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The Philippines in the South China Sea dispute

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Legal basis of Philippine claim in the South China Sea

The claim of the Philippines to sovereignty of the Spratlys was originally based on a private claim asserted by Captain Thomas Cloma, who declared in 1956 that he had discovered a group of islands in the South China Sea which he called *Kalayaan* (Freedom) Islands. Since 1971, the Philippines has occupied six islands in the Spratlys. In 1978 the Philippine government laid formal claim to the islands it controlled through the issuance of Presidential Decree No. 1599, which established the Philippines' Exclusive Economic Zone (EEZ) to a distance of 200 miles from the country's baseline.¹ On 10 March 2009 the Philippines strengthened the legal basis of its claim through the passage of the *2009 Baseline Law*, which defines the country's archipelagic baseline according to the United Nations Convention on the Law of the Sea (UNCLOS) provisions pertaining to archipelagos. In January 2013 the Philippines sought to boost its legal claims over the Spratlys and other land features in the South China Sea when it filed a statement of claim against China in the Arbitral Tribunal of the UNCLOS. In its Notification and Statement of Claim to the Arbitral Tribunal, the Philippines laid its claims to the Spratly Islands, Scarborough Shoal, Mischief Reef, and other land features within its 200-mile EEZ on the basis of the UNCLOS, and specifically to its rights to a Territorial Sea and Contiguous Zone under Part II of the Convention, to an EEZ under Part V, and to a Continental Shelf under Part VI.² Unfortunately, since 2009 China has challenged the Philippines legal claim to these numerous islands, reefs and banks by relying on growing naval prowess backed by coercive diplomacy. To date, this challenge has led to a tense two-month standoff between Philippine and Chinese civilian vessels in the Scarborough Shoal.

1 Lowell Bautista, 'International Legal Implications of the Philippine Treaty Limits on Navigational Rights in Philippine Waters', *Australian Journal of Maritime and Ocean Affairs* 1, 3 (2009), 7. <http://search.proquest.com/printviewfile?accountid=28547>.

2 Department of Foreign Affairs, 'Notification and Statement of Claim to the United Nations Convention of Law of the Sea (UNCLOS) Arbitral Tribunal,' (Manila, 22 January 2013), 12-14.

The 2012 Scarborough Shoal standoff

The Philippines has the weakest navy in the region, and its air force is unable to patrol and monitor its vast maritime territory. In 2012, China targeted the Philippines in naval brinkmanship. The Scarborough Shoal standoff began on 8 April 2012, when a Philippine Air Force (PAF) reconnaissance plane spotted eight Chinese fishing boats around the shoal. In response to this, President Aquino directed the AFP (Armed Forces of the Philippines) and the Philippine Navy to step up its monitoring activities in line with its enforcement of the country's fisheries and maritime environmental protections laws. On the morning of 10 April, the Philippine Navy's flagship, BRP Gregorio Del Pilar confirmed the presence of eight Chinese fishing vessels anchored inside the lagoon. After monitoring the vessels, the Philippine ship, in accordance with its established rules of engagement, dispatched a boarding team to inspect the fishing vessels. The team reported that large amounts of illegally collected corals, giant clams, and live sharks were found inside the compartments of the first fishing vessel boarded.

Instead of allowing the Philippine vessel to apprehend the fishing vessels at the shoal, however, two Chinese marine surveillance vessels positioned themselves between the arresting Philippine warship and the Chinese fishing vessels, effectively preventing the Philippine ship from arresting the Chinese fishermen. The following day, Manila realised that it was engaged in a potentially dangerous standoff with an emergent and assertive China. President Aquino decided to withdraw the BRP Del Pilar and replace it with a smaller coastguard vessel in an effort to lower the tension generated by the standoff. Instead of reciprocating Manila's gesture, Beijing announced that it would deploy its most advanced fishery patrol ship, the Yuzheng 310 – an advanced large patrol vessel equipped with machine guns, light cannon, and electronic sensors – to join the two civilian patrol vessels already present. The Chinese foreign ministry announced that 'the Philippines' attempt to carry out so-called law enforcement activities in the waters of Huangyan Island has infringed upon China's sovereignty, and runs counter to the consensus reached by both

sides on maintaining the peace and stability in the South China Sea.' It further warned the Philippines 'not to complicate and escalate the situation.'³

Clearly, at the beginning of the standoff, China immediately gained the upper hand as it forced the Philippines to back away from confronting the Chinese civilian presence. With its growing armada of armed civilian maritime vessels at its disposal, China was able to place the onus of escalating the dispute on the Philippines, forcing its representatives to reconsider before using force to resolve a matter of maritime jurisdiction. China sent an additional patrol ship; consequently, three Chinese ships confronted a lone Filipino coastguard vessel in the shoal. In response to a diplomatic protest filed by the Philippines, the Chinese embassy contended that the three Chinese surveillance vessels in Scarborough Shoal were 'in the area fulfilling the duties of safeguarding Chinese maritime rights and interests', adding that the shoal 'is an integral part of the Chinese territory and the waters around the traditional fishing area for Chinese fishermen.'⁴ The incident demonstrates the extent of China's development of naval brinkmanship as a means of handling territorial disputes in the South China Sea.

The end of the standoff and its aftermath

During the 2012 Philippines–US Bilateral Strategic Dialogue in Washington D.C., Philippine Foreign Secretary Albert del Rosario made an unprecedented but honest remark regarding the Philippines' vulnerability and utter desperation in its incapacity to confront a militarily powerful China at the Scarborough Shoal, north of the disputed Spratly islands, 124 nautical miles from Luzon, and well within the country's exclusive economic zone (EEZ):

It is terribly painful to hear the international media accurately describing the poor state of the Philippine armed forces. But more painful is the fact that it is true, and we only have ourselves to blame for it. For the Philippines to be minimally reliant upon a US regional partner...it therefore behooves us to resort to all possible means to build at the very least a most minimal credible defense posture.⁵

In the interim, through the pretext of the forthcoming typhoon season, the two countries were able to ease the level of tension over the two-month standoff. On 16 June President Aquino ordered all Philippine vessels to leave the shoal for this reason.⁶ On 18 June, the Chinese foreign ministry announced that Chinese fishing boats near the disputed Scarborough Shoal were returning to port. The following day, the China Maritime Search and Rescue Centre announced that it had deployed a rescue ship to the Scarborough Shoal to provide assistance to Chinese fishing boats returning from the area due to 'rough sea conditions.'⁷ The coordinated withdrawal of Filipino and Chinese civilian vessels from the shoal came amid ongoing consultations between the two countries and reduced political tension over the shoal.

Despite the easing of tensions over the matter, both countries continue to claim sovereignty, and the prospect for resolution of this territorial row remains slight, with the unresolved two-month standoff providing a basis for a possible regional flashpoint in the future. The underlying suspicion and antagonism between the Philippines and China over the disputed shoal in the South China Sea are still very much intact. Further, this incident underscores an international reality: Chinese economic and naval

3 Thai News Service Group, 'China/Philippines: China Seeks Preservation of Over-All Friendly Relations with Philippines as Tension over Scarborough Shoal Ebbs Momentarily,' *Asia News Monitor* (12 April 2012), 1. <http://search.proquest.com/docview/993552886/138B64F7C71082>.

4 James Hookway, 'Philippine, China Ships Square Off,' *The Wall Street Journal Asia* (12 April 2012), 2. <http://search.proquest.com/docview/993221572/fulltext/1368A3AE>.

5 Agence France Press, 'Philippines Sends SOS to the International Community,' *Philippine Star* (2 May 2012), 1-20.

6 Jane Perlez, 'Stand-off over South China Sea Shoal eases: Beijing and Manila pull their ships from area, but the dispute is not settled,' *International Herald Tribune* (19 June 2012), 4. <http://search.proquest.com/docview/1020884288/1386FC0C1134>.

7 Teddy Ng, 'Stand-Off Eases as Sides Withdraw Ships from Shoal: Beijing Follows Manila in Pulling Vessels out of Disputed Area because of Bad Weather,' *South China Morning Post* (19 June 2012), 1. <http://search.proquest.com/docview/1020927910/139091870A75BB1E5FF/15?accounti=2>.

power casts a dark and long shadow over the Philippines and Vietnam, which are at the forefront of the South China Sea dispute with China.⁸

Conclusion

The 2012 Scarborough Shoal standoff between the Philippine and Chinese civilian vessels constitutes an arch-typical international incident. Three years before the incident, China had already become more assertive in pursuing its expansive maritime claims in the South China Sea. Since 2009 it has built a powerful and formidable navy to back its territorial claims. It has also actively challenged the littoral states' EEZ claims and threatened them with various military exercises aimed at demonstrating its readiness and capacity to exert coercive military pressure to effect control over the islands and waters within its nine-dash map.

These developments coincided with a major political change in the Philippines – the election of Benigno Aquino III to the presidency. After a few months in office, President Aquino began to challenge China's claim in South China Sea by shifting the focus of the AFP from internal security to external defence and seeking US diplomatic and military support for a balancing policy against China. The Obama Administration responded by extending additional military and diplomatic assistance to its southeast ally as it, in turn, had been concerned about China's growing naval power and assertiveness with regard to its maritime claims.

These developments, together with the strategic pivot of the US to the Pacific, have strengthened the resolve of the Philippines and Vietnam to protect the regions they claim sovereignty over. President Aquino's balancing policy against China and US support for this policy led, in turn, to a dramatic deterioration in Philippine–China relations. This fuelled the two-month long standoff between Philippine and Chinese civilian vessels in Scarborough Shoal. While the deadlock ended when both the Philippines and China withdrew their civilian vessels at Scarborough Shoal in the middle of June

2012, the fuel that ignited the impasse remains. Such potential for hostility will persist as long as China continues to increase its efforts to control the region and as other claimant countries, such as the Philippines and Vietnam, remain firm in asserting their right to control their respective claims in the South China Sea.

8 William Chong, 'Path to Scarborough Far from Fair: South China Sea Rivals no Match for China's Economic, Military Clout', *The Strait Times* (21 April 2012), 1. <http://search.proquest.com/docview/1008636649/fulltext/1368A3A>.