

SCARBOROUGH REEF: A NEW FLASHPOINT IN SINO-PHILIPPINE RELATIONS?

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INTRODUCTION

Scarborough Reef (*Huangyan Island* in Chinese) is located within the geographic coordinates of 15°08'-15°14'N, 117° 44'-117°48'E. It is triangular-shaped with a circumference of 46km. The total area of the feature including the inner lagoon is 150km². There are several rocks on the reef, the largest of which is South Rock (*Nanyan*). This feature is apparently above water at high tide (1.8m high), and situated at the south-eastern extremity of the reef. Near the north of South Rock there is a channel, approximately two cables wide (370m), with depths of 5 to 6 fathoms (9-11m), leading into the lagoon. In addition, North Rock (*Beiyan*) and several other tiny above-water coral rocks are also situated on the reef. Thus Scarborough Reef is actually a large atoll including South Rock and North Rock. According to a Chinese authority on the South China Sea, the reef is also the biggest atoll in the South China Sea.¹ It lies approximately 170 nautical miles (nm) (318km) east of the Macclesfield Bank, and approximately 115nm (215km) off Zambales province on the western side of Luzon Island.

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Scarborough Reef is of special significance to the whole South China Sea issue. Nonetheless, Western literature on the South China Sea largely ignores this reef.² Indeed, even some Chinese scholars neglect to mention Scarborough Reef in the four traditionally-acknowledged groups of islands in the South China Sea.³ Commonly, Scarborough Reef has been regarded as part of the Zhongsha Islands (*Zhongsha Qundao*) in China, at least since 1935. This is often officially reiterated by China, with a recent example in 1997 when the reef became subject to dispute.⁴

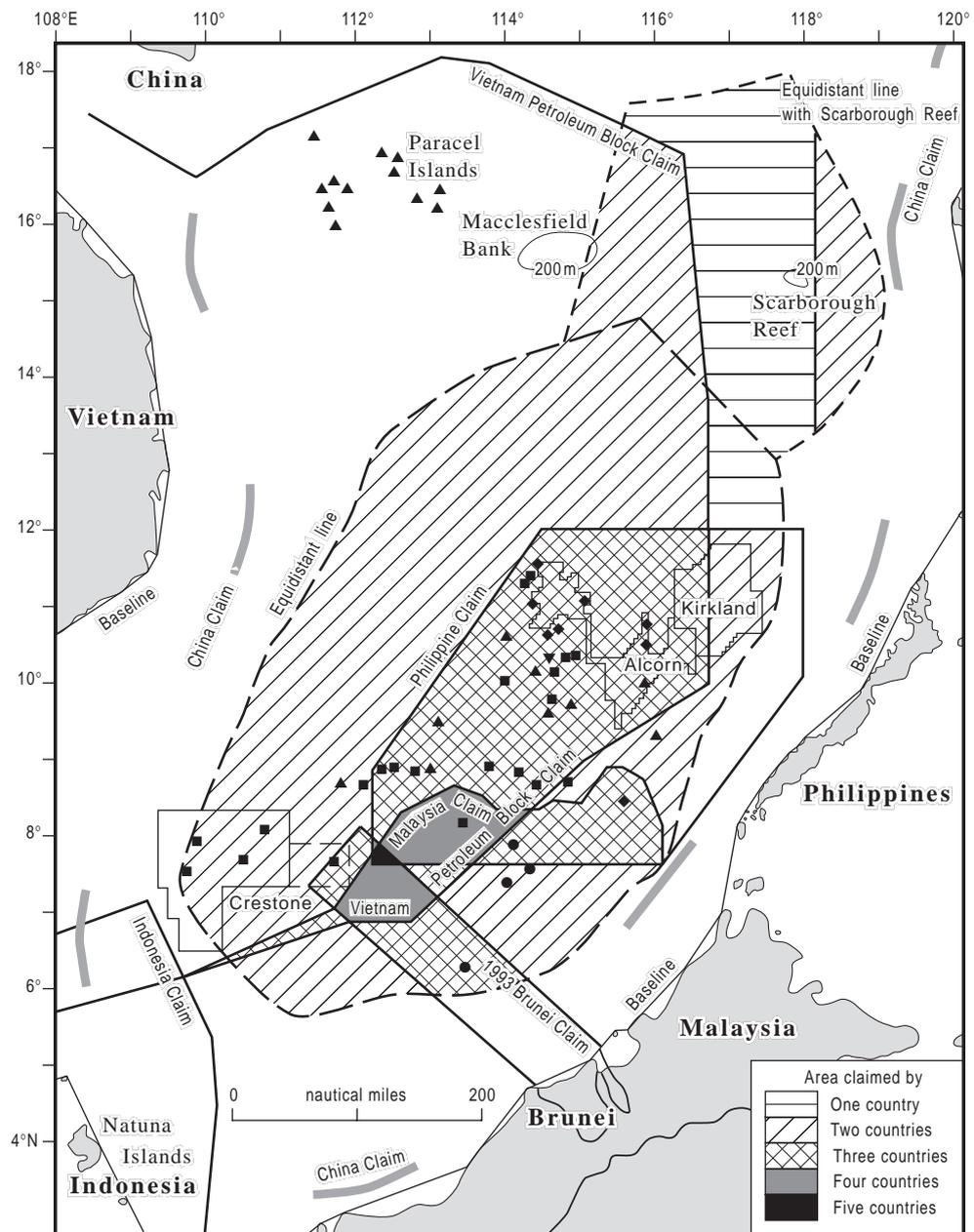
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Certain foreign scholars challenge the inclusion of Scarborough Reef in the Zhongsha Islands as being geographically questionable, and even incorrect.⁵ The problem lies in the different perceptions of the meaning of the term “*Zhongsha Qundao*.” If the term Zhongsha Islands is regarded merely as the English equivalent to Macclesfield Bank, then Scarborough Reef does not form part of this group. Nevertheless, in the Chinese conception, the term “*Zhongsha Qundao*” is not limited only to Macclesfield Bank, but includes Scarborough Reef and other shoals, such as Truro Shoal (*Xianfa Ansha*), Helen Shoal (*Yitong Ansha*), St. Esprit Shoal (*Shenhu Ansha*) and Dreyer Shoal (*Zhongnan Ansha*) as well. In addition, the term “*Qundao*” in Chinese can be translated into “*archipelagoes*” in English, thus making the geographical scope of the Zhongsha Islands even wider.

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As a result, care should be exercised in the use of the names of islands in the South China Sea.⁶ Nevertheless, it must be acknowledged that there are discrepancies in the description of the Zhongsha Islands in China: while the official written literature places Scarborough Reef under the name of the Zhongsha Islands, the label of “*Zhongsha Qundao*” on Chinese official maps is placed over Macclesfield Bank and does not extend towards Scarborough Reef, thus causing confusion among foreign scholars. Meanwhile, it should be pointed out that the definition of the Zhongsha Islands including Scarborough Reef only represents the Chinese definition, and the outside world may take a different view.

In 1935 the Chinese Ministry of Interior published a list of names of islands in the South China Sea, in which Scarborough Reef was named according to its original English name, and was listed under the group definition of the Nansha Islands.⁷ In 1947 it was given a name *Minzhu Jiao* (Democracy Reef) and was designated as part



of the Zhongsha Islands.⁸ In 1983 the People's Republic of China renamed the reef Huangyan Island, but the feature remained part of the Zhongsha Islands according to the Chinese authorities. Huangyan Island therefore became Scarborough Reef's official Chinese name while *Minzhu Jiao* is still reserved as its second name.⁹ As far as the Republic of China (Taiwan) is concerned, its recently publicised baseline claim identified Scarborough Reef as part of the Zhongsha Islands.¹⁰

Around Scarborough Reef, marine living resources are abundant, and these are traditional fishing targets for Chinese fishermen as well as for Philippine fishermen. In addition, Chinese fishing vessels often sail into Scarborough Reef's lagoon to collect, for example, shells and sea cucumbers.¹¹ There is also an international navigational waterway near Scarborough Reef. Approximately 300 ships pass in the vicinity of the reef daily.¹² Japan uses this route to transport 80% of its petroleum from the Middle East, and therefore regards this waterway as its lifeline.

Since the entry into force of the 1982 United Nations Convention on the Law of the Sea (the LOS Convention) in 1994, the maritime areas subject to coastal state jurisdiction have greatly expanded. Consequently, the significance of islands has increased dramatically. According to the LOS Convention, an island has its own

territorial sea of 12nm as a minimum. If regarded as a fully-fledged island rather than a mere “rock” (Article 121(3)), an island can even provide its sovereign state with the basis for a claim to a 200nm exclusive economic zone (EEZ). In the case of Scarborough Reef, there is no doubt that the feature can generate its own territorial sea for its owner. It is, however, questionable whether Scarborough Reef could have the capacity to generate its own 200nm EEZ.

If Scarborough Reef can generate an EEZ claim, its area would be 54,000nm²...

According to the LOS Convention, rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.¹³ However, the LOS Convention contains no further provisions on the exact meanings of “rocks”, “human habitation” and “economic life of their own”, thus leading to different interpretations. Some scholars suggest that only islands which have shown the ability to sustain stable human populations of at least 50 people should be allowed to generate maritime zones.¹⁴ Under such a suggestion, Scarborough Reef clearly lacks the capability to have its own extended maritime zones including an EEZ because of its size at high tide and lack of permanent inhabitants. On the other hand, it should be realised that due to the ambiguity in the expressions of the above-mentioned LOS Convention provision, it could be argued that islets like Scarborough Reef may have the capability to generate their own maritime zones including an EEZ. Any conclusive argument cannot be reached for the moment. If Scarborough Reef can generate an EEZ claim, its area would be 54,000nm².¹⁵ However, any such claim would overlap with a Philippine claim from Luzon Island. That is one of the reasons why Scarborough Reef has become a contentious issue between China and the Philippines.

OVERLAPPING CLAIMS: CHINA VS. THE PHILIPPINES

The bilateral dispute over Scarborough Reef came to the surface in 1997 when Filipino naval vessels prevented three Chinese boats from approaching the reef on 30 April and then hoisted the Philippine flag there. China lodged a strong protest and warned the Philippines that the incident could complicate friendly ties between the two countries.¹⁶ China has maintained a longstanding territorial claim over Scarborough Reef. As mentioned above, as early as 1935 China listed Scarborough Reef as part of the Zhongsha Islands. Since then, China’s position has remained unchanged, whether on behalf of the mainland or Taiwan-based authorities. Thus when China reaffirms its claim to the Zhongsha Islands, this naturally implies Scarborough Reef is included.

The Zhongsha Islands were first mentioned as part of the People’s Republic of China in 1951 when the then Foreign Minister Zhou Enlai made a statement to protesting the negotiation of the San Francisco peace treaty with Japan without China’s involvement, stating that:

*...just like the entire Nansha Islands, **Chungsha Islands** and Tungsha Islands, the Sisha Islands (the Paracel Islands) and Nanwei Island (Spratly Island) have always been China’s territory. Although they had been 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 (emphasis added).¹⁷*

In May 1956 China protested against Philippine remarks that some of the South China Sea islands should belong to the Philippines because of their proximity to Philippines territory.¹⁸ In 1958 China promulgated its *Declaration on the Territorial Sea*, in which it states that:

...the breadth of the territorial sea of the People’s Republic of China shall be twelve nautical miles. This provision applies to all territories of the People’s Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands, the Dongsha

*Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas (emphasis added).*¹⁹

The 1992 *Law on the Territorial Sea and the Contiguous Zone* reaffirmed China's claim to sovereignty over the Zhongsha Islands.²⁰ In fact, China has claimed all the islands, reefs and shoals within its 1947 unilaterally drawn U-shaped line in the South China Sea as its territory. Scarborough Reef lies within this line. For administrative purposes, China places the South China Sea islands, including Scarborough Reef, under the administration of Hainan Province.²¹ It is, however, reported that it was not until the 1970s that China sent its first scientific expedition to Scarborough Reef.²²

In comparison to China's claim, the claim made by the Philippines is rather new...

In comparison to China's claim, the claim made by the Philippines is rather new. This was acknowledged by the Philippine Foreign Affairs Secretary Domingo Siazon when he delivered a statement on Scarborough Reef in a public hearing of the Senate Foreign Relations and Defense Committees on 5 June 1997, saying that "Scarborough Shoal is a new issue on overlapping claims between the Philippines and China."²³ Historically, the Philippines had no territorial claim to Scarborough Reef. Even in a 1978 map which was published by the Philippine National Mapping and Resource Information Authority, Scarborough Reef was not marked as Philippine territory.²⁴ Thus Scarborough Reef is a recently developed subject of dispute in Sino-Philippine relations since 1997. The dispute has added some new dimensions to the already existing overlapping claims to the Spratly Islands made by both China and the Philippines in its political, legal and strategic aspects.

The Philippine claim was expressly made in 1997 by the following statement of its Foreign Affairs Secretary: "we maintain that the Scarborough Shoal is part of our territory" because Article 1 of the Philippine Constitution states that the national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories over which the Philippines has sovereignty and jurisdiction. It was further stated that:

...the Philippines has exercised sovereignty and effective jurisdiction over Scarborough Shoal as well as over waters surrounding the shoal. Filipino fishermen have used the area as their traditional fishing ground and as sanctuary during bad weather. It has been the subject of oceanographic, reef structure and other marine scientific studies by the Philippines through the University of Philippines and the Department of Environment and Natural Resources. Scarborough Shoal was used for a long period of time as an impact range by defense authorities. The Philippines had also operated a lighthouse on Scarborough Shoal. Philippine laws on smuggling and illegal fishing have been enforced in the area for a long time.

Finally, it was noted that, "Scarborough Shoal has been subject to the laws and policies of the Philippine government, which were never contested by other parties in the past."²⁵ There are a number of questions resulting from the above statement, which will be dealt with below. Here it is simply pointed out that the last point of the statement is clearly incorrect because China claimed Scarborough Reef much earlier than the Philippines. When the Philippines began to make a similar claim thereto, then it would be fair to say that the Chinese claim has been contested by the Philippines rather than the Philippines' by the Chinese.

WHO'S ON FIRST?

The Philippines made its claim over part of the Spratly Islands as early as the 1970s when it occupied seven islands and designated them as the Kalayaan (Freedomland).²⁶ The reason given to support the Philippine claim was that the Spratly islands were *terra nullius*. The Philippine government further asserted that

the Kalayaan Islands are not part of the Spratly Islands because: (1) the Kalayaan group is some distance from the Spratlys; (2) the largest island is larger than the Spratly Island and it is commonly accepted practice to name an island group after its largest island; and (3) by definition, the Philippines make no claim to the Spratly or Paracel Islands.²⁷

The Kalayaan area has its own peculiarities. According to Philippine *Presidential Decree* No.1596 it represents a claim to sovereignty including not only the islands but also the waters, and the sea-bed as well as the airspace within the defined area. Its validity is questionable in international law, just like the alleged Chinese claim to the entire South China Sea based upon the U-shaped boundary line shown on the Chinese map. No matter what it is, Scarborough Reef is north of the Spratly Islands and lies 348km beyond the Kalayaan area. That is to say, the Philippine claim in the South China Sea did not include Scarborough Reef and its surrounding area before 1997.

The Philippines claims as territorial waters those seas bounded by its archipelagic baselines and the limits described in the treaties between Spain and the United States ratified in 1898 and 1901 and the Convention ratified by the United Kingdom and the United States in 1933. This means that its territorial waters vary in width from 1nm in the Sulu Sea between Pearl Bank and Babuan Island to 285nm northeast of Amianan Island, the most northerly point of the Philippine territory.²⁸ However, Scarborough Reef was not within the outer limits described by the above treaties. The reef is located 25km (13.5nm) west (outside) of the 1898/1933 Treaty Limits. In practice, the Philippines has usually used exact geographic coordinates to define its territories, which can be seen from its claim to the Kalayaan as well as its metropolitan territory. It is clear that Scarborough Reef is not within the areas defined by these coordinates.

The Philippines established its EEZ up to 200nm from the baselines from which the territorial sea is measured by *Presidential Decree* No.1599 in June 1978.²⁹ Accordingly, Scarborough Reef may lie within that 200nm distance. Therefore one of the Philippine arguments to justify its claim to the Scarborough Reef is that this reef is located within the Philippine EEZ. It may be recalled that during the tension from Mischief Reef in 1995, the Philippine authorities frequently criticised China's occupation of Mischief Reef as a grave violation of Philippine sovereignty over its EEZ.³⁰ As Dzurek correctly points out,

*...the Philippines' unilateral EEZ claim ignores any potential EEZ radiating from the Spratlys themselves. Maritime jurisdiction flows from sovereignty over land territory, not the reverse. If the Philippines is not sovereign of the Spratly Islands, then Mischief Reef would probably fall outside Manila's EEZ jurisdiction. The Philippine claim of violation to its EEZ may be an effort to muddy the juridical water and gain international support for its weak sovereignty claim.*³¹

The same reasoning can well be applied to the Scarborough Reef case. Furthermore, it is worth mentioning that in 1997 a Philippine judge dismissed charges of illegal entry into Philippine territory against 21 Chinese fishermen apprehended by the Philippine navy near Scarborough Reef finding that "there can be no legal basis as yet for the conclusion that the accused...entered Philippine territory illegally" as it had not yet been established that that area "exclusively belongs to the exclusive economic zone of the Philippines" based upon the 1978 Presidential Decree.³²

The Philippines has also used the concept of contiguity to justify its claim. Comparatively speaking, Scarborough Reef is closer to the Philippines than to China, though it is still about 215km (116nm) from Luzon. However, the concept of

acquiring a territorial title by means of geographical continuity has been discarded in recent times.³³ As has been pointed out, contiguity is a pretext for attempts to preempt the sovereignty of a certain area which the state concerned is not yet in a position to acquire by effective occupation. Therefore, inasmuch as the territorial claims are based on notions of “proximity” or “contiguity”, they have no validity in law.³⁴ Turning to the legal concept of “prescription” as it applies to the case of Scarborough Reef, it may be argued that even if China originally owned the reef, Manila could obtain sovereignty over it if it exercised peaceful, unopposed and continuous governance over the reef.³⁵ Nevertheless, the applicability of the prescription concept is problematic because (1) this concept is controversial in contemporary international law and state practice, and international judicial bodies are reluctant to expressly recognise prescription;³⁶ (2) China never relinquished its claim; and (3) so far the Philippines has not made an actual, much less continuous, occupation of the reef.

In 1992, Jorge Coquia, a legal adviser to the Philippine government stated that “*the Philippines has no intention or interest in any area in the South China Sea outside the limits set forth in P.D. No.1596.*”³⁷ That statement indicates that the Philippine claim over the South China Sea is limited to the Kalayaan area. Nevertheless, its claim to Scarborough Reef is a new one and relates to an area beyond the limits of the Kalayaan area. It is therefore inconsistent with what the Philippines had expressed before. Thus unless the Philippines could justify that their claim to Scarborough Reef was an old one, already in existence before the Kalayaan claim, its claim is probably not tenable.

It seems impossible that China will give up its claim to Scarborough Reef in the foreseeable future.

It seems impossible that China will give up its claim to Scarborough Reef in the foreseeable future. There are at least two reasons accounting for this. Firstly, this is the only above-water natural feature in its claimed Zhongsha Islands. China therefore perceives the reef to be vital to a claim to the entire Zhongsha Islands including Macclesfield Bank. Macclesfield Bank itself and other surrounding shoals are permanently submerged under water and not permitted to be claimed in international law, including the LOS Convention. Nevertheless, as has been pointed out by a Chinese scholar, this reef is *believed* to be critical for the Zhongsha Islands with its loss or gain thought to determine the loss or gain of the whole island group.³⁸ Second, the Chinese claim to Scarborough Reef is superior to that of the Philippines, at least from historical and comparative perspectives. This makes China persevere with its own position and is unlikely to compromise easily. As a Chinese Foreign Ministry spokesman reiterated recently, “*Huangyan Island in the South China Sea has been an inherent part of Chinese territory since ancient times and the Chinese government maintained a consistent position on related issues.*”³⁹

SEEKING A PEACEFUL SOLUTION

the claims to Scarborough Reef...are not perfect and subject to challenge...

No matter what the case might be, it is well acknowledged that the claims to Scarborough Reef, made either by China or the Philippines, are not perfect and subject to challenge, despite the fact that China’s is superior to the Philippines’. China’s superiority does not mean that China is able to possess the ownership of the reef without question. Reality shows that China’s claim has been challenged by the Philippine side and a bilateral dispute has formed. Such a dispute contains two aspects. One relates to the sovereignty issue over Scarborough Reef – i.e. who owns that reef? The other is the maritime boundary dispute resulting from the Reef. However, if sovereignty over the reef is granted to the Philippines, then there should be little potential overlapping maritime area between China and the Philippines. In any case, unless one side has recognised the validity of the other’s claim, the dispute exists and will continue to exist.

There are some general international rules to help states resolve their disputes. The United Nations Charter obligates UN member states to resolve their territorial disputes by peaceful means, which include, *inter alia*, negotiation, investigation,

mediation, conciliation, arbitration, judicial settlement and use of regional organs and means.⁴⁰ The LOS Convention also has similar provisions on treaty obligations to settle any maritime dispute by peaceful means.⁴¹ Thus it is universally accepted that peaceful settlement of international disputes is one of the fundamental principles in international law. Since China and the Philippines are both UN members as well as signatories of the LOS Convention, they are obliged to resolve any dispute between them in a peaceful way.

In fact, both China and the Philippines have pledged to solve their disputes in the South China Sea by peaceful means. In 1995 after the Mischief Reef incident, the two countries signed a code of conduct in which they promised to settle their bilateral disputes in accordance with the recognised principles of international law, including the LOS Convention. They also agreed that their bilateral territorial disputes in the South China Sea should not affect the normal development of their relations.⁴² Indeed, recently the two sides issued a joint communiqué in which the foreign ministers of China and the Philippines “*reaffirmed their commitment that the relevant disputes be settled peacefully in accordance with the established principles of international law, including the United Nations Convention on the Law of the Sea.*”⁴³ The two sides agreed to later form a joint expert working group on confidence-building measures and a legal group to study their respective claims to Mischief Reef.⁴⁴

Settlement by judicial means would be the most efficient and permanent way to solve the dispute over Scarborough Reef. However, it is unlikely that both China and the Philippines would submit their dispute to any international judicial organ or arbitral tribunal in the foreseeable future. In spite of calls for judicial settlement from various circles,⁴⁵ it seems that the parties prefer bilateral negotiations towards the settlement of the dispute.⁴⁶

The concept of joint development may also be worth considering, at least as an interim measure to settle the Sino-Philippine dispute over Scarborough Reef. Not long ago, China was described as “*the most reluctant to commit itself to joint development, and clearly presents the greatest obstacle to a cooperative solution.*”⁴⁷ However, things have changed since 1995 and China has shown its willingness to cooperate through joint development. For example, during a visit to Malaysia in 1997, the then Chinese Premier, Li Peng, expressed China’s willingness to jointly explore the economic development of the Spratly Islands rather than determining which countries have rights to the islands. The ASEAN members discussed China’s offer.⁴⁸ It is expected that some kind of joint development could be formulated in the near future for the South China Sea.

In the spirit of cooperation, a possible alternative modus vivendi would be the establishment of a joint maritime zone around Scarborough Reef

In the spirit of cooperation, a possible alternative *modus vivendi* would be the establishment of a joint maritime zone around Scarborough Reef for the purpose of resource management and environmental protection between China and the Philippines. Since Scarborough Reef does not necessarily qualify as a fully-fledged island and therefore generate its own EEZ and/or continental shelf under the LOS Convention, the two countries concerned may declare an area of 12 or even 24 nautical miles in breadth around the Scarborough Reef as a joint maritime zone. An existing precedent is the joint fishery conservation zone around the disputed Falkland/Malvinas Islands created by Argentina and the United Kingdom.⁴⁹ A joint mechanism would be helpful for the settlement of the dispute over Scarborough Reef, no matter what form that mechanism would take. Recently, China proposed to the Philippines that the facilities in the Mischief Reef could be jointly used both by the Chinese and Filipino fisherman. The Philippines regarded this as a major development towards the settlement of the South China Sea dispute.⁵⁰ China’s offer is positively helpful for the resolution of the Scarborough Reef dispute.

It should be pointed out that in many island territorial disputes, the value of the land is less than the maritime zone that could be claimed from that land under the LOS Convention.⁵¹ Thus the crux in the dispute over Scarborough Reef is not only the reef itself, but also more importantly the maritime zones around it and the resources therein. Second, Scarborough Reef also has the potential to affect the future delimitation of maritime boundaries of the EEZ and continental shelves between China and the Philippines in the South China Sea. In such a context, it is most likely that the Philippines will argue that the reef is not entitled to generate an EEZ claim according to the LOS Convention, whereas China would favour a maximum extent of water area generating from this reef.

The preservation of the *status quo* would favour the Philippines because of its proximity to Scarborough Reef. As Prescott has recommended, “*the Philippines has built a lighthouse on the Reef [sic] but it would be much safer to ensure that it is permanently occupied.*”⁵² It is not clear whether the Philippines would take action to occupy the reef in years to come. If that happened, it would definitely invite strong repercussions from China. Tension would then be likely to escalate to an unpredictable stage. Both sides certainly would not like to see such a negative event occurring in their bilateral relations.

Recent developments in the American-Philippine military relationship may also have some implications for Scarborough Reef. The United States pushed the Philippines to conclude a new bilateral agreement regarding US forces stationed in the Philippines. In order to reach such a goal, William Cohen, the US Defense Secretary expressed his view in Manila on 3 August 1998 to the effect that the US armed forces would come to the aid of Manila if its troops in the South China Sea were attacked.⁵³ His comments may indicate a change in the American position on the South China Sea dispute since previously, in the American view, the disputed South China Sea islands were not covered by the Philippines-US mutual defence treaty.⁵⁴ Such a change may encourage the Philippines to take more ambitious actions around Scarborough Reef, even to the extent of sending troops to occupy it. If so, it will escalate the tensions in Sino-Philippine relations, as well as create instability in the whole South China Sea. According to Joseph Estrada, the Philippine President, stronger ties with the US represent a “*deterrent*” against Chinese incursions into the disputed Spratly Islands in the South China Sea.⁵⁵ Obviously, China is not happy with such an explanation. A spokesman of the Chinese Foreign Ministry merely noted that “*we hope that the countries concerned act in support of regional peace and stability.*”⁵⁶

In conclusion, it can be seen that both China and the Philippines have promised to settle their territorial disputes in the South China Sea by peaceful means. This is positive and helpful for the building-up of good relations between the two countries. On the other hand, however, it must be realised that there are uncertainties over the Scarborough Reef dispute. If the two sides keep their promises and pave the way for regional peace and security, the contested reef could turn into an area of cooperation. If the two sides are inclined to pursue their unilateral interests, disregarding the need for cooperation, then the reef could be a potential threat to peace and security in the South China Sea.

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¹ See Chen Shijian (1987) (ed.) *The Collection of Names and Materials on the South China Sea Islands*, Guangzhou: Guangdong Atlas Publishing House, at 181 and 345.

² For example, Heinzig, D. (1976) *Disputed Islands in the South China Sea*, Wiesbaden: Otto Harrassowitz, esp. at 19.

³ For example, Kien-hong Yu, P. (1991) *The Four Archipelagoes in the South China Sea*, Taipei: Council for Advanced Policy Studies, esp. at 20-21; and Zhao Lihai (1996) *Study on Issues of the Law of the Sea*, Beijing: Peking University Press (in Chinese), at 25.

⁴ The spokesman of the Chinese embassy in Manila Hao Yinbiao said in a statement that the Scarborough Reef belonged to China's Zhongsha Islands. See *Strait Times*, 14 May 1997.

- 5 Haller-Trost, R. (1998) in <http://www.mailbase.ac.uk/lists/int-boundaries/1997-05/0017.htm>
(access date: 21 July).
- 6 Not only is the western world not clearly aware of this conception, but some Chinese legal
scholars also define the Zhongsha Islands in an erroneous way. Huangyan Island is not included
and regarded as an isolated island. See, for example, Jianmin Shen (1997) 'International Law
Rules and Historical Evidences Supporting China's Title to the South China Sea Islands',
7 *Hastings International & Comparative Law Review*, Vol.21, 3.
- 8 The name of the Zhongsha Islands at that time was Nansha Islands while the name of the Spratly
Islands was Tuansha Islands. See Chen (ed.), *supra* note 1, at 41.
- 9 Chen, *ibid.*, at 48.
- 10 Chen, *ibid.*, at 55. The whole list of names of the South China Sea islands was also printed in
People's Daily (in Chinese) dated 25 April 1983.
- 11 See *China Times* (in Chinese), 1 January 1999. The problem with the ROC claim is that the
baselines only encircle Scarborough Reef while disregarding the other parts of the Zhongsha
Islands, such as Macclesfield Bank.
- 12 See Xu Zongfan and Zhong Jinliang (1987) 'Topographical Features of the Huangyan Island', in
Chen (ed.), *supra* note 1, at 589.
- 13 See Reuters World Service, 3 January 1997. As is said, the Reef "could choke to death the
commercial traffic between Asia, the United States and the Philippines." See 'Manila vows to
keep China off isle', *The Straits Times*, 19 May 1997.
- 14 Article 121, the LOS Convention.
- 15 Valencia, M.J., Van Dyke, J.M. and Ludwig, N.A. (1997) *Sharing the Resources of the South
China Sea*, Dordrecht: Martinus Nijhoff, at 43.
- 16 Prescott, J.R.V. (1996) *The South China Sea: Limits of National Claims*, MIMA Paper, Kuala
Lumpur: Maritime Institute of Malaysia, at 39.
- 17 *Strait Times* (Singapore), 14 May 1997.
- 18 See Shao Hsun-cheng (1974) 'Chinese Islands in the South China Sea', *People's China*, No.13;
reprinted in Cohen, J.A. and Hungdah Chiu (eds) *People's China and International Law: A
Documentary Study*, Princeton: Princeton University Press, Vol.1, 344-345.
- 19 See Zhang Haiwen (1995) *The Legal Regime Applicable to the South China Sea Islands* (in
Chinese), Doctoral Dissertation, Peking University, at 75 (on file with the author).
- 20 Office of Laws and Regulations, Department of Ocean Management and Monitoring, State
Oceanic Administration (1991) (ed.) *Collection of the Sea Laws and Regulations of the People's
Republic of China*, Beijing: Ocean Press, at 3.
- 21 Article 2, Law on the Territorial Sea and the Contiguous Zone, 25 February 1992, reprinted in
United States Department of State Bureau of Oceans and International Environmental and
Scientific Affairs, *Limits in the Seas: Straight Baseline Claim: China*, No.117, 9 July 1996, at
11.
- 22 Before the establishment of Hainan Province in 1988, the South China Sea islands were subject
to the administration of Guangdong Province.
- 23 The scientific investigations were conducted by the South China Sea Institute of the Chinese
Academy of Sciences. See Xin Yejiang (1996) (ed.) *China's South China Sea Islands*, Haikou:
Hainan International Information Publishing Centre (in Chinese), at 131.
- 24 Statement of the Philippine Foreign Affairs Secretary Domingo Siazon before the Public
Hearing of the Senate Foreign Relations and Defence Committees on 5 June 1997 (on file with
the author).
- 25 See <http://www.mailbase.ac.uk/cgi-bin/...int-boundaries&1997-05&55205&64889> (access date:
22 May 1998).
- 26 Siazon, *supra* note 23.
- 27 Presidential Decree No.1596 defines the area of the Philippine claim as:

"[t]he area within the following boundaries: from a point [on the Philippine Treaty Limits] at latitude 7°40' North and Longitude 116°00' East of Greenwich, thence due west along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the intersection of the parallel of 12°00' N with the meridian of longitude 114°30' E, thence due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence Southeastwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude; including the sea-bed, sub-soil, continental margin and air space shall belong and be subject to the sovereignty of the Philippines. Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as 'Kalayaan'."

See "Declaring Certain Areas Part of the Philippine Territory and Providing Their Government and Administration", Presidential Decree No.1596, reprinted in Aileen San Pablo-Baviera (1992)(ed.) *The South China Sea Disputes: Philippine Perspectives* (Quezon City, Philippines:

- Philippine China Development Resource Center & Philippine Association for Chinese Studies, at 55.
- 27 Villacorta, V.W. (1991) 'The Philippine Territorial Claim in the South China Sea', in Hill, R.D., Owen, N.G. and Roberts, E.V. (eds.) *Fishing in Troubled Waters* (Hong Kong: Centre of Asian Studies, University of Hong Kong, 210-211.
- 28 Prescott, *supra* note 15, at 2.
- 29 Presidential Decree No.1599, reprinted in *Philippine Yearbook of International Law*, Vol.8, 1982, D-14-D15.
- 30 See Rodriguez, P. (1995) 'Manila to Beef up Forces in Spratlys', UPI (Manila), 15 February; and 'With Eyes Wide Open', Malaya (Quezon City), 14 February; cited in Dzurek, D.J. (1995) 'China Occupies Mischief Reef in Latest Spratly Gambit', *IBRU Boundary and Security Bulletin*, Vol.3 (1), 1995, at 71.
- 31 Dzurek, *ibid.*, at 68.
- 32 'Judge drops charges against 21 Chinese fishermen', *China News* (Taipei), 11 July 1997.
- 33 Blum, Y.Z. (1965) *Historic Titles in International Law*, The Hague: Martinus Nijhoff, at 176.
- 34 Waldock, C.H.M. (1950) 'The Legal Basis of Claims to the Continental Shelf', in *Grotius Transactions*, Vol.36, 1950, at 120; and 'Disputed Sovereignty in the Falkland Islands Dependencies', *British Yearbook of International Law*, Vol.25, 1948, at 344.
- 35 This view is taken from the anonymous referee to which this author is very grateful. As to the concept of prescription, see Zou Keyuan (1995) 'Territory in International Law', in Wang Tiejia (ed.), *International Law* (Beijing: Law Press)(in Chinese), at 237.
- 36 For reference, see the *Case on Sovereignty over Certain Frontier Land (Belgium/Netherlands)* before the International Court of Justice, *ICJ Report*, 1959, 209-262.
- 37 Coquia, J. (1992) 'Philippine Position on the South China Sea Issues', in Pablo-Baviera (ed.), *supra* note 26, at 53.
- 38 See Cheng Jiachuan (1991) 'Conditions of the Scarborough Reef and Countermeasures' in China Institute for Marine Development Strategy (ed.) *Proceedings of the Conference on the Struggle Situation and Strategy of the South China Sea*, Beijing (in Chinese), at 89. It may be argued that even if the Philippines owned Scarborough Reef and even if China allowed a full claim to the EEZ from that reef, Macclesfield Bank would still lie on the Chinese side by a line of equidistance drawn between that reef and the easternmost of the Paracel Islands. While we admit that it is fairly true, we should bear in mind the following important factors:
- (1) the Chinese conception of the Zhongsha Islands includes not only Macclesfield Bank, but also Scarborough Reef and other shoals so that the interpretation is much bigger than the conception only of Macclesfield Bank;
- (2) the Chinese divide the islands in the South China Sea into four groups, of which Zhongsha is one. China likes the four island groupings to have their own maritime zones. Thus the Chinese definitely do not prefer the argument that Macclesfield Bank could be claimed by generating maritime zones from the Paracel Islands; and
- (3) the claim to maritime zones is based upon land. In China's view, the existence of Scarborough Reef is not only for Macclesfield Bank *per se*, but also for the potential maritime zones which could be generated from the whole Zhongsha Islands.
- 39 BBC Worldwide Monitoring, 12 August 1998.
- 40 Article 2 (3), the Charter of the United Nations.
- 41 See Articles 279-285, the LOS Convention.
- 42 See 'Code of Conduct between People's Republic of China and the Philippines' (on file with the author).
- 43 Agence France Presse, 30 July 1998.
- 44 *Business World* (Manila), 31 July 1998.
- 45 For example, Goh Chok Tong, the Prime Minister of Singapore once called for the two sides to submit their dispute to the International Court of Justice for settlement. *Ming Pao* (Hong Kong)(in Chinese), 8 June 1997.
- 46 This is further confirmed by the following remarks made by the legal adviser to the Philippine Foreign Ministry: "It is hoped that all the states in Southeast Asia with adjacent maritime boundaries will be able to conclude agreements, thus avoiding expensive and unfriendly judicial or arbitral methods." Coquia, J.R. (1990) 'Maritime Boundary Problems in the South China Sea', *U.B.C. Law Review*, Vol.24, at 123.
- 47 Ba, A.D. (1994) 'China, Oil and the South China Sea: Prospects for Joint Development', *American Asian Review*, Vol.12 (4), at 138.
- 48 *New Straits Times*, 27 August 1997.
- 49 See Smith, R.W. and Thomas, B.L. (1998) 'Islands Disputes and the Law of the Sea: An Examination of Sovereignty and Delimitation Disputes', *Maritime Briefing*, Vol.2 (4), at 26.
- 50 *Manila Standard*, 31 July 1998.
- 51 Smith and Thomas, *supra* note 49, at 18.
- 52 Prescott, *supra* note 15, at 39. The Philippines has planned to build a lighthouse on the reef and it is not clear whether this plan has been put into practice.
- 53 He said, "we have a mutual defence treaty which is not geographically specific. Our commitment is to defend against attacks on the Philippine people, or US personnel as well, wherever they may be." See *South China Morning Post*, 4 August 1998.

- ⁵⁴ Article V of the Mutual Defense Treaty states in part that “*an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific.*” According to the US, the wording “*metropolitan territory of the Philippines*” is defined as to include all of the land areas and adjacent waters which were ceded to the United States by Spain in the Treaty of Paris in 1898 and the Treaty of Washington in 1900. See Berry, Jr., W.E. (1989) *U.S. Bases in the Philippines: The Evolution of the Special Relationship*, Boulder: Westview Press, 237-240.
- ⁵⁵ *Financial Times*, 5 August 1998.
- ⁵⁶ Agence France-Presse, 4 August 1998.

PERMEABLE BOUNDARIES AND BORDERS IN A GLOBALISING WORLD: NEW OPPORTUNITIES OR OLD PROBLEMS?

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