the US and Manila’s new security partners will provide much needed support.

13 Ernest Bower, “The JMSU: A Tale of Bilateralism and Secrecy in the South China Sea”, CSIS, July 27, 2010, <https://www.csis.org/analysis/jmsu-tale-bilateralism-and-secrecy-south-china-sea>

14 The 1992 Manila Declaration on the South China Sea was signed by ASEAN foreign ministers during the 25th ASEAN Ministerial Meeting in Manila, the Philippines. The Declaration called for a peaceful resolution of disputes, the exercise of restraint by involved parties, and cooperation in areas of mutual interest.

15 Lye Liang Fook, “The China-Philippines Bilateral Consultation Mechanism on the South China Sea: Has it Worked for China?”, Fulcrum, April 25, 2024, <https://fulcrum.sg/the-china-philippines-bilateral-consultation-mechanism-on-the-south-china-sea-has-it-worked-for-china/>

16 They were in fact the 3rd stage of China’s gradual occupation of Mischief Reef, after the installation in 1988 of sovereignty markers and bamboo stilt structure. It was followed in the late 1990s by permanent concrete structures, and led to the massive land reclamation that took place between 2014 and 2016