CHAPTER 15

Boundary Conflict: The China-Philippines Confrontation over the Scarborough Reef, and the Viability of UNCLOS Dispute Resolution Procedures

Joel C. Coito

Introduction

Scarborough,¹ an exposed landmass in the South China Sea, has become the focal point of an increasingly bitter dispute between the People’s Republic of China (China) and the Republic of the Philippines (the Philippines).² The South China Sea encompasses approximately 1.4 million square miles of


² See Tupaz, Wagner, and Pozon, “China, the Philippines, and the Scarborough Shoal” (“[T]he rising tension over the Scarborough Shoal has served to raise the Philippines’ profile once again—both as a potential adversary to China over mineral resources in the region, and as a reliable ally of the U.S.”); see also Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” Naval War College Review 64 (2011): 1. (“[S]ome have described
the Pacific Ocean, within which China, the Philippines, Vietnam, Malaysia, and Brunei\textsuperscript{3} have asserted a conflicting “tangle of overlapping boundaries.”\textsuperscript{4} The impetus for these disparate claims stems from the strategic importance of the South China Sea and its abundant natural resources, including oil, gas, and hydrocarbons.\textsuperscript{5}

This chapter addresses the purported basis and legitimacy of the territorial claims over the Scarborough Shoal asserted by China and the Philippines, growing tensions and recent standoffs at the Shoal, proper classification of the Scarborough Shoal under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and dispute resolution mechanisms available to, and in some cases compulsory for, State parties contained in the treaty. Finally, it assesses the impact of the Philippines’ unprecedented decision to initiate arbitration proceedings against China, as well as the importance of China’s response to the legitimacy of dispute resolution mechanisms under the UNCLOS regime.

I Scarborough Reef

An accurate, if uncharitable, description of the Scarborough Shoal recently labeled it a “miniscule rock formation in the South China Sea.”\textsuperscript{6} Given the growing fracas over sovereign rights to the shoal, its meager size is overshadowed by its great geopolitical significance. To understand the controversy over this small feature, it is helpful to first discuss its vast resources and strategic importance within the South China Sea. With this context as a backdrop, Part II dissects the conflicting claims of China and the Philippines to the Scarborough Shoal.

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\textsuperscript{5} “Standoff at Scarborough Shoal,” \textit{Aljazeera}, August 3, 2012, accessed January 15, 2013, http://www.aljazeera.com/programmes/101east/2012/07/20127303659038417.html (“The South China Sea is a strategically important and resource-rich area in Asia. Around half the world’s merchant fleets pass through every year carrying an estimated $5 trillion worth of trade. The area is also believed to contain valuable oil and gas deposits.”).