

The “Four-Sha” Claim: Signalling a Post Covid-19 Global Order

"Four-Sha" is a lens through which Chinese long-term ambitious claims over the South China Sea is fully exposed. The current global health crisis provides a window of opportunity for the realisation of Chinese lofty hegemonic dream. While the international community may choose to laugh at China's baseless claims or stay alerted and be vocal against its attempts to rewrite international law, the acquiesced will be faced with the glaring consequence of a new world order to the favour of one and to the detriment of all, that will emerge at the end of the current war against COVID-19 and begin with lawlessness at sea.

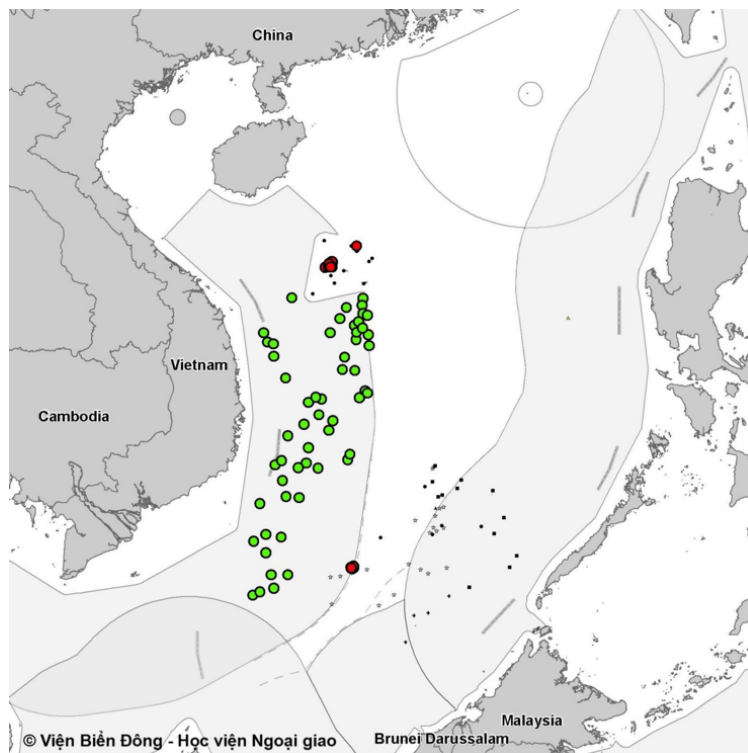
April 2020 marked the second month of disruptions on a global scale to human life and activities due to the outbreak of the COVID-19 pandemic. Hundreds of thousands of people have lost their lives and millions have been infected. As of 23 April, more than one third of the world population have been put on a lockdown to halt the spread of COVID-19 while scientists have yet to develop a workable vaccine or effective drug to combat the disease. Meanwhile, in one part of the world, specifically the South China Sea, China has been pushing its excessive sovereignty and maritime claims with new "legal theory", conveniently called the "Four Sha" claim, and various coercive activities on the ground. What is the new “Four-Sha” claim and what is the significance of it at this special moment? This paper will look at how the “Four-Sha” claim developed in the past four years since it first unfolded in 2017. Particular focus will be given on its geographical expansiveness and legality, followed by a comment on the possible impact on China's ambitions when it comes to the post COVID-19 world order.

The “Four-Sha” claim unfolds

The “Four-Sha” argument was [discretely and unofficially introduced](#) by Ma Xinmin, Deputy Director General of Chinese Foreign Ministry's Department of Treaty and Law, in a meeting in Boston in 2017, as a basis for China's sovereignty and maritime claims in the South China Sea. In fact, “Four-Sha” is the literal expression of China's so-called Nanhai Zhudao (the South China Sea Islands). In a [statement](#) delivered right after the verdict of the South China Sea Arbitration on

12 July 2016, China claimed that its Nanhai Zhudao consisted of Paracels, Spratlys, Pratas and Macclesfield.

“Dao” in Chinese means island. China, however, extended its sovereignty claim far beyond the islands and included both low-tide and submerged features in the South China Sea. In a recent joint announcement of China’s Ministries of Natural Resources and Civil Affairs on 19 April 2020, China [named and documented](#) the coordinates of 80 islands, reefs, seamounts, shoals and ridges, of which 55 were stated to be seafloor geographical entities. It is worth to note that all of the 80 features, oft-presented in Chinese previous maps, have just been "discovered" and among them, 55 seafloor geographical entities are well located within the 200 nautical miles continental shelf generated from the mainland of Vietnam and far outside the 12 nautical miles of any Chinese-claimed high tide features (*illustrated in the following map*).



The map of newly named features in China’s Announcement on 19 April 2020
(Map produced by the IT team of the East Sea (South China Sea) Institute, based on the coordinates provided in the Announcement. The 25 features that China claims are islands are marked by the red circles and the 55

submerged features marked with the green)

Prior to this move, China has already extended its maritime claims to most of the South China Sea. In a [Note Verbale](#) to the United Nations Secretary-General (UNSG) in 2009, China, for the first time, asserted its claims to sovereignty over the adjacent waters as well as sovereign rights to the relevant waters by referring to an attached map which emphasized the nine-dashed line.

On 24 July 2012, China [established](#) the Sansha City to administer the Paracels, Pratas and Spratlys islands and their surrounding waters, which covered nearly 2 million square kilometres and among which only around 20 square kilometres are land. At this time, there were no further elaborations on the precise geography of the 2 million square kilometres, thus one can speculate that the area included the waters confined within the nine-dashed line given that they account up to 80% of the whole South China Sea.

Once the nine-dashed line was ruled out by the South China Sea Arbitration Award in 2016,^[11] China [twisted its arguments](#) regarding the claims over the EEZ and continental shelf of the Nanhai Zhudao to seem more “in line” with the language of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). China claimed territorial sovereignty, maritime rights and entitlements over Spratly’s as a singular unit, and maritime rights and as a continental state, it can use the outlying archipelagos to establish entitlements to maritime zones, including internal waters, territorial sea, EEZ and continental shelf.^[12] In [its latest Note Verbale](#) to the UN Secretary General in response to Malaysia’s extended continental shelf submission, China maintained both the nine-dash line and the “UNCLOS-based” arguments that reiterated its sovereignty over Nanhai Zhudao and maritime rights and interests in the South China Sea based on historical practices and international law. While it is unclear whether China will assign the 80 invented features that were announced on 19 April to the Spratlys or Paracels, it is quite certain that China considers them to be part of Nanhai Zhudao and thus they are able to generate maritime rights and

interests. The location of the 80 features in the map indicates that the scope of the maritime spaces to be generated from these features would expand even beyond the nine-dash line. It seems there can be a link between the announcement of these 80 “new” features and Chinese Haiyang Dizhi 8’s seismic survey activities in the continental shelf of Vietnam from July to October 2019. If so, China’s current survey in the area off the Malaysian coast may result in further “discovery” of features in coming months. This means the new “discovered” submerged features may also serve as “basepoints” to claim “archipelagic baselines” surrounding the “Four-Sha” from which China can further expand its aggressive sovereignty and maritime claims to the entire South China Sea.

The rule by law

The latest trajectory of Chinese claims of sovereignty over submerged features and maritime entitlements from the four outlying archipelagos in the South China Sea challenges the fundamental norms of international law. The fact that China’s explicit classification of new 55 seafloor geographical entities with full names and coordinates in its government announcement conveys two messages regarding its sovereignty and maritime claims.

First, such act purports to exercise the exclusive authority of China in its sovereignty claim over the seafloor geographical entities.^[3] A Chinese scholar [confirmed](#) that “to reiterate its sovereignty claims over the South China Sea, China coined names for 80 more features after the 1983 exercise.” In the [announcement](#) on the establishment of the so-called two municipal districts on 18 April 2020, China also allocates the Macclesfield, a low tide elevation, within the administration of the Paracels districts. In this regard, the status of submerged features has been well established in jurisprudence and state practice as part of the seabed, thus is governed by the legal regime of maritime zones under UNCLOS and cannot be appropriated under the rules and principles of territorial acquisition.^[4] The only exception when sovereignty can be accorded to a low tide elevation is when such feature is situated within the territorial sea of an island, ergo the state

already has sovereignty over the territorial sea itself.^[51] By asserting sovereignty claim over seabed features, China has overtly defied the current rules of international law on territorial acquisition and the law of the sea.

Second, by naming the seafloor geographical entities, China further projects its unlawful claims over the EEZ and continental shelf of littoral states in the language of a new customary international law or even possibly based on a scientific guidelines and procedures of the International Hydrographic Organisation (IHO).

With regard to the former, China argues that continental states have effectively reserved the consideration of outlying archipelago as a unit during the negotiation of UNCLOS, and that customary international law allows for continental states to generate full entitlement to maritime zones from outlying archipelagos as units.^[61] Archipelago is defined as "a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such".^[71] The archipelagic base line that is established by joining the outermost points of the outermost islands and drying reefs of the archipelago was exclusively granted for archipelagic states,^[81] and all parties to UNCLOS consented to that. In fact, during the negotiations of UNCLOS, state parties agreed to remove the application of archipelagic and straight baselines to dependent archipelagos of continental states.^[91] China was among those states and it later even admitted that UNCLOS did not regulate the issue of continental States' outlying archipelagos.^[101] China's claim that continental shelf can draw from the straight baselines by connecting all the outermost points of the outermost islands of an archipelago defeats the very purpose of Part IV of UNCLOS on archipelagic regime. It also dismisses the unity requirement set out in Article 47 that archipelagic states carefully negotiated and hardly won during the negotiation of UNCLOS. Hence, China now argues that continental states have effectively reserved the consideration of outlying archipelago

as a unit, and that customary international law allows for continental states to generate full entitlement to maritime zones from outlying archipelagic units.^[11]

Customary international law can only be crystallised through general state practices and *opinio juris*.^[12] In an attempt to prove the former, China pointed to 17 specific cases where states applied straight baselines to dependent archipelagos of continental states. However, among them, three of the states are not part of UNCLOS and eight made such claims before ratifying UNCLOS.^[13] The remaining 6 examples, including China’s own straight baseline claims over the Paracels and Diaoyu/Senkaku islands, is not sufficient for the establishment of either a general practice or *opinio juris*.^[14]

Even with the most favourable hypothetical assumption that such customary international law does exist, China intentionally ignored quantitative requirements on the ratio of water to land, the length of each baseline, which should be measured following Article 47^[15], as well as the coastal characteristic conditions for drawing straight baseline under Article 7 of UNCLOS.^[16] The model of straight baselines China applied to the Paracels islands failed to meet both of the requirements and was opposed to by other states.^[17]

This leads to the conclusion that drawing normal baseline of high tide features individually is the only lawful method applicable to the features in the South China Sea. Therefore, following the verdict the South China Sea Arbitration, it is likely that other high tide features in the South China Sea can only generate territorial seas and contiguous zones. Low-tide and submerged features, regardless of their locations, are not subjected to sovereignty claims. They are parts of the sea bed thus their status will be decided by the legal regime of their respective maritime zones. This shows that China lacks legal grounds to claim maritime rights and jurisdiction in the EEZ and continental shelf of the littoral states in the South China Sea. Its coercive maritime activities in this area, therefore, directly challenge the *sui generis* characteristic of the EEZ and the existence

ipso facto and ab initio of the continental shelf based on the principle of natural prolongation - the two main achievements of UNCLOS - which China supported and advocated for in support of developing countries' rights during the negotiations of the Convention.

Concerning the IHO, this international organisation allows states, organisations and individuals to name the undersea features in a standardised manner in accordance with internationally accepted principles and procedures. The IHO guidelines emphasized that "undersea feature is a part of the ocean floor or seabed that has measurable relief or is delimited by relief" and "names approved by national authorities in waters beyond the territorial sea should be accepted by other states if the names have been applied in conformance with internationally accepted principles".^[18] In fact, the issues geographical naming in electronic nautical chart of the South China Sea has been discussed since 2016 at the East Asia Hydrographic Committee (EAHC), a regional committee of the IHO, but [ended with no result](#) due to disagreement of the members on different existing names. Naming seabed features, therefore, is purely a technical issues within the mandate of the IHO, an scientific organisation coordinating international cooperation on uniformity in nautical charts and documents of the world's sea, ocean and navigational waters, to promote safety navigation for seafarers.^[19] If China plans to abuse the IHO institutions and procedures to name the 55 seafloor entities, this shall not give rise to lawful entitlement of China over the seabed of the continental shelf of Vietnam.

The might prevails?

Judging by China's rhetoric and actions, the current developments in the South China Sea show methodical calculations and long-term ambitions of the country. The three stages of China's assertiveness of its claims in the South China Sea aligns with China's foreign policy narratives throughout the years - starting from creeping jurisdiction claims of the “hide your strength, bide your time” period of Deng Xiaoping to aggressive assertiveness around the time China began to

strive for a bipolar global order since 2008 and finally to setting the new rules when it realised its dream of becoming the number one world power.

Under its “creeping jurisdiction” strategy, the post-1949 China turned its focus to the features in the South China Sea by continuing Taiwan’s illegal occupation at the Paracels the end of the Second World War. Taking advantage of the regional power vacuum, China unlawfully took control of the entire Paracel Islands in 1974, established its first presence in the Spratlys in 1988, and further expanded into the Mischief Reef in 1995. It domestically rationalized the “historical rights” argument with a modest provision in China’s 1998 EEZ and Continental Shelf Act^[20] as well as the outlying archipelagic straight baseline system for the Paracels in [another government document](#) in 1996.^[21] It also infringed on Vietnam’s sovereignty rights and jurisdiction by awarding an exploitation contract to a small US oil company (Crestone) in the Vanguard Bank and the Blue Dragon Area in 1992.^[22]

With the end of the "hide your strength, bide your time" policy, China drastically increased its assertiveness and activities in the South China Sea. In 2009, the UN received China’s map with the nine-dashed line to claim "indisputable sovereignty" over the islands and the adjacent waters, sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof in the South China Sea.^[23] China took control of Scarborough Shoal in 2012. It further extended its sovereignty claims to include submerged features, such as James Shoal, in 2014,^[24] Beijing built artificial features in the Spratlys from 2014 to 2016.^[25] On maritime rights and jurisdiction specifically, China deployed oil rigs,^[26] conducted seismic surveys,^[27] intimidated fishermen and rammed fishing vessels,^[28] exercised water cannons,^[29] harassed oil exploration and exploitation activities of other littoral states,^[30] challenged freedom of navigation and flight operations in the area^[31] etc. The purpose of all of these activities is to control the navigation routes, seabed and air space of the South China Sea as well as the resources in the water within the nine-dash line. However, at least during this stage, China was still trying to shape their language to fit

international law and UNCLOS standards and restrained from providing a legal interpretation on the basis and meaning of the nine-dash line claim. China still cared about international reactions and adjusted its activities accordingly in order to express itself as a responsible emerging power.

The latest sovereignty claim over 55 submerged features in the context of “Four-Sha” interpretation may signal to a new China which has accumulated sufficient strength and confidence to defy current international law and create its own rules. It is the first time that China expressly claims sovereignty over seabed geographical entities, an act contrary to the century-long agreed rule on territorial acquisition. Through its influence, China attempts to manipulate international institutions like the IHO to integrate its political interests including projecting its ill-based sovereignty and maritime claims.^[32] It further challenges the sovereign rights and jurisdiction *ipso facto* and *ab initio* of coastal states over their continental shelf. It is worth recalling that the continental shelf regime [was initiated](#) by the Truman Proclamation at the end of the Second World War, which stemmed from the US’s interest in the vast natural resources of the subsoil and seabed contiguous to its coast. The initial regime of the continental shelf gave huge advantages to developed countries due to their possessions of high technologies in fossil exploitation.^[33] With the mount voice from developing countries, the continental shelf regime was finally corrected and codified in UNCLOS to bring equal benefits and help preserving natural resources for developing countries. China might currently be trying to reshape and overturn the fundamental norms of international law to its own advantage, including territorial acquisitions and laws of the sea (particularly the continental shelf regime of UNCLOS). It is arguably building a new world order that primarily benefits its own interests. As the first country to successfully keep the COVID-19 outbreak in check, whilst others, including the US, EU and Japan are struggling to cope and anticipating economic downturns, China is now in a more comfortable position to freely reshape the post-COVID-19 world order.

In short, "Four-Sha" is a lens through which Chinese long-term ambitious claims over the South

China Sea is fully exposed. Regardless of the number of “sha”, be it two popular shas, the Paracels or Spratlys, or three as the name of the Sansha city indicates, or four including Pratas and Macclesfield, the long-term ambition of China is to maximise its sovereignty and maritime claims. Establishing full control over the geographical features, navigation routes, seabed, air space and resources of the South China Sea will eventually serve its lofty hegemonic dream. The current global health crisis provides a window of opportunity for the realisation of this dream. While the international community may choose to laugh at China’s baseless claims or stay alerted and be vocal against its attempts to rewrite international law,^[34] the acquiesced will be faced with the glaring consequence of a new world order to the favour of one and to the detriment of all, that will emerge at the end of the current war against COVID-19 and begin with lawlessness at sea.

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Notes

[1] The Tribunal firmly concluded that “China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention”. Para.278 of the Award on the Merits in the matter of the South China Sea Arbitration before an Arbitral Tribunal constituted under Annex VII of the UNCLOS between the Philippines and China, full text available at: <http://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf>

[2] Chinese Society of International Law, “The South China Sea Arbitration Awards: A Critical Study”, 17 *Chinese Journal of International Law* (2018) 207-748 at paras. 596-598.

[3] Conclusion made in the *Clipperton Island Arbitration (France v. Mexico)* 2 RIAA 1105, also in (1932) 26

AJIL 390 at 393.

[4] “Maritime Delimitation and Territorial Questions between Qatar and Bahrain”, Merits, Judgment, ICJ Reports 2001, p. 40, para. 206; “Territorial and Maritime Dispute (Nicaragua v. Colombia)”, Judgment, ICJ Reports 2012, p. 624, para. 26.

[5] “Territorial and Maritime Dispute (Nicaragua v. Colombia)”, Judgment, ICJ Reports 2012, p. 624, para.26; In *Pedra Blanca* case, the Court decided that “sovereignty over South Ledge, as a low-tide elevation, belongs to the State in the territorial waters of which it is located”. “Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)”, Judgment, ICJ Reports 2008, p. 12, para. 299.

[6] *Ibid*, paras. 574-587.

[7] Article 46 UNCLOS.

[8] Article 47 and 46(a) of UNCLOS.

[9] Ashley Roach, “Offshore Archipelagoes enclosed by Straight Baselines: An Accessive Claim?”, 49(2) *ODIL*, 2018, p.176, 178.

[10] Chinese Society of International Law, “The South China Sea Arbitration Awards: A Critical Study”, 17 *Chinese Journal of International Law*, 2018, 207-748; 570-573.

[11] *Ibid*, paras. 574-587.

[12] Article 38 of Statute of the International Court of Justice.

[13] Table 1 on State practice drawing special baselines for continental states' outlying archipelagos, Chinese Society of International Law, “The South China Sea Arbitration Awards: A Critical Study”, 17 *Chinese Journal of International Law*, 2018, p.492.

[14] Sophia Kopela, “Dependent Archipelagos in the Law of the Sea”, (Brill, Nijhoff, 2013), p.149-189.

[15] Article 47 of UNCLOS provided that "An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles."

[16] Article 7 of UNCLOS provided that "In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."

[17] US Department of State, “Limits in the seas”, *Office of Ocean and Polar Affairs*, No.117, 9 July 1996, <https://www.state.gov/limits-in-the-seas/>. Vietnam also sent its objection to the UN on 6 June 1996. For full text, see Law of the Sea Bulletin, No.32, 1996, p.91, https://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletinE32.pdf

[18] Point B and D of the IHO Guidelines for the Standardization of Undersea Feature Names

[19] Statement on the IHO website, <https://iho.int/en/about-the-iho>

[20] Article 14 of the Exclusive Economic Zone and Continental Shelf Act says that “the provisions of this Act shall not affect the historic rights of the People’s Republic of China”. For full text, see http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn_1998_eez_act.pdf.

[21] United Nations Maritime zone notification, “Deposit lists of Geographical Coordinates by China”, July 5 1996, http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/mzn_s/mzn7.pdf.

[22] Clagett, Brice M. "Competing Claims of Vietnam and China in the Vanguard Bank and Blue Dragon Areas of the South China Sea.", *Oil Gas Law and Taxation Review*, Part I, no. 10 1995, p. 375-388.

[23] Note Verbale from the People’s Republic of China to the Secretary-General of the United Nations, No. CML/17/2009, 7 May 2009

[24] Ba Hamzah, “China’s James Shoal Claim: Malaysia the Undisputed Owner”, *RSIS Commentary*, 1 July 2014

[25] See more at CSIS AMTI Reports and Commentary: <https://amti.csis.org/category/land-reclamation>.

[26] China deployed HS981 in the contiguous zone of Triton, a feature of the Paracels in 2014.

[27] China deployed HS08 to conduct seismic surveys in the continental shelf of Vietnam in 2019 and Malaysia in 2020.

[28] A big number of fishing vessels of Vietnam and other littoral states has been intimidated and rammed by law enforcement vessels of China since 2008. See John Reed, “South China Sea: Fishing on the frontline of Beijing's ambitions”, *Financial Times*, 24 January 2019, <https://www.ft.com/content/fead89da-1a4e-11e9-9e64-d150b3105d21>

[29] Water cannon has been used by law enforcement of China against Filipino and Vietnam fishermen in the South China Sea in Scarborough confrontation in 2012, oil rig deployment 2014 and other incidents.

[30] Oil exploration and exploitation activities of Vietnam at the Vanguard bank and other oil blocks in its continental shelf, of Philippines at the Reed Bank and of Malaysia at the vicinity from its coastline have been constantly harassed by China since 2011.

[31] China often followed and send warning notices to the warships and aircrafts conducting freedom of navigation and overflight operations in the South China Sea.

[32] Vietnam has applied for membership of the EAHC and IHO since 2009, yet has not become a member due to the objection of China.

[33] Article 1 of the 1958 Convention on Continental Shelf allowed coastal states to establish the continental shelf to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial

sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources.

[34] Bill Hayton, April 20 2020, https://twitter.com/bill_hayton/status/1252170762997424130; “Beijing Names Islands In Disputed South China Sea”, *AFP News*, April 21 2020, <https://www.barrons.com/news/beijing-names-islands-in-disputed-south-china-sea-01587466205>