



global POLICY

GP-ORF Series

LINE IN THE WATERS

The South China Sea
Dispute and its
Implications for Asia

Edited by
Abhijit Singh



LINE IN THE WATERS

**The South China Sea
Dispute and its
Implications for Asia**

Edited by
Abhijit Singh

© 2017 Observer Research Foundation

Line in the Waters: The South China Sea Dispute and its Implications for Asia

ISBN: 978-81-86818-27-5

Cover image:

jiang X/China Navy aircraft carrier battle group/Flickr/CC BY-NC-SA 2.0

Designer:

Simi Jaison Designs

Printer:

Mohit Enterprises, New Delhi

Contents

Arbitration on the South China Sea - Implications for Maritime-Asia	2
<i>Abhijit Singh</i>	
Freedom of Navigation - A Critical Security Imperative	13
<i>Jeff M. Smith</i>	
The Sino-US Security Dilemma - The Root Cause and Way Out	22
<i>Teng Jianqun</i>	
Singapore's Security Imperatives	30
<i>Koh Swee Lean Collin</i>	
Indonesia's South China Sea Problem	38
<i>Ristian Supriyanto</i>	
Vietnam's Regional Security Challenges.....	47
<i>Ha Anh Tuan</i>	
Duterte's Geopolitical Game-play.....	55
<i>Richard Javad Heydarian</i>	
A Japan-India Partnership in Maritime-Asia	64
<i>Satoru Nagao</i>	





*Courtesy of Asia Maritime Transparency Initiative
<https://amti.csis.org/atlas/>*

Arbitration on the South China Sea – Implications for Maritime-Asia



ABHIJIT SINGH

*Abhijit Singh is Senior Fellow and Head of Maritime Policy Initiative at the Observer Research Foundation (ORF) in New Delhi. A former Indian naval officer, he has edited two books on maritime security - *Indian Ocean Challenges: a Quest for Cooperative Solutions* (2013) and *Geopolitics of the Indo-Pacific* (2014), and written extensively on India's growing maritime reach, security of sea-lines of communication, Indian Ocean governance issues and maritime infrastructure in the Asian littorals.*

In 2016, a series of developments in maritime-Asia drew international attention to the territorial disputes in the South China Sea, none more so than the Philippines vs. China Arbitration over maritime rights and jurisdiction in the littoral seas. On July 12, 2016, a tribunal at the Permanent Court of Arbitration (PCA) at Hague passed a landmark on the matter, ruling that Beijing's claims of historic rights within the nine-dash line are without legal basis. It further concluded that Beijing's activities within the Philippines' two-hundred-nautical-mile exclusive economic zone (EEZ), such as illegal fishing and environmentally damaging artificial island constructions, constituted and infringement of Manila's sovereign rights.

In many ways, China had only itself to blame for the debacle. Beijing's first reaction to the Philippines' legal appeal had been to ignore the matter altogether – as if not acknowledging the case would effectively delegitimise it. Given the high level of international interest in the affair, however, it was forced to make a course correction, issuing a position paper in December 2014 clarifying its official stance on the issue.¹ Unfortunately for Beijing, its contention that Manila had violated the United Nations Convention of the Law of the Sea (UNCLOS) by filing a petition on a matter of 'sovereignty' and 'territorial jurisdiction' failed to convince judges at the PCA, who ruled comprehensively in favour of the Philippines.²

Notwithstanding the maritime legalese surrounding the case, the technical nuances of the points raised reveal an underlying narrative. It is important to note that when Manila filed proceedings under Annex VII of the UNCLOS in July 2013, it was smart enough to invoke only those provisions that allow for compulsory arbitration. Fully aware that territorial disputes are beyond the remit of UNCLOS, the

Manila framed its petition to seek a clarification from the court whether state rights and obligations in the waters, seabed, and maritime features of the SCS could be demarcated by something as arbitrary as a hand-drawn line on a chart.

Philippines' legal team dressed-up their case as one of historical rights and judicial clarifications on the applicability of UNCLOS provisions. This is significant because many of China's operational moves in the region after the verdict reflect a sense of betrayal at being legally ambushed by a 'lesser', though legally stronger, opponent.³

At the heart of the Philippines' submission were questions about the legal validity of China's nine-dash line' in the South China Sea. Manila framed its petition to seek a clarification from the court whether state rights and obligations in the waters, seabed, and maritime features of the SCS could be demarcated by something as arbitrary as a hand-drawn line on a chart. Simply put, Manila asserted that China's maritime map of the SCS was of dubious provenance, and claims arising from it were an outright violation of the law.

A Flawed Legal Strategy

China's belatedly mounted legal defence was innately flawed. Beijing implausibly argued against the tribunal's mandate to interpret the application of the UNCLOS; erroneously invoked Art 298, citing its voluntary opt-out of compulsory arbitration under the UNCLOS; and unconvincingly petitioned for the dismissal of the Philippines' case, invoking the Declaration of the Conduct of Parties (DOC) in the South China Sea.⁴ Nothing in the text of that agreement, the judges pointed out, imposed any obligation on a state to eschew legal remedies in pursuing a just redress. Yet, until July 12, 2016 when the Tribunal passed its final judgment, few had believed that China would face such a humiliating loss. It came as a surprise that the tribunal ruled in favor of the Philippines on almost every count, unanimously rejecting nearly all of China's maritime claims in the region.

The felicity with which the tribunal tackled legal technicalities deserves acknowledgment. The court rightly held that all the territories in the contested Spratly Islands are reefs or rocks, and not islands – an important distinction, as under UNCLOS, reefs cannot generate a claim to the surrounding waters or airspace, and rocks serve as the basis only for a maritime claim of 12 nautical miles. The judges' classification of the features on the Spratlys as "less than Islands" negated the possibility of any being used to proffer claims of a 200-nautical-mile exclusive economic zone.

China's real problem, it appears, is that the court's 'non-territorial' judgment implicitly invalidates Beijing's territorial claims in the South China Sea.⁵ Before the verdict, Chinese leaders assumed that their South China Sea claims would eventually be recognised, because the features under Chinese control will, at some point in the future, be awarded the status of islands. Beijing believed that its "islands" in the Spratlys would

legitimise its legal claim over territory enclosed within the nine-dash line, without having to resort to any form of overt aggression.

The tribunal declaration, however, that the Spratly features are only reefs or rocks, deflated Chinese claims. China's outposts in the Spratly group are now rendered isolated enclaves floating in the Philippines' exclusive economic zone—lying within 200 nautical miles of that country's territory. This is one reason why Beijing has moved to quickly accept the Philippines' suggestion for a maritime sanctuary around the Scarborough shoal and jointly exploit South China Sea resources elsewhere.⁶

If negating China's historical claims was not enough, the court also found Beijing to be guilty of conducting illegal maritime activities inside the Philippines' exclusive economic zone. Chinese vessels, the judges held, were not only fishing in unauthorised fashion, they were routinely engaged in dangerously manoeuvres by approaching Philippine boats too close, preventing them from fishing, and extracting oil within the zone. Turning its knife in an already aching wound, the tribunal then censured China for its construction of artificial islands in the region, which it determined had caused severe environmental damage and heightened geopolitical tensions.

China's Operational Response

Despite the clarity brought by the verdict to many contentious issues, it did not plug all loopholes. Its biggest inadequacy is the lack of an honorable face-saver for Beijing.⁷ China was perhaps aware that the court would pass an adverse ruling, but was still taken aback by the severity of the final verdict. Expectedly, it provoked an immediate response from the PLAN that moves to expand its operational presence in the South China Sea. Within days of the judgment, Beijing upped the tempo of its reclamation activities and began creating military infrastructure on islands under its control in the SCS. If the international community had any doubts, China made it clear that there is no provision in international law to enforce a UN court's binding judgment.

Since then, Chinese military and non-military vessels have regularly undertaken activities to strengthen their de facto control of the area. Far from being pushed into adopting a more conciliatory approach, Beijing has doubled down on a strategy of "passive assertiveness" – methodically expanding its regional military footprint while avoiding risky manoeuvres that could trigger an accidental clash. Besides stepping up its fortification of military outposts in the Spratly Islands in open defiance of the tribunal's ruling, China has constructed reinforced aircraft hangars on Subi, Mischief and Fiery Cross Reefs. These new facilities have potential military usage and expand the PLA's power projection capability in the South China Sea. In combination with the first, Beijing

Despite the clarity brought by the verdict to many contentious issues, it did not plug all loopholes. Its biggest inadequacy is the lack of an honorable face-saver for Beijing.

has moved to mobilise its massive coastguard fleet to mark its presence and intimidate non-Chinese fishermen in Southeast and East Asia, in the process substantially raising the risk of an inadvertent clash.

The PLAN's South China Sea patrols and exercises since the ruling have consolidated China's wider strategic footprint without adopting unnecessarily provocative military postures. Rather than establishing an air defence identification zone – which would have been hard to enforce – Beijing initiated a new program of “air combat patrols”, flying nuclear-capable H-6K bombers and Su-30 fighters over disputed island features in an intimidating display of its airpower and resolve.⁸ Worryingly, China's joint maritime exercises with friendly navies incorporated “island-seizing drills” and anti-submarine warfare.

Meanwhile, despite undertaking multiple FONOPS in the South China Sea since the verdict, the US seems to be at a loss of options in tackling China's provocations. Despite warning from the Obama administration and President-elect Donald Trump, Beijing has refused to mend its ways. In December 2016, a Chinese boat confiscated a US underwater drone in the waters off the Philippines, challenging US operational primacy in the SCS.⁹ The UUV was returned days later, but Beijing showed how it was taking unkindly to intrusive US maritime operations, as well as unconsidered remarks by Trump and his transition team.

In effect, Beijing has managed to shift the burden of escalation onto the US and its allies, who must now decide how much provocation is enough to cross the threshold of tolerance. With the Chinese Supreme Court's recognition of a “clear legal basis for China to safeguard maritime order, marine safety and interests and to “exercise integrated management over the country's jurisdictional seas”, US analysts and policymakers know Beijing could soon come up with a domestic law to tighten its control over the South China Sea.¹⁰ If China declares base lines around the Spratlys, it will set the proverbial cat out among the pigeons.

India's South China Sea Interests

A passive bystander through much of the dispute's recent history, India took a measured stand in the wake of the UN tribunal's verdict. New Delhi issued a statement that urged all parties to show utmost respect for the UNCLOS, and the international legal order of the seas and oceans.¹¹ The statement indicated India's recognition of the legitimacy of the Permanent Court of Arbitration (PCA), but more importantly, it illustrated New Delhi's willingness to acknowledge the need for all affected parties to uphold the verdict.

While New Delhi's choice of words seemed motivated by the need to appear balanced, China insisted on interpreting India's stand as being

in support of its position. The Chinese media noted that New Delhi's signing of the Russia-India-China joint statement was an affirmation of the need for all parties involved in the maritime disputes to settle matters through dialogue rather than seeking legal recourse.

Not that Beijing has ever believed that India's South China Sea stand matters. Days before the start of the G-20 meeting, Wang Yi, China's Foreign Minister, held wide-ranging talks with Prime Minister Narendra Modi and External Affairs Minister Sushma Swaraj.¹² The agenda included a number of contentious bilateral issues – China's perceived opposition to India's membership to the Nuclear Security Group (NSG), Beijing's opposition to UN sanctions on Jaish-e-Mohammed Chief, Masood Azhar, and the China-Pakistan Economic Corridor – but not the affairs of the South China Sea. That the visiting Chinese delegate had the South China Sea in mind all along was confirmed a day later, when the Chinese media hailed India for being “neutral on the South China Sea” – convinced that if the matter ever came up at the forthcoming G-20 summit, New Delhi would not take sides.¹³

For its part, India realises that too much interest in the affairs of the SCS has the potential to impact bilateral ties. Indeed, a week prior to Wang's visit to India, the *Global Times*, a Chinese tabloid widely seen as the government's mouthpiece, had warned New Delhi that its seemingly inimical posture on the South China Sea could damage bilateral ties. “Instead of unnecessary entanglements with China over the South China Sea debate during Wang's visit,” an editorial in the newspaper had declared, “India must create a good atmosphere for economic cooperation, including the reduction of tariffs...amid the ongoing free trade talks.”¹⁴

Regardless of Beijing's deeply held beliefs, however, developments in the South China Sea do affect Indian interests. To begin with, Indian trade and economic imperatives in the Pacific are more pronounced than ever. Under the ‘Act East’ policy, trade with ASEAN and the far-eastern Pacific is expanding significantly. Consequently, Asia's Eastern commons are increasingly becoming a vital facilitator of India's economic development. With growing dependence on the Malacca Strait for the flow of goods and services, economics is increasingly a factor in India's Pacific policy. The territorial conflicts in the SCS threaten the future trajectory of India's economic development, creating an unacceptable impediment for regional trade and commerce.¹⁵

More importantly, India believes that the disputes in the Southeast Asian littorals are a litmus test for international maritime law. In the aftermath of the Hague Tribunal's verdict on the South China Sea, New Delhi feels obligated to take a principled stand on the issue of freedom of navigation and commercial access as enshrined in the UNCLOS. Regardless of the guarantees being sought by Beijing from India about staying neutral on

The territorial conflicts in the SCS threaten the future trajectory of India's economic development, creating an unacceptable impediment for regional trade and commerce.

the SCS, New Delhi cannot be seen to be condoning an aggressive stand by China in the region.

For all of China's concessions on offer, New Delhi has reason to continue viewing PLAN manoeuvres in the Indian Ocean Region (IOR) with suspicion. For one thing, Beijing still yet to explain its rapidly growing undersea presence in littoral South Asia. The flimsy pretext of anti-piracy operations to justify the deployment of Chinese submarines in the Indian Ocean makes many Indian maritime analysts believe that China is preparing for a larger strategic thrust in the Indian Ocean.¹⁶

Implications for South Asia

An aggressive Chinese maritime posture in the South China Sea Chinese also has implications for the wider Asian commons – in particular the South Asian littorals, where Indian observers fear an increase in power asymmetries. For many Indian analysts, there is a clear correlation between aggressive Chinese patrolling in the SCS and its growing deployments in the Indian Ocean Region. China's aggressive response to the UN Arbitral Tribunal's verdict is interpreted by many in India as a broader strategy to project power in maritime-Asia.

What most worries Indian observers is the prospect of reclamation and militarisation of features under China's possession. In particular, Indian analysts anticipate the deployment of Chinese missiles, fighters and surveillance equipment in its Spratly group of islands, allowing the PLAN effective control over the entire range of maritime operations in the SCS. As China's maritime militias become more active in its near-seas, Indian watchers are anticipating an expansion of Chinese maritime activities in the IOR. Many fear a rise in non-grey hull activity in the Eastern Indian Ocean, where China's distant water fishing fleet is already a significant presence.

Beijing's blueprint for maritime operations in the Indian Ocean might involve the construction of multiple logistical facilities close within India sphere of influence. China's 10-year agreement with Djibouti in 2015 for the setting up of a naval replenishment facility in the northern Obock region is widely seen by Indian experts as proof of the PLA Navy's strategic ambitions in the IOR.

The Way Forward

If regional watchers expect the tribunal's verdict to bring a sense of closure in Southeast Asia, they could be disappointed. The judgment sets a significant legal precedent: the principles that guided the tribunal's decision are now part of international law, and countries must embrace

An aggressive Chinese maritime posture in the South China Sea Chinese also has implications for the wider Asian commons – in particular the South Asian littorals, where Indian observers fear an increase in power asymmetries.

and reinforce them if they want others to uphold them in the future. But it does little to remedy China's behaviour, or to prevent other regional countries from seeking legal recourse.

Since July 12, 2016, US President Barack Obama has repeatedly asked China to abide by the arbitral award, even warning Beijing that a violation of international "norms" would entail "consequences".¹⁷ However, while Washington has been firm in pronouncements, it has failed to prompt a stronger operational response from regional states. The Philippines, in particular, seems oblivious that it was the prime mover of legal proceedings against China. Rather than hold China to account, President Rodrigo Duterte appears keen to play "political footsie" with Beijing.¹⁸ In the circumstances, it appears only the US and, to a lesser degree, Japan, are willing to confront China in the South China Sea.

America's options are to either raise the frequency of its freedom of navigation or conduct more aggressive footing regional patrols. Despite a resumption of FONOPS, there is little consensus among American policymakers that assertive USN patrols in the South China Sea will change Chinese behaviour. Yet, if Beijing crosses the "red-line" by reclaiming Scarborough, it is likely the US Navy will offer strong pushback.¹⁹ Washington will be keen to leverage diplomacy in preventing tensions from rising. But it knows Beijing is unlikely to offer any guarantees that it will scale back its aggression in the South China Sea.

Even so, there are ways in which regional states could reinforce the recent ruling without militarily confronting China. The first is to encourage both China and the Philippines to abide by the UN court's decision. Other claimants too must discuss ways in which the ruling affects their own position vis-à-vis the maritime disputes. All parties must desist from military activities and allow tensions to cool.

In the meantime, it is better to keep talking – for the solution to the problems in the SCS might actually lie in accelerated dialogue. Southeast Asian states must encourage Chinese officials to negotiate with other claimants in the South China Sea, and also make progress on a binding code of conduct (CoC) with ASEAN. A clear set of guidelines for maritime behaviour in the South China Sea could prove invaluable.

Not only would a CoC freeze the waterway's political and territorial status quo, it would signal China's willingness not to threaten the existing security order in the long term. Meanwhile, the US must make it clear to Beijing that the avenues for cooperation risk shut-down if China resorts to assertive moves, such as construction at Scarborough Shoal.

For India, it is important to display solidarity with Southeast Asian states to press for a peaceful solution to the SCS disputes. New Delhi must

Despite a resumption of FONOPS, there is little consensus among American policymakers that assertive USN patrols in the South China Sea will change Chinese behaviour.

encourage both China and ASEAN to undertake greater confidence-building measures and to reduce the risk of an accidental clash. It is in nobody's interest to see great-power conflict over the South China Sea.

New Delhi can assure China that it does have reasonable options available to it. With or without the UN court's interventions, resolving the impasse in the South China Sea peacefully and legally would be in everyone's interests.

Against this larger backdrop, the following chapters of this primer attempt to evaluate the prospects for peace and stability in the South China Sea. The contributors argue that even though the vexed nature of the dispute has prevented all sides from reaching a working consensus, the search for diplomatic solutions hasn't ended. Undoubtedly, as Jeff Smith points out, the only way in which the seriously contested issue of freedom of navigation (FON) in the SCS can be resolved is through greater diplomatic dialogue between the US and China. Yet, as Teng Jianqun suggests, there are many ways of interpreting navigational freedoms – each one meant to serve specific political agendas, and shaped by a uniquely nationalist historical perspective.

Meanwhile, the region's middle powers remain concerned over the deteriorating security dynamic in the region. Richard Haydarian gives an excellent account of President Duterte's refusal to side with the US, affecting his own unique 'pivot' towards China. The Philippines, he avers, is only following in the footsteps of other ASEAN countries that have all felt the need to adopt an 'equi-balancing' strategy towards the two great powers.

Ristian Supriyanto points to the need for greater confidence building measures in the SCS. While the adoption of a naval Code for Unplanned Encounters at Sea (CUES) as a crisis management mechanism counts as a positive move, he notes the absence of consensus in resolving the controversial uses of white-hull vessels and "maritime militias" in enforcing maritime claims. For Koh Swee Lean Collin, the balancing game in the SCS can have unintended consequences for all sides seeking to maximise gains. Closer diplomatic and economic links with China, he avers, doesn't change the reality that regional states remain increasingly dependent on the US for their security. Ha Anh Tuan outlines Vietnam's principal motivations in abstaining from public criticism of China. Making predictions about the SCS, he argues, is fraught with risk for Hanoi because future outcomes are likely to be dependent entirely on evolving variables. Finally, Satoru Nagao brings out Japan's need for a special partnership with India in the regional maritime commons. As great-power politics becomes more intense in the South China Sea, he proposes a deeper India-Japan operational compact in the regional littorals.

Clearly, the old certainties that brought prosperity and stability to the Western Pacific for over three decades are under threat. The US-led security system undergirding Asia's maritime strategic order is being dismantled. More disturbingly, the institutional edifice on which political confidence in the system was built is being decisively undermined. This primer is an attempt to have a reasoned discussion of the consequences of continuing instability in the South China Sea.

Against this backdrop, the following chapters of this primer attempt to evaluate the prospects for peace and stability in the South China Sea. The contributors argue that even though the vexed nature of the dispute has prevented all sides from reaching a working consensus, the search for diplomatic solutions has not ended. Undoubtedly, as Jeff Smith points out, the only way in which US and China can resolve the seriously contested issue of freedom of navigation (FON) in the SCS is through a better understanding of each other's positions, even if each must ensure their perspectives are compatible with maritime law. Yet, as Teng Jianqun suggests, there are many ways of interpreting navigational freedoms – each one meant to serve specific political agendas, and shaped by a uniquely nationalist historical perspective.

Meanwhile, the region's middle powers remain concerned over the deteriorating security dynamic in the region. Richard Haydarian gives an excellent account of Philippines President Rodrigo Duterte's refusal to side with the US, affecting his own unique 'pivot' towards China. The Philippines, he avers, is only following in the footsteps of other ASEAN countries that have all felt the need to adopt an 'equi-balancing' strategy towards the two great powers.

Ristian Supriyanto points to the need for greater confidence-building measures in the SCS. While the adoption of a naval Code for Unplanned Encounters at Sea (CUES) as a crisis management mechanism counts as a positive move, he notes, the absence of consensus in resolving the controversial uses of white-hull vessels and 'maritime militias' in enforcing maritime claims. For Koh Swee Lean Collin, the balancing game in the SCS can have unintended consequences for all sides seeking to maximise gains. Even with closer diplomatic and economic links with China, he avers, doesn't change the reality that regional states remain increasingly dependent on the US for their security. Ha Anh Tuan outlines Vietnam's principal motivations in abstaining from public criticism of China. Making predictions about the SCS, he argues, is fraught with risk for Hanoi because future outcomes are likely to be dependent entirely on evolving variables. Finally, Satoru Nagao brings out Japan's need for a special partnership with India in the regional maritime commons. As great-power politics becomes more intense in the South China Sea, he proposes a deeper India-Japan operational compact in the regional littorals.

The contributors argue that even though the vexed nature of the dispute has prevented all sides from reaching a working consensus, the search for diplomatic solutions has not ended.

Clearly, the old certainties that brought prosperity and stability to the Western Pacific for over three decades are under threat. The US-led security system undergirding Asia's maritime strategic order is being dismantled. More disturbingly, the institutional edifice on which political confidence in the system was built is being decisively undermined. This primer is an attempt to have a reasoned discussion of the consequences of continuing instability in the South China Sea.

- 1 *Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines*, Ministry of Foreign Affairs, Republic of China July 12, 2014 http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml
- 2 Julian Ku, *It is Beijing's fault that China lost big in the South China Sea ruling*, The Quartz, July 17, 2016 <http://qz.com/733012/it-is-beijings-fault-that-china-lost-big-in-the-south-china-sea-ruling/>
- 3 Abhijit Singh, *End of Maritime Innocence*, The Asia Times Online, July 10, 2016, <http://www.atimes.com/article/end-of-maritime-innocence-the-china-vs-philippines-arbitration-saga/>
- 4 Jay Batongbacal, *Arbitration 101: Philippines v. China*, Asia Maritime Transparency Initiative, Jan 21, 2015 <https://amti.csis.org/arbitration-101-philippines-v-china/>
- 5 Alex Linder, *China swiftly rejects Hague Tribunal ruling against its South China Sea claims*, The Shanghaiist, Jul 12, 2016 http://shanghaiist.com/2016/07/12/china_rejects_hague_ruling.php
- 6 *Philippines to Declare Marine Sanctuary in South China Sea*, The New York Times, November 21, 2016 http://www.nytimes.com/2016/11/22/world/asia/philippines-rodrigo-duterte-scarborough-shoal-china.html?_r=0
Joint exploration in South China Sea legal, The Business Standard, January 5, 2017, http://www.business-standard.com/article/news-ians/joint-exploration-in-south-china-sea-legal-philippine-official-117010500978_1.html
- 7 Mira Rapp-Hooper, *Parting the South China Sea*, Foreign Affairs, Sept / Oct 2016 <https://www.foreignaffairs.com/articles/china/2016-07-22/parting-south-china-sea>
- 8 Brian Kalman, *Escalation, Naval Deployments and Geopolitical Conflict in the South China Sea*, Global Research, August 16, 2016, <http://www.globalresearch.ca/escalation-naval-deployments-and-geopolitical-conflict-in-the-south-china-sea/5541122>
- 9 *Chinese warship seizes US underwater drone in international waters*, The Guardian, December 16, 2016, <https://www.theguardian.com/world/2016/dec/16/china-seizes-us-underwater-drone-south-china-sea>
- 10 Amanda Macias, *China's top court issued an 'ominous' message about the South China Sea*, The Business Insider, August 4, 2016 <http://www.businessinsider.in/Chinas-top-court-issued-ominous-message-about-the-South-China-Sea/articleshow/53532697.cms>
- 11 Jayanth Jacob, *India for peaceful means to resolve South China Sea row*, Hindustan Times, July 13, 2016 <http://www.hindustantimes.com/india-news/south-china-sea-india-for-peaceful-means-to-resolve-row-pak-backs-beijing/story-ej0MxK644YDSaff5C06COI.html>
- 12 *Chinese Foreign Minister Wang Yi meets Narendra Modi*, The Hindu, August 13, 2016 <http://www.thehindu.com/news/national/chinese-foreign-minister-wang-yi-meets-narendra-modi/article8984735.ece>
- 13 *Chinese media hails India for being 'neutral' over South China Sea*, Daily News and Analysis, Aug 17, 2016 <http://www.dnaindia.com/india/report-chinese-media-hails-india-for-being-neutral-over-south-china-sea-says-ties-developing-smoothly-2245998>
- 14 Hu Weijia, *India should focus on preserving good economic ties with China, rather than on the South China Sea*, The Global Times, August 8, 2016 <http://www.globaltimes.cn/content/999240.shtml>
- 15 Abhijit Singh, *Telling China like it is about the South China Sea*, Observer Research

- Organisation Online, <http://www.orfonline.org/expert-speaks/telling-china-like-it-is-about-the-south-china-sea/>
- 16 *China Defends Its Submarines In Indian Ocean*, NDTV, July 7, 2017 <http://www.ndtv.com/world-news/china-defends-its-submarines-in-indian-ocean-says-they-are-legitimate-1429068>
 - 17 Jason Miks, *Obama: Consequences if China violates rules and norms*, CNN, Sept 4, 2016 <http://edition.cnn.com/2016/09/04/us/obama-china-response-zakaria-interview-miks/>
 - 18 Andrew Brown, *Rodrigo Duterte Throws a Grenade in Washington's China Strategy*, Wall Street Journal, Sept 7, 2016 <http://www.wsj.com/articles/duterte-throws-a-grenade-in-washingtons-china-strategy-1473239479>; *The Real Reasons Rodrigo Duterte Flip-Flopped On South China Sea*, Forbes, January 4, 2017 Disputes<http://www.forbes.com/sites/panosmourdukoutas/2017/01/04/the-real-reasons-rodrigo-duterte-flip-flopped-on-south-china-sea-disputes/#2baf2b8b6361>
 - 19 *Report: China May Cross Obama's 'Red Line,' Reclaim Scarborough Shoal*, Sputnik News, August 15, 2016 <https://sputniknews.com/asia/20160815/10444267318/china-red-line-scarborough-obama.html>

Freedom of Navigation - A Critical Security Imperative



JEFF M. SMITH

*Jeff M. Smith is the Director of Asian Security Programs and the Kraemer Strategy Fellow. He is the author of *Cold Peace: Sino-Indian Rivalry in the 21st Century* (Lexington Books, 2014), Co-Editor of the *World Almanac of Islamism 2014* (Rowman and Littlefield 2014), and contributing author to a number of books and monographs on Asian security issues.*

What a difference eight years can make. In January 2009, the South China Sea (SCS) was barely on the world's collective radar. 'Land reclamation' was still an exotic term. China had yet to submit its 'Nine Dash Line' claim to an international body or seize Scarborough Shoal from the Philippines. There were no Chinese aircraft carriers, no artificial islands, no 'maritime militia', and no 'military alert zones' in the Spratlys.

After 30 years of comparative stability from 1979 to 2009, the SCS began seeing a wave of tumult eight years ago. Dormant territorial disputes in the Spratlys have been inflamed atop an emerging fault line in great power competition as a separate, unrelated dispute between the US and China over Freedom of Navigation (FON) has migrated to the SCS, and grown progressively intertwined with the sovereignty disputes there.

Meanwhile, Beijing seems increasingly determined to construct and operate within a parallel set of laws and norms governing FON and maritime entitlements gradually abandoning its commitment to the UN Convention on the Law of the Sea (UNCLOS) and customary international law.

For the US, the most concerning aspect of these developments relates to an escalating series of Chinese challenges to FON in the SCS. If the severity of those challenges was not clear before, in December 2016 the US was confronted with a blatant provocation when the People's Liberation Army Navy (PLAN) stole a sovereign US drone in waters beyond even China's so-called Nine Dash Line.¹

As with the EP-3 incident three months after President George W. Bush's inauguration, the drone theft two months before the inauguration of the Donald Trump presidency, set an ominous tone for bilateral relations.² It also confirmed what has become increasingly evident in recent years: China and the US—indeed, China and all nations committed to FON, UNCLOS, and a rules-based maritime order—have a fundamental conflict of interest in the South China Sea.

US Interests in the South China Sea

It is ironic that there remains so much confusion about American interests in the South China Sea, given how Washington's position has been remarkably consistent for over 20 years. In 1995, the US State Department identified US interests in the SCS as follows:³

- An abiding interest in the maintenance of peace and stability
- Serious concern [towards] any maritime claim or restriction on maritime activity in the SCS that is not consistent with international law, including UNCLOS
- No position on the legal merits of the competing claims to sovereignty over the various islands, reefs, atolls, and cays
- Freedom of navigation is a fundamental interest of the United States.

On the critical questions related to sovereignty over the disputed rocks and LTEs in the SCS, America takes no position. Its principal interest lies in ensuring that the disputes are not resolved unilaterally by force.

The US is nevertheless a keen observer of SCS affairs. Its neutrality on the sovereignty disputes is complicated by the involvement of its regional partners and treaty allies, and by a lack of clarity among regional states of the circumstances in which America's treaty obligations apply to disputed features. More recently, violent shifts in the geopolitical dispensation of regional partners have further complicated matters.

Yet, these considerations pale in comparison to the one 'core' US national interest under growing threat in the SCS: Freedom of Navigation and the US commitment to practice and uphold FON for *civilian and military* vessels as defined by customary international law and UNCLOS.

Freedom of Navigation

While the US-China dispute over Freedom of Navigation is complex and multi-layered, it revolves around two rather basic questions: Where do China's waters begin and end, and what is China entitled to do in the maritime space under its jurisdiction. On both questions, the US position generally aligns with UNCLOS and customary international law. Despite signing and ratifying the Convention, China's position does not. The US Congress has not ratified UNCLOS since it was signed by then President Bill Clinton in 1994 but has upheld its provisions on maritime entitlements and jurisdiction.

Broadly speaking, UNCLOS grants nations a 12 nautical mile (nm) territorial sea stretching out from their continental shelf where they

enjoy expansive sovereign rights. Beyond that, nations are granted more limited rights over things like resource exploitation in a 200 nm Exclusive Economic Zone (EEZ). Uninhabitable rocks and natural islands also get entitlements: a territorial sea for the former and an additional EEZ for the latter. Features below sea level at high tide (LTEs) get no sovereign entitlements.

The US also upholds UNCLOS provisions on the creation of maritime ‘baselines’. Seized from Vietnam in 1974, China has drawn straight baselines around the Paracel Islands, claiming all the maritime space within as ‘territorial waters’, a right UNCLOS grants exclusively to archipelagic states. And American policy aligns with UNCLOS’ unambiguous treatment of artificial islands: namely, an LTE or rock cannot be ‘upgraded’ to a rock or island simply by blanketing it with sand from the ocean floor.

Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or continental shelf.⁴

By contrast, China has claimed maritime space and entitlements beyond those granted by UNCLOS, with its ill-defined Nine Dash Line claim over nearly the entire SCS serving as the most notorious, but by no means only, example. Legal scholars have long viewed the basis for this nebulous claim—China’s so-called ‘historic rights’—as inconsistent with UNCLOS. Their skepticism was confirmed by a July 2016 UNCLOS Arbitral Tribunal ruling which deemed the Nine Dash Line invalid and inconsistent with the Convention. In a sweeping decision, it also

Maritime jurisdictions

Territorial Sea	Up to 12 nautical miles from a country’s baseline (low-water coastline).	Sovereign territory of the state. Foreign civilian and military vessels right to innocent passage.
Contiguous Zone	Up to 24 nautical miles from the baseline.	State may exercise control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws.
Exclusive Economic Zone	Up to 200 nautical miles from baseline	Sovereign rights for exploring and exploiting resources; preserving marine environment; establishing artificial islands and structures
High Seas	All parts of the sea that are not included in the EEZ, the territorial sea, or in the internal waters of a state. No exclusive rights.	

Source: *The National Oceanic and Atmospheric Administration (NOAA)*

confirmed what many suspected: none of China's seven outposts in the Spratlys—indeed, no feature in the Spratlys—was a 'natural island' before land reclamation entitled to an EEZ.

The core of the US-China dispute, however, relates to Beijing's attempt to restrict military FON in its EEZ and territorial sea. China argues that foreign military *operations* in its EEZ and *any* foreign military *activity* in its territorial sea—including 'innocent passage'—require prior notification and consent from Beijing.

From a legal perspective, international experts and law scholars have convincingly debunked China's minority interpretation of UNCLOS, demonstrating that the Convention does not grant the coastal state expansive powers to regulate foreign military activity in the EEZ.⁵ That is why China has increasingly downplayed UNCLOS in defending its position, arguing that its domestic laws supersede UNCLOS on these matters or that they are beyond the scope of the Convention.

From a practical standpoint, EEZs account for some 102 million square kilometers of the roughly 335 million square kilometers of ocean surface. Under China's interpretation, the US and other foreign militaries could be barred from operating in nearly one-third of the world's oceans, an outcome unacceptable to Washington and one never envisioned by the drafters of UNCLOS.

FON with Chinese Characteristics

At first glance, FON is a peculiar issue to quarrel over: every nation, including China, is a vocal proponent. "There has never been any problem with the freedom of navigation and overflight; nor will there ever be any in the future, for China needs unimpeded commerce through these waters more than anyone else," Chinese President Xi Jinping explained in 2015.⁶

Chinese officials are less eager to publicly discuss how Beijing's definition of FON extends only to commercial vessels and not military ones. Beijing has traditionally avoided articulating this directly but Chinese officials have grown less coy in recent years. In August 2015, Chinese Ambassador to the Philippines Zhao Jianhua bluntly stated: "No freedom of navigation for warships and planes."⁷ Two months later, an article in the official *China Daily* added: "China doesn't believe that the United States' military surveillance and reconnaissance in China's exclusive economic zone is freedom of navigation."⁸

Of course, China's opposition to military FON has been evident for some time. While several capitals share Beijing's position that foreign warships must receive prior notification and consent to operate in their EEZ or

International experts and law scholars have convincingly debunked China's minority interpretation of UNCLOS, demonstrating that the Convention does not grant the coastal state expansive powers to regulate foreign military activity in the EEZ.

peacefully transit their territorial sea, their opposition has been limited to diplomatic protests. China, by contrast, has operationally challenged the US Navy warships and aircraft over one dozen 'unsafe encounters' since the turn of the century.

Until recently, this cat-and-mouse game largely unfolded off China's mainland coast and Hainan Island. In 2014, however, China began an unprecedented spree of land reclamation and artificial island construction atop seven rocks and LTEs under its administration in the Spratlys.

These actions raised fears China would a) seek to claim territorial seas and EEZs for its artificial islands beyond what's permitted under UNCLOS, and b) seek to illegally restrict US military FON around the outposts. Those fears were confirmed in May 2015 when a CNN crew aboard a US surveillance aircraft operating in international waters near China's Spratly outposts captured a Chinese radio operator warning the aircraft to leave China's 'military alert zone'.

Given that China had no sovereign jurisdiction over that airspace, and since a 'military alert zone' has no basis in UNCLOS, the Obama administration came under a wave of pressure to conduct Freedom of Navigation Operations (FONOPs) around China's artificial islands to challenge Beijing's illegal action.

FONOPs and Double Standards

Since the late 1970s, the US Departments of State and Defense have been jointly operating a The US Freedom of Navigation Operations (FONOPs) program is designed to challenge excessive maritime claims by any state, partner and adversary alike. Between 12 and 28 times a year, US military vessels fly and sail in ways that affirm America's non-adherence to unlawful claims. Between October 2015 and October 2016, the Obama administration launched four publicly-acknowledged FONOPs in the SCS. The first three were designed to challenge China's opposition to 'innocent passage' through its territorial sea by foreign warships. Two of those operations were conducted near China's outposts in the Spratlys, bookending one near Triton Island in the Paracels. The fourth, launched near Woody Island, was designed to challenge China's creation of illegal baselines around the Paracels in 1996, when it illegally "encompasses [ed] the entire group of Paracel Islands within a ring of sovereign waters."⁹

Beijing has been highly critical of both 'close-in' surveillance operations and FONOPs in the past and the most recent operations were no different. They have "gone beyond the scope of freedom of navigation. It is a political provocation and the purpose is to test China's response,"¹⁰

argued China's foreign ministry. "Reconnaissance conducted by the U.S. military aircraft poses a potential threat to the security of China's maritime features, and is highly likely to cause miscalculation, or even untoward maritime and aerial incidents."¹¹

A December 2016 report by the National Institute for South China Sea Studies (NISCSS) argues that FONPOs are designed to "assert naval and aerial supremacy across the global, protect [America's] global interests and maintain its global hegemony." Perhaps most comically, Beijing claims the innocent passage of US Navy vessels has "jeopardized the safety of personnel and facilities on the reefs."¹²None of these arguments withstand analytical scrutiny. First, US warships and aircraft have been navigating in international waters and conducting FONPOs for decades. Washington cannot accept the characterisation of its longstanding exercise of navigational freedoms as a 'provocation' deserving of a belligerent response. Second, FONPOs are the opposite of 'biased and discriminatory', conducted against no shortage of US partners, including India and Taiwan, and US treaty allies like the Philippines. The US does, for obvious reasons, conduct more surveillance operations near China than other regional states but these operations are distinct from FONPOs and, critically, compliant with UNCLOS and international law.

Finally, Chinese officials have repeatedly accused the US of applying a double standard, insisting Washington would not accept the PLAN operating in America's EEZ. This claim rings particularly hollow. Not only has the Chinese military been operating in Japan's EEZ for years, but in 2013 PLA Navy warships began doing so in America's EEZ. At the Shangri La Dialogue in Singapore that year, a "Chinese participant confirmed that the PLA Navy had conducted unspecified activities in America's EEZ around Guam and Hawaii, and said this was not perceived in Beijing as illegal or hypocritical."¹³When Adm. Samuel Locklear, then head of US Pacific Command, was asked whether it was true the PLAN had begun such operations, he replied: "They are, and we encourage their ability to do that." Washington responded in similar fashion when five Chinese warships transited America's territorial sea off Alaska in October 2015. "This was a legal transit of U.S. territorial seas conducted in accordance with [UNCLOS]," the Pentagon calmly explained.¹⁴America, in this case, has practiced what it's preached.

A Flagrant Provocation

On 15 December 2016, the US-China FON dispute took an ominous turn in an incident some 50 nm northwest of the Philippines' Subic Bay. The USNS *Bowditch*, an unarmed US survey ship manned by a civilian crew, was shadowed by a PLAN salvage and rescue vessel as it maneuvered to retrieve an 'ocean glider' Unmanned Underwater Vehicle (UUV) gathering hydrographic data. Before the *Bowditch* could recover

Washington cannot accept the characterisation of its longstanding exercise of navigational freedoms as a 'provocation' deserving of a belligerent response.

the underwater drone, the PLAN ship abruptly launched a smaller vessel to capture the UUV. Just 500 meters away, the *Bowditch* established radio contact but the Chinese vessel responded simply, “we are returning to normal operations,” before quickly departing the area. The Pentagon demanded the immediate return of the UUV: “It’s ours, it was clearly marked, we want it back, and we don’t want this to happen again.” Five days later, China quietly complied, insisting Washington was “overhyping” the incident. “On the South China Sea issue, we took in humiliations with a humble view in past years. I think this era has ended,”¹⁵ explained Wu Shicun, the director of the National Institute for South China Sea Studies shortly after the incident. Prof. Jin Canrong of Renmin University was less diplomatic: “China is a dragon, America is an eagle, Britain is a lion. When the dragon wakes up, the others are all snacks.”¹⁶

Compared to prior sparring matches between the US and China at sea, the UUV theft was unique and, for several reasons, uniquely troubling. First, it involved a PLA Navy ship. Chinese harassment activities are more often undertaken by civilian law enforcement ships, fishermen, and other ‘maritime militia’ vessels. The latter have drawn the water cannons of US navy ships before, even trying to snag the sonar arrays of US vessels with grappling hooks. However, they have never tried to steal an American drone. The most notable feature of the incident, however, was its location. Unlike prior naval incidents, the UUV incident was beyond any Chinese-claimed EEZ. Indeed, it was 600 nm from China’s coast, 300 nm from its Spratly outposts, 90 nm from Scarborough Shoal (which China seized in 2012 and which is not entitled to an EEZ) and, most incredulously, outside China’s Nine Dash Line claim.

Beijing has yet to offer justification for the PLAN’s actions beyond claiming the UUV was posing “navigation and personnel safety issues for ships in the area.” Even if this were true (and it is not), the PLAN’s refusal to return the drone after radio contact was established was unacceptable. Ashley Townsend of Australia’s Lowy Institute rightly characterised the incident as “unprecedented” and “one of the most brazen actions that the PLA Navy has taken against the U.S. Navy for a very long time.”

As concerning, there emerged signs that China’s attempts to limit FON are extending beyond the military sphere to the more sacred commercial sphere. At a speech in Honolulu in December 2016, Commander of the US Pacific Fleet Adm. Scott Swift warned that ships and aircraft operating near China’s artificial islands in the Spratlys “are subject to superfluous warnings that threaten routine *commercial* and military operations. Merchant vessels that have navigated shipping lanes freely on behalf of lawful international commerce *are diverted* after entering so-called military zones.”¹⁷

Looking Ahead

There was a time when US and Chinese officials insisted they had no conflict of interests in the South China Sea.¹⁸ That era ended when China constructed artificial islands in the SCS and sought to restrict US FON around its Spratly outposts. The December 2016 NISCSS report concluded that the US-China FON dispute “has now evolved into the central South China Sea issue.”¹⁹ What began as periodic harassment of US military vessels based on legal positions at least partly couched in international law has in recent years evolved into something more concerning and dangerous. Since the onset of a more assertive Chinese foreign policy in the late 2000s, and its more recent land reclamation activities in the Spratlys, Chinese challenges to FON have grown more frequent and brazen.

Despite ratifying UNCLOS, China appears determined to establish and operate under a parallel, subjective, and troublingly ambiguous regime governing the maritime space of the Western Pacific. As legal expert Julian Ku notes, the PLAN’s December 2016 seizure of a US drone was “in clear violation of any possible theory of international law” and “shows that China is veering further away from a putative rules-based global order.”²⁰ A “rules-based order” and a “principled order” are two things the Obama administration—and Defense Secretary Ashton Carter, in particular—have talked a great deal about in recent years. The frontline in the battle to institutionalise and defend that order has been, and will remain, Freedom of Navigation. As Admiral Harry Harris, the head of US Pacific Command, argued in a 2015 speech: “There is one global standard for freedom of navigation – not a double standard by which China can fly, sail, and operate wherever international law allows while other nations cannot.” “International seas and airspace,” he said, “belong to everyone and are not the dominion of any single nation.”²¹

There are few issues where the US stands on firmer legal and moral ground, and is more unequivocally backed by historic precedent, domestic and international law, US national interests, and a majority of the world’s capitals. If, with every conceivable wind at their back, the US and the myriad capitals vocally committed to FON cannot draw and enforce a line around this ‘core interest’, any aspirations for a principled and rules-based order will prove exceedingly short-lived.

Despite ratifying UNCLOS, China appears determined to establish and operate under a parallel, subjective, and troublingly ambiguous regime governing the maritime space of the Western Pacific.

- 1 *Pentagon demands China return US underwater drone*, CNN, December 19, 2016 <http://edition.cnn.com/2016/12/16/politics/chinese-warship-underwater-drone-stolen/>
- 2 *China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications*, CRS Report for Congress October 10, 2001 <https://fas.org/sgp/crs/row/RL30946.pdf>
- 3 *Daily Press Briefing*, U.S. Department of State, May 10, 1995 http://dosfan.lib.uic.edu/ERC/briefing/daily_briefings/1995/9505/950510db.html
- 4 *UNCLOS Part V Article 60*, http://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm
- 5 Raul Pete Pedrozo, *Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone*, Chinese Journal of International Law, (2010) 9 (1): 9-29, <http://chinesejil.oxfordjournals.org/content/9/1/9.full>
- 6 *Forging a Strong Partnership to Enhance Prosperity of Asia* – Speech by Xi Jinping, President of the PRC at the National University of Singapore, November 7, 2016 http://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpdynxjpxgsfw/t1313923.shtml
- 7 *Chinese diplomat outlines limits to freedom of navigation*, Military Times, August Times, August 12, 2015 <http://www.militarytimes.com/story/military/2015/08/12/chinese-diplomat-outlines-limits-freedom-navigation/31535711/>
- 8 *Forum heralds regional security cooperation*, China Daily, October 14, 2014 http://www.chinadaily.com.cn/opinion/2015-10/14/content_22178714.htm
- 9 *Mischief Reef: President Trump's First FONOP?*, Asia Maritime Transparency Initiative, November 30, 2016 <https://amti.csis.org/mischief-reef-president-trump/>
- 10 *China says won't cease building on South China Sea isles*, Reuters, November 22, 2015 <http://www.reuters.com/article/us-asean-summit-idUSKCN0TB01P20151122>
- 11 *Foreign Ministry Spokesperson Hong Lei's Regular Press Conference*, Ministry of Foreign Affairs, PRC, May 22, 2015 http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1266162.shtml
- 12 *U.S. Navy ship sails by China's manmade island in South China Sea*, PBS News Hour, October 27, 2015 <http://www.pbs.org/newshour/rundown/china-warns-u-s-navy-ship-sails-chinese-built-island/>
- 13 *The Shangri-La Dialogue Report-2013*, IISS, July 2013 <https://www.iiss.org/-/media/Silos/Shangri-La/The-Shangri-La-Dialogue-Report-2013/Shangri-La-Dialogue-Report-2013.pdf>
- 14 *Chinese Navy Ships Came Within 12 Nautical Miles of U.S. Coast*, Wall Street Journal, September 4, 2014 <http://www.wsj.com/articles/chinese-navy-ships-off-alaska-passed-through-u-s-territorial-waters-1441350488>
- 15 *Beijing throws down the gauntlet, seizes U.S. undersea drone in South China Sea*, The Japan Times, December 17, 2016 <http://www.japantimes.co.jp/news/2016/12/17/asia-pacific/u-s-demands-return-underwater-drone-seized-china-south-china-sea/#.WFxYaLlrKpo>
- 16 *Quotation of the Day*, The New York Times, December 19, 2016 <http://www.nytimes.com/2016/12/19/todayspaper/quotation-of-the-day.html>
- 17 *Speech by Admiral Scott H. Swift, Commander, U.S. Pacific Fleet*, Cooperative Strategy Forum, Honolulu, Hawaii, December 14, 2015 <http://www.cpf.navy.mil/leaders/scott-swift/speeches/2015/12/cooperative-strategy-forum.pdf>
- 18 Jeff Smith, *Let's be Real: The South China Sea is a US-China Issue*, The Diplomat, June 24, 2015 <http://thediplomat.com/2015/06/lets-be-real-the-south-china-sea-is-a-us-china-issue/>
- 19 *Report on the Military Presence of the United States of America in the Asia Pacific Region 2016*, National Institute for South China Sea Studies, Institute for China-American Studies, December 2016 <http://chinaus-icas.org/materials/test/>
- 20 Julian Ku, *The Nonexistent Legal Basis for China's Seizure of the U.S. Navy's Drone in the South China Sea*, Lawfare Blog, at <https://www.lawfareblog.com/nonexistent-legal-basis-chinas-seizure-us-navys-drone-south-china-sea>
- 21 *Admiral Harris Addresses the 2015 Halifax International Security Forum*, U.S. Pacific Command, November 21, 2015 <http://www.pacom.mil/Media/Speeches-Testimony/Article/630828/admiral-harris-addresses-the-2015-halifax-international-security-forum/>

The Sino-US Security Dilemma - The Root Cause and Way Out



TENG JIANQUN

Dr Teng Jianqun is a senior research fellow and the Director of the Center for Arms Control at the China Institute of International Studies. From 1979 to 1992, he served in the People's Liberation Army, first in the navy and later in the Academy of Military Science, where he served as assistant research fellow and editor-in-chief of the "World Military Review." Teng has written extensively on arms control, disarmament and nonproliferation including "An Assessment of US Non-proliferation Policy" and "Choices and Challenges of China's Nuclear Disarmament."

With an awakening of maritime consciousness and a growing pace of economic reform and development, China is displaying renewed interest in the affairs of the seas. Beijing's maritime rejuvenation comes at a time when the United States is rebalancing to the East. As opposed to the US Navy, which has been a maritime power for nearly 250 years, the PLA (Navy) is an aspiring force with a maritime dream. But differences between China and the US in the Western Pacific have grown sharper in recent times, acquiring the nature of an open confrontation. With both sides unwilling to compromise on their interests in the South China Sea (SCS), the avenues for dialogue and negotiation are rapidly shrinking. With the shifting power balance in the region, China and the US seem to be locked in a complex security dilemma with no easy solutions in sight.

A Historical Perspective

In China's view, the history of the South China Sea dispute is the key to deciphering its many complexities. China and the United States have both changed their policies and attitudes in the SCS, but have a different understanding of the region's history. The US used to take no position during the Cold War era, while China protected its interests only through diplomatic leverage. How their policies in the region have evolved overtime has been a function of their historical perspectives.

China's Position

Since its founding in 1949, the People's Republic of China has given priority to diplomatic leverage in its political agenda. In the 1950s, the Chinese government made a series of statements and announcements

related to the sovereignty of the islands in the South China Sea. In May 1950, the Chinese government declared that they will not allow the Nansha Islands (Spratly Islands) and some other islands to be “illegally occupied” by other countries. A year later, Prime Minister Zhou Enlai proclaimed sovereignty over Xisha¹ and Nanwei² Islands. Like Nansha³ and Dongsha⁴ Islands, he declared, the former have always belonged to China. In May 1956, when the Philippines announced its claims over Nansha, the Chinese government reiterated what it called its “undisputable sovereignty” over the islands, making clear that it would never allow any country to invade these islands.

In many ways, it was America’s show of assertiveness in the Western Pacific that led to a standoff over Huangyan Island⁸ in April 2012. It led to Beijing taking comprehensive control of a shoal and its relevant waters.

The 1970s was a period of limited response by the Chinese government to the occupation by claimants. As relevant countries in Southeast Asia sought to occupy the SCS islands, China began a process of territorial recovery. In January 1974, the Chinese Navy recovered the Xisha Islands from Vietnam. In September 1979, when the Vietnamese government issued a white paper claiming sovereignty over Huangsha⁵ and Changsha,⁶ China refuted Hanoi’s claim forcefully. Five years later, in March 1988, the Chinese Navy defeated the Vietnamese Navy in a skirmish over Chigua Reef.⁷ After the clash, the Chinese government reiterated its sovereignty over Xisha Islands and Nansha Islands, even as the Vietnamese Navy took possession of other reefs in Nansha Islands.

By the 1990s, however, the Chinese government had resigned itself to the maintenance of sovereignty and stability in the SCS. As China-ASEAN relations improved, so did the prospects for peace in Southeast Asia. There were a series of cooperative advancements in this period, notably the Declaration of the South China Sea (July 1992) and the Declaration on the Conduct of Parties on the South China Sea (November 2002).

Importantly, China and ASEAN undertook not to worsen the dispute by resorting to unnecessary aggression. However, when outgoing US President Barack Obama announced his ‘rebalancing’ strategy towards Asia Pacific, many Chinese analysts came to believe that the US was going to enlarge its interests and adopt provocative policies. In many ways, it was America’s show of assertiveness in the Western Pacific that led to a standoff over Huangyan Island⁸ in April 2012. It became a turning point in China’s policy in the South China Sea, as Beijing moved to take comprehensive control of a shoal and its relevant waters. Later in the same year, during the CPC 18th Congress in Beijing, President Hu Jintao declared that China’s maritime aspirations with three overarching objectives: safeguarding its maritime sovereignty; carrying out maritime exploration; and protecting the maritime environment. From then on, the Chinese government has been willing to protect its national interests not only through diplomacy but also through law enforcement and use of the military.

Evolution of the US Position

The US-Spanish War of 1898 marked the start of the US' interest in the affairs of the South China Sea. The war's completion saw the signing of the Paris Treaty in 1898 and a subsidiary treaty for the possession of islands outside of the country's mainland. Neither treaty showed the Nansha Islands or Huangyan Island as a part of the territory of the Philippines.

After World War II, the United States committed to assist China's KMT Party in recovering the islands in the South China Sea, which had been occupied by Japan. The KMT Navy is known to have used US warships to gain control of the islands. The Cairo Declaration, in which the US was a party, was instructive in clarifying the status of the South China Sea. The declaration held that *"the three great allies are fighting this war to restrain and punish the aggression of Japan. They covet to gain for themselves and have no thought of territorial expansion. It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed."* In other words, the Chinese government stood to recover the islands from the possession of Japan.

In the 1950s and 1960s, the United States adopted an ideological anti-communist posture in the Asia-Pacific. After the Korean War broke out, the US signed an Agreement of Mutual Defense and Assistance with three countries in Southeast Asia. In 1954, it concluded another agreement with regional states forming the Southeast Asia Treaty Organization. For the first time, Washington and its allies sought to dominate the South China Sea, to deter and defeat the spread of communism in Southeast Asia.

American double standards in its dealings in the South China Sea have been clear from the start. The US refused to accept China's sovereignty over Nansha Islands and Xishan Islands in the 1950s and opposed construction on Ganquan Island.⁹ In 1957, the US, South Vietnam, and Taiwan reached an agreement that the Mutual Defense Treaty between the United States of America and the Republic of China was about arrangements in the South China Sea.¹⁰

After the Vietnam War ended in 1975, the SCS became a battleground for influence between the United States and the former Soviet Union. In the late 1970s, the former Soviet Union assisted Vietnam in making Cam Ranh Bay a naval base for the Soviet Navy, even as the United States reached an agreement with the Philippines for use of bases on the latter's

Washington's South China Sea policy has been one of direct confrontation with China. The Obama administration's 'rebalance' is the old offshore-balancing game played in the European continent 100 years ago.

territory. Interestingly, the United States maintained an ambivalent posture on the SCS during the administration of Ronald Reagan by refraining from any public opposition to China's sovereignty claims.

The next phase was one of US 'intervention' in Southeast Asia. After the UNCLOS came into force, the United States modified its approach to the South China Sea. Following the Meiji Reef¹ standoff between China and the Philippines in 1995, the US State Department adopted the Foreign Interests Act, reiterating freedom of navigation in the South China Sea. Joseph Nye, then an official from the US State Department, declared that if there was military action in the South China Sea, the US armed forces would be ready to escort the vessels and to make sure that freedom of navigation was preserved. Nye was the first US official to express such a position, implying that the United States would use forces to intervene in the dispute in the South China Sea.

Since then, Washington's South China Sea policy has been one of direct confrontation with China. The Obama administration's 'rebalance' is the old offshore-balancing game played in the European continent 100 years ago. Its main purpose is to manipulate the contradictions between China and its neighbours and find excuses for military posturing in the Asia Pacific region. Even as officials from the Obama administration deny taking sides, they have used the SCS dispute as an important leveraging tool.

In July 2010, the then Secretary of State, Hilary Clinton announced that the US had clear interests in the SCS. Washington, she declared, treated freedom of navigation in the region as a core imperative. While the US took no position over the dispute in the South China Sea, Clinton stated that the US government would be willing to assist all the claimants in solving the dispute, even support all the political and legal agreements reached between the relevant countries. Clinton also made it clear that the United States opposes any use of force to solve the dispute, and that the actions taken by relevant parties should be in accordance with international law, especially the UNCLOS of 1982.

A Security Dilemma

Still, differences between the US and China continue to persist and have developed into a 'security dilemma' over time. In the main part, the divergences flow from competing interpretations of geo-politics and international laws. China and the United States, it seems, have a fundamentally divergent appreciation of the principles governing these areas.

American leaders believe that to be a strong power in the world, a country must have a powerful navy. Alfred Thayer Mahan, the well-known US

maritime theorist, argued that the history of sea and ocean was a history of competition, intimidation and warfighting. According to Mahan, the prosperity and development gained through maritime trade could only be protected through the efficient use of military power. The history of maritime power related to all the nations who relied on the maritime domain and its exploration for their development.¹²

For the US, therefore, control over the seas is a prerequisite for hegemonic power projection. The US Navy seeks to achieve this through the setting up of offensive task forces. Through its use, the US Navy carries out global freedom of navigation.

The awakening of China's maritime consciousness, meanwhile, has been a recent phenomenon. It was only in November 2012, during the 18th CPC national congress in Beijing, that President Hu Jintao announced China's maritime power aspirations. The aim, he declared, was to enhance capacity for exploiting maritime resources, resolutely safeguard maritime rights and interests, and build China into a maritime power."¹³

In a Defence White Paper in 2015, Chinese officials brought out the importance of the seas for enduring peace, lasting stability and sustainable development of China. The traditional mentality that land outweighs sea must be abandoned, and great importance has to be attached to managing the seas and oceans and protecting maritime rights and interests. The White Paper held that it is necessary for China to develop a modern maritime military force structure commensurate with its national security and development interests, safeguard its national sovereignty and maritime rights and interests, protect the security of strategic SLOCs and overseas interests, and participate in international maritime cooperation, so as to provide strategic support for building itself into a maritime power."¹⁴

Most importantly, the white paper stressed on the need for a strong navy. *"In line with the strategic requirement of offshore waters defense and open seas protection, the PLA Navy (PLAN) will gradually shift its focus from 'offshore waters defense' to the combination of 'offshore waters defense' with 'open seas protection' and build a combined, multi-functional and efficient marine combat force structure. The PLAN will enhance its capabilities for strategic deterrence and counterattack, maritime maneuvers, joint operations at sea, comprehensive defense and comprehensive support."*¹⁵

China's President Xi Jinping has repeatedly pointed out that his country has the right to safeguard its sovereignty and maritime interests. Even though China is committed to maintain peace and stability in the South China Sea, it will not be at the cost of its territorial interests. China would like to privilege negotiation, consultation, and peaceful means to manage the differences and dispute. Beijing would be respectful of

In a Defence White Paper in 2015, Chinese officials brought out the importance of the seas for enduring peace, lasting stability and sustainable development of China.

freedom of navigation and over-flight under the international laws. But it would not let its interests be undermined.

China's political leaders hold that the construction in the Spratly Islands is not targeted at other countries and not detrimental to their interests. While undertaking not to militarise the islands, China hopes to adopt a constructive approach to addressing towards the relevant issues.¹⁶

Even so, the politics of the South China Sea remains complicated. Geopolitically, the United States' main concern is China's control over the SCS. Washington's Indo-Asia-Pacific strategy is about making sure China does not dominate the critical waterway. American policymakers see the South China Sea as a strategic bridge between the two Oceanic systems, wrongly assuming that the Chinese government has both the intention and capability to dominate the waterway.

When US officials express a willingness to talk about the rule of law in the South China Sea, they do not state clearly which international laws they refer to. The United States has signed the UNCLOS but shies away from ratifying it. Despite calls to ratify this convention, the US government does not do it because of fears that doing so might limit American commercial activity in the high seas.

Beijing, meanwhile, may have ratified the UNCLOS, but it accords equal importance to the DOC between ASEAN and China. Chinese leaders find it odd that the US government continually emphasises the binding nature of an arbitral court's ruling in July this year, on all parties concerned. US state department officials appear to present the order as a referendum on international law.¹⁷

American policymakers see the South China Sea as a strategic bridge between the two Oceanic systems, wrongly assuming that the Chinese government has both the intention and capability to dominate the waterway.

Clearly, there exists a big gap in the way the United States and China interpret international laws. Washington prefers to adhere to the general arrangement by international laws, while Beijing looks at the UNCLOS and its legal principles in the context of its sovereignty over the SCS islands. Without little common ground, the two countries have made little progress in their discussions.

The Way Forward

Is there then a way out of the security dilemma between the United States and China?

It is fair to say that the security dilemmas between China and the United States in the South China Sea stem from the change in the regional balance of power. Without compromise from either side, the confrontation might escalate into military conflict. The best way out of the dilemma then is to share the burden of security in the region.

Firstly, China and the United States should both recognise the reality that the balance of power in the South China Sea is inexorably shifting. China's rapidly rising comprehensive power makes it more amenable to use force in safeguarding its maritime interests. While it may not challenge the US' dominant position in the Asia Pacific region, Beijing will not let its sovereign interests be undermined. In order to avoid an escalation in tensions, China and the United States should have a candid exchange on the situation in this region. Cold War mentality and zero-sum games need to be shunned.

Secondly, both countries should realise the dangers of a military confrontation. The two countries are nuclear weapon states and any direct clash would have disastrous consequences for the region. Encouragingly, several recent MOUs seem to have reduced the dangers of miscalculation. These agreements include the Memorandum of Understanding on establishing the mutual reporting and trust mechanism on major military operations and the MOU on the code of safe conduct on naval and air military encounters.

Confidence building measures between the two military, critical for transparency and crisis management, have also been reportedly growing. Indeed, Admiral Scott Swift, the U.S. 7th Fleet Commander recently commented that encounters between the US Navy and the PLA Navy in the South China Sea were "professional and active"¹⁸-- meaning both sides were familiar with the procedures of unplanned encounters at sea.

Thirdly, China and the US should be careful not to insist on sovereignty negotiation with any other country. China will firmly insist on its claims in the South China Sea and the United States will continue to harp on freedom of navigation. One way to break the cycle would be to have joint patrolling in the South China Sea, maybe even share China's facilities in Nansha Island. Some US officials might view joint patrolling with China as an endorsement of the latter's activities in the South China Sea. But if Washington is truly interested in the freedom of navigation, it will have to respond positively. If not, its resolve at maintaining freedom of navigation might be tested.

Lastly, China should learn to be patient in its dealings with the United States. The completion between an established hegemon and a rising power is always prolonged and protracted. After nearly 40 years of opening up its economy and instituting reforms, China is now playing a responsible role in regional and global affairs. It will need to slowly learn to keep pace with the global leader. For its part, the US will need to better accommodate China's interests. The new administration under Donald Trump cannot be expected to completely abandon its South China Sea policy. It may indeed create some troubles for Beijing in the coming years. In the long-run, however, Washington will need to share its turf

with the new challenger. The competition and cooperation in security and economy are two sides of the same coin. Donald Trump might soon realise that being patient with China might be his best bet.

-
- 1 Parcel Islands.
 - 2 Originally, Spratly Island was just designated as one island—Nanwei Island and later Spratly was designated as the whole islands.
 - 3 Spratly Islands
 - 4 Pratas Islands
 - 5 Xisha Islands or Paracel Islands
 - 6 Nansha Islands or Spratly Islands
 - 7 Johnson South Reef.
 - 8 Scarborough Shoall
 - 9 The Robert Island.
 - 10 The treaty was signed on December 2nd, 1954 in Washington and entered into force on March 3rd, 1955 by the exchanges of instrument of ratification at Taipei, terminated by the United States of America in 1980. <http://www.taiwandocuments.org/mutual01.htm>
 - 11 The Mischief Island.
 - 12 阿尔弗雷德·塞耶·马汉：《海权论：海权对历史的影响》，冬初阳译，长春：时代文艺出版社，2014年版，第1页。
 - 13 Chinese president, Hu Jintao delivered a keynote report during the opening ceremony of the 18th CPC National Congress at the Great Hall of the People in Beijing, capital of China, Nov. 8, 2012. The 18th CPC National Congress was opened in Beijing on Thursday. http://news.xinhuanet.com/english/special/18cpcnc/2012-11/17/c_131981259_6.htm
 - 14 Chinese military Strategy, the State Council Information Office of the People's Republic of China, May 2015, Beijing. http://www.chinadaily.com.cn/china/2015-05/26/content_20820628.htm
 - 15 *ibid*, http://www.chinadaily.com.cn/china/2015-05/26/content_20820628.htm
 - 16 Remarks by Chinese President Xi Jinping at the White House briefing, 2015年9月25日 <https://www.whitehouse.gov/the-press-office/2015/09/25/remarks-president-obama-and-president-xi-peoples-republic-china-joint>.
 - 17 Keynote speech by Daniel Krinstenbrink at CSIS on July 12th, 2016
 - 18 The Q&A by Admiral Swift at the international conference on maritime issue at Canberra on March 6th, 2016.

Singapore's Security Imperatives



KOH SWEE LEAN COLLIN

Koh Swee Lean Collin is research fellow at the S. Rajaratnam School of International Studies, based in Singapore. He researches primarily on maritime security and naval affairs in Southeast Asia.

Tensions in the South China Sea (SCS) reached a high-point after the Permanent Court of Arbitration announced on 12 July 2016 its ruling in favour of the Philippines, ending the almost three-year legal battle initiated by then Philippine President Benigno Aquino III's administration against China.¹

Although the courtroom battle had followed a standoff in Scarborough Shoal in April 2012 and reportedly been bitter, the tribunal's decision did not lead to an instant deterioration in Philippines-China ties. In the aftermath of the decision, Manila desisted from criticising China's SCS stance, even as Washington held back from any escalatory moves. The Association of Southeast Asian Nations (ASEAN), and China too, issued joint statements espousing a desire peace and stability in the SCS.²

Soon after, newly installed Philippine president Rodrigo Duterte visited Beijing where he met his Chinese counterpart Xi Jinping, leading to a thaw in the frostiness that had followed Manila's legal challenge. The rapprochement appears to hold well, backstopped by generous Chinese investments for the Philippines. Most importantly, China Coast Guard (CCG) vessels have not been obstructing Philippine fishermen operating at the Scarborough Shoal for the first time since 2012, which seems to attest to the success of Duterte's policy towards attaining a *modus vivendi*.

The current easing of tensions between China and the Philippines allows other concerned parties – both claimant and non-claimant states – some breathing space following years of high-anxiety over an imminent risk of armed confrontation in the disputed waters. With its non-claimant status and peculiar geostrategic location within a somewhat volatile neighbourhood, Singapore regards as a positive development the disinclination of SCS parties for overt aggression. Yet it would be simplistic to say that the tiny island city-state can rest assured that the situation will not deteriorate any time soon; for incidents in recent weeks have highlighted that the current easing of SCS tensions is at best tenuous.

An Uneasy Peace in the SCS

Coinciding with Duterte's visit to China, the US Navy destroyer USS *Decatur* conducted the first FONOPS in waters close to Chinese-occupied Paracel Islands, much to Beijing's consternation. This was a timely reminder that notwithstanding the Sino-Philippine rapprochement, the SCS dispute is more complex than outwardly appears. Singapore realises that there is a prominent dimension of the Great Power rivalry in the SCS, with both China and the US jockeying hard for advantageous positions. Chinese leaders realise that it is only American military presence in Southeast Asia that can undermine the PLA Navy's physical control of the SCS.

Beijing has steadily accumulated its military force projection capabilities in the SCS. Through steady and massive investments into the People's Liberation Army's (PLA) modernisation, it has managed to enhance the ability to wage a limited SCS war if necessary.

But Washington too is keenly aware of Beijing's political game in Southeast Asia. Since the 1990s, Beijing has steadily accumulated its military force projection capabilities in the SCS. Through steady and massive investments into the People's Liberation Army's (PLA) modernisation, it has managed to enhance the ability to wage a limited SCS war if necessary. After the turn of the century, Beijing has not only persisted in the PLA modernisation efforts but also began beefing up its maritime law enforcement (MLE) capacities. Like its navy counterpart, the CCG has also been accumulating new hardware.

Beijing realises that its SCS interests depend largely on its ability to sustain military presence in the littoral seas. It has thus embarked on a massive island-building and fortification program aimed at creating forward outposts. These artificial islands boast 3,000-metre-long airstrips and facilities to enable civilian and military operations. The military build-up at China's new islands is of a nature that cannot be challenged by any other regional claimants without major US military involvement. Even so, neutralising these static dispositions will require a massive military strike, or a blockade of PLA reinforcement 'bridge' across the SCS.

Of course, considering the deep Sino-US economic interdependence, this extreme scenario appears unlikely. It also remains questionable whether Washington would "show its hand" by engaging Beijing in an armed conflict merely for the sake of freedom of navigation, particularly when US policymakers have repeatedly stressed that they take no sides as far as the merits of conflicting claims in the SCS.

Nonetheless, the risk of inadvertent or accidental incidents in the SCS is real. Many consider the problem as a manifestation of long simmering differences over military activity in the region. These encompass conflicting interpretations of foreign military operations in the exclusive economic zones (EEZs). Needless to say, it has been the cause of many past Sino-US incidents, notably the EP-3 incident in April 2001 and the USNS *Impeccable* incident in March 2009.

With or without the SCS disputes, therefore, an enduring US military presence in the region would imply a hardening of animosity between Beijing and Washington. For Singapore, the SCS is more than just a set of sovereignty and jurisdictional disputes, or even marine resource competition. It regards this critical space as having a deeper strategic significance.

Singapore's Security Stance

It may be asked why Singapore should be concerned about security in the Southeastern littorals, when it is neither a SCS claimant state nor a US security ally. The country's SCS stance has always been consistent: as a non-claimant, it emphasises taking no sides and calls for the peaceful resolution of differences. A strong advocate of international law and rules-based order, Singapore is keen for a legal resolution mechanism for the SCS disputes. However, being a small island country without many natural resources, it is highly dependent on the vital sea lines of communications (SLOCs) for survival and prosperity. Therefore, the country avidly advocates freedom of navigation and over-flight in the SCS.³ Besides rules-based order and military self-help, Singapore also depends on a network of foreign defence and security partnerships. The US remains a primary security partner – a relationship which began during the Cold War and qualitatively enhanced over time.⁴

A digression into history might, in fact, prove instructive. In the 1990s, Singapore had never featured in the SCS spats. It was a time when US military dominance remained unchallenged even as China struggled with the pains of economic liberalisation and PLA modernisation. When the island state decided to grant US military access to its facilities following the latter's withdrawal from the Philippines, it received minimal blowback from Beijing. Whatever little criticism came its way was from immediate neighbours and even that died down soon after. While the Mischief Reef incidents in 1995 and 1998 saw Beijing expand its SCS presence, the PLA remained in no position to challenge US military power.

In the years that followed, Singapore maintained its consistent position without having to make a clear strategic choice between China and the US. Each occupied a particular pole-position in Singaporean policymakers' priority lists – China, for economics; US for security.⁵ In the early 2000s, this remained the case, even as the US was preoccupied with the Global War on Terror in Afghanistan and Iraq. Following the signing of the Strategic Framework Agreement (SFA) in 2005 that recognised Singapore as a 'Major Security Cooperation Partner', the situation slightly changed. Fortunately for Singaporean leaders, between 2000 and 2008 Beijing had a bigger fish to fry. Beijing was then devoted to deterring President Chen Shui-bian from declaring Taiwan's independence. Since China and ASEAN had inked the Declaration of Conduct of Parties in the South

Being a small island country without many natural resources, Singapore is highly dependent on the vital sea lines of communications (SLOCs) for survival and prosperity. Therefore, the country avidly advocates freedom of navigation and over-flight in the SCS.

China Sea in November 2002, tensions had eased to a considerable degree.

However, after 2008 the situation began to steadily deteriorate. The election of Kuomintang's Ma Ying-jeou as president in March 2008, allowed Beijing to devote far greater focus on the SCS. A year later, the Philippines and Vietnam's submissions of new SCS baseline claims, provided the spark for an escalation in tensions. By 2012, as the Obama administration announced its 'Asia pivot' and the intent to shift up to 60-percent of American naval forces to the Asia-Pacific, the South China Sea situation had worsened. Meanwhile, the PLA had made noteworthy strides in its modernisation, boasting increasingly capable air and naval forces that enhanced its ability to project and sustain force in the SCS; its successfully seizing of de facto control over the Scarborough Shoal reflected that reality.

Faced with few alternatives, Singapore threw in its support – both in word and deed – for the US, backing its rebalancing strategy. In 2013, the country enhanced US Navy access to its naval facilities by allowing the rotational deployment of advanced Littoral Combat Ships – some of which then began active 'routine patrols' in the SCS, often shadowed by Chinese warships. In 2015, Singapore and the US inked the enhanced Defence Cooperation Agreement, building on the 1990 Memorandum of Understanding and the 2005 SFA. This new pact envisioned further qualitative enhancements of US military presence in the region, including the rotational deployment to Singapore of US Navy P-8A Poseidon long-range maritime patrol and reconnaissance aircraft – a prominent workhorse over the SCS and involved in several close brushes with Chinese forces.

Despite its consistent exposition of a neutralist SCS stance, therefore, Singapore continually finds itself in an awkward position on the matter. As Chinese observers saw it, Singapore, whose population is predominantly Chinese, commits the mistake of not siding with Beijing on the territorial disputes.⁶ Ruefully, for Singaporean policymakers, the SCS serves as a litmus test of allegiance, and a significant marker in the containment and counter-containment dynamic that simmers between China and the US.⁷

In late September 2016, a controversy erupted when the island city-state's envoy to Beijing, Ambassador Stanley Loh wrote a letter in response to a *Global Times* article deeming its claims on Singapore's alleged attempts to insert a mention of the PCA award in a joint statement following the 17th Non-Aligned Movement, as "false and unfounded".⁸ The Chinese foreign ministry rose to defend the nationalist tabloid.⁹ An influential Chinese defence adviser, Professor Jin Yanan, a director at the PLA National Defence University's strategic research institute, even suggested that

Beijing consider imposing sanctions, as retaliation to make Singapore “pay the price for seriously damaging China’s interests.”¹⁰

The bilateral spat worsened later in November 2016 when a batch of Singapore Army infantry carrier vehicles was detained by local authorities during a trans-shipment in Hong Kong. At the time of writing this piece in late December, the vehicles remained in custody despite numerous diplomatic representations by the Singapore Government. Even though the seizure was said to have been attributed to a violation of Hong Kong’s Import and Export Ordinance,¹¹ this incident could have reflected the increasingly strained ties over numerous issues, not just those related to the SCS or Taiwan, but Beijing’s perception of Singapore as being part of the US rebalancing strategy and thus part of Washington’s effort to contain China.¹² Singapore is thus sucked into this vortex, by dint of its geostrategic circumstances and key political choices to align itself more closely with the US on the defence and security front during the Cold War till now, as well as the current reality of China’s growing economic and military power and, consequently, growing self-confidence in asserting its interest.

The Way Forward

While Singapore would not ever want to make a choice between China and the US, it is a prospect its policymakers would want to consider seriously. Their decision would depend on a host of factors, including a scenario where the US would lose its preeminent position as the world’s superpower, giving way to a *Pax Sinica* order – an unforeseen proposition for Singapore’s policy elite.¹³ And yet, it may be in the interests of Singapore and other Southeast Asian countries to help preserve the status quo. Increasingly closer diplomatic and economic links with China does not change the reality that smaller regional states are dependent on the US for their security. To understand the emerging dynamic, Singaporean policymakers need look no further than Vietnam: Hanoi recognises the value of a military relationship with the US as a counterweight to an increasingly assertive China. Singapore might then look to maintain and even enhance its existing defense and security relations with the US. Of course, Singapore-China defense and security relations, which have seen significant improvement in recent years, will continue to be an area of focus. But it is unlikely to overtake Singapore’s military cooperation with the US, notwithstanding Beijing’s attempts to position itself as the preeminent power in the South China Sea.¹⁴

Besides advocating a rules-based order and helping sustain ASEAN’s role in the regional security architecture, Singapore knows it will face the occasional storm arising from the Sino-US rivalry. With the recent election of Donald Trump as the new US president, more uncertainty in the SCS is a likely prospect. The island state, however, realises that

While Singapore would not ever want to make a choice between China and the US, it is a prospect its policymakers would have to consider seriously.

the Philippines' attempts to scale back its security relations with the US – particularly the decision to scrap two of the key bilateral military exercises CARAT and PHIBLEX – will require Manila to facilitate a durable American military presence – if only to hedge against growing geopolitical uncertainties. This could put Singapore on a potential collision course with China on the diplomatic front. It is a conundrum that Singaporean policymakers must confront.

That said, Singapore can continue to play a constructive role in preserving and enhancing regional peace and stability. The SCS disputes look set to persist, and the current tranquility cannot be taken for granted. The priority for Singaporean diplomats would be to devote efforts towards managing the disputes and their associated dynamics, ensuring that they do not result in interstate tragedies in the SCS. For long, Singapore has been a strong advocate of Asia-Pacific multilateralism and its active role as the coordinator of ASEAN-China dialogue relations is likely to continue. While supporting initiatives for confidence-building and security cooperation, Singapore will want to be innovative in conceiving ways to preempt the potential dangers in the SCS.

There is an expectation in some quarters that ASEAN and China will establish a Code of Conduct (CoC) in the SCS. Some observers are hopeful that the Code of Unplanned Encounters at Sea (CUES) – promulgated during the Western Pacific Naval Symposium in 2014 – will be expanded to include MLE forces. In this event, it appears Singapore could push for regional discussions and eventual adoption of important confidence and security-building measures. In particular, it is likely that Singaporean policymakers will push for passive mitigation initiatives to prevent the proliferation of submarines in the South Asian littorals. Earlier in May 2015, the Singaporean Navy had attempted unsuccessfully to push regional maritime forces to agree on the institution of such measures. It now appears Singapore will make a renewed bid to gather like-minded partner nations in the region. Many will hope the new initiative will gradually expand to include other willing parties.

MLE forces have seen much action in the South China Sea – with many enforcement agencies spearheading their respective governments' efforts to protect their geopolitical stakes in the region. These are organised, trained and equipped differently from the navies, and are meant primarily to execute their countries' domestic laws. It is possible that the discussion about expanding CUES might be hampered because of contextual differences between navies and MLE forces, as well as the fact that regional states define 'coast guards' differently. The main issue of contention is that many CGs are seen to include maritime militia forces which adopt an aggressive but unaccountable posture in the SCS. Their governments are likely to be unwilling to acknowledge their functions, and even include them in the expanded CUES ambit.¹⁵

While an expanded CUES may be initially promulgated to first include coastguards and subsequently expanding to other forces such as maritime militia, Singapore can play a constructive role in facilitating constructive discussions on the matter.

Finally, Singapore should continue to strongly advocate for inclusive regional arrangements to foster maritime cooperation, leveraging on its geographical, operational and diplomatic advantages. There are notable pre-existing regional mechanisms that can help facilitate such forms of cooperation, but even creating new mechanisms could prove useful. The Expanded ASEAN Maritime Forum (EAMF) is a good example of Singapore's potential to reinvigorate an existing mechanism, actively promoting cooperation between maritime authorities of ASEAN member states and the eight dialogue partners, including MLE forces. One potential area for the EAMF to serve as a useful mechanism would be fishery management in the SCS. The expanded forum could even emulate the Arctic Council's fostering of functional cooperation between coast guards. Since it has no direct fishery interests in the SCS, Singapore could help catalyse discussions between other involved parties.

- 1 *South China Sea: Court rules in favor of Philippines over China*, CNN, July 12, 2016 <http://edition.cnn.com/2016/07/12/asia/china-philippines-south-china-sea/>
- 2 *China, ASEAN vow to promote peace, stability in South China Sea*, Xinhua, July 25, 2016 http://news.xinhuanet.com/english/2016-07/25/c_135538791.htm
- 3 See for instance, *Minister George Yeo's Media Interview Following the Closing Ceremony of the 43rd ASEAN Ministerial Meeting and Related Meetings, 23 July 2010, Hanoi*, Ministry of Foreign Affairs, Singapore, 25 July 2010 https://www.mfa.gov.sg/content/mfa/overseasmission/cairo/press_statements_speeches/embassy-news-and-press-releases/2010/201007/press_201007_2.html
- 4 See for instance, *Opening Remarks by Dr Tony Tan Keng Yam, Deputy Prime Minister and Minister for Defence at the Joint Press Conference with Secretary William Cohen*, Ministry of Defence, Singapore, January 15, 1998.
- 5 *Transcript of Prime Minister Lee Hsien Loong's Interview with US Television Journalist Charlie Rose On 14 April 2010 in the United States*, Prime Minister's Office, Singapore, 14 April 2010.
- 6 For instance, read Liu Zhun, *Spat reveals true stance of Singapore to Chinese public*, Global Times, 30 September 2016.
- 7 In response to the P-8 rotational deployment to Singapore, Global Times, a nationalist tabloid affiliated to the ruling CPC, wrote in an editorial that this move "is clearly aimed at China, and Singapore is thus moving closer to the US in terms of security. See, *US spy plane new disturbance for SE Asia*, Global Times, 10 December 2015
- 8 *Full Text of Ambassador Stanley Loh's Letter to Global Times Editor-In-Chief Hu Xijin, in response to an article by Global Times (Chinese) dated 21 September 2016*, Ministry of Foreign Affairs, Singapore, September 26, 2016. https://www.mfa.gov.sg/content/mfa/media_centre/press_room/pr/2016/201609/full-text-of-ambassador-stanley-loh-s-letter-to-global-times-edi.html
- 9 *Foreign Ministry Spokesperson Geng Shuang's Regular Press Conference on September 27, 2016*, Ministry of Foreign Affairs of the People's Republic of China
- 10 "Defence adviser escalates Singapore row," *South China Morning Post*, October 1, 2016.
- 11 Clifford Lo and Phila Siu, *Singapore military carriers 'left off cargo manifest'*, South China

Morning Post, December 1, 2016.

- 12 Some Chinese literature for example contained maps which espoused a different take on the “island chains” – regarded by some Chinese analysts as Washington’s strategy to contain the country. See for example, Jiang Yu, *Island Chain and Chinese Navy’s Going to the High Seas*, Shipborne Weapons, December 2008 issue, p. 29.
- 13 *Transcript of Prime Minister Lee Hsien Loong’s interview with Caixin*, 7 Feb 2014, at the Istana, Prime Minister’s Office, Singapore, 7 February 2014; “PM Lee: I am sure the US will bounce back,” *Channel NewsAsia*, July 1, 2014
- 14 *US expected to keep up Asian military presence*, Straits Times, 7 April 2012
- 15 Swee Lean Collin Koh, *Expanded CUES: A Worthwhile Idea but Challenging Exercise?* Asia Pacific Bulletin, No. 352, Washington, DC: East-West Center, September 15, 2016.

Indonesia's South China Sea Problem



RISTIAN SUPRIYANTO

Ristian Atriandi Supriyanto is an Indonesian Presidential PhD Scholar with the Strategic and Defence Studies Centre at the Australian National University.

The current problem in the South China Sea has presented Indonesia with a challenge at a moment when it is least expected. The crisis has occurred at a time when the Sino-Indonesian relationship is on the cusp of going into a full-swing, and when the Association of South-East Asian Nations (ASEAN), the so-called ‘cornerstone’ of Indonesia’s foreign policy, has been undergoing a deeper and wider integration towards becoming a full-fledged community of nations. More critically, however, the likelihood of a South China Sea conflict poses a geopolitical challenge of unprecedented magnitude—that of a major power conflict—so close to home. Fresh initiatives are necessary if Indonesia and ASEAN are to defuse the crisis.

From a mere dispute to a crisis

The South China Sea issue is a long-running one. One may recall the armed clashes between some claimants during the Cold War in their quest to occupy and settle some of the features. At a glance, the current trend seems far more stable, if not tranquil, than it was three to four decades ago. Indeed, the South China Sea at the time did not preoccupy the attention of most Southeast Asian nations, even less, the non-claimant major powers. A shared unspoken sense prevailed that the South China Sea was only a local conflict among a few claimants, with little consequences, if any, to affect the relationship between the great powers of the time, namely China, the Soviet Union and the United States.

Back then, the UN Convention of the Law of the Sea (UNCLOS) was also still being negotiated, even though the claimant states had already drawn and staked their claims. More importantly, none of the claimants then possessed the amount of sea-power sufficient enough to enforce effective control against the use of the sea by the other claimants. Consequently, there was no way for any claimant to deny major maritime powers of the world the use of South China Sea for international military and commercial navigation.

That the South China Sea has become internationalised at present is less a result of the calculated move by the claimants, and more due to the increased confidence of the claimants to make their presence felt at and from the sea.

That the South China Sea has become internationalised at present is less a result of the calculated move by the claimants, and more due to the increased confidence of the claimants to make their presence felt at and from the sea. With the resolution of major land disputes and conflicts in mainland Southeast Asia, as well as increased welfare and prosperity of the claimants, their residual discords have shifted increasingly seaward. Yet, unlike in the past, some claimants now possess more means to deliver their policies more consequentially at and from the sea. Not only do they devote more funding on sophisticated maritime warfare capabilities, they literally have changed, or are changing, the physical features in the South China Sea as a way to fortify their present claims.¹

In addition, means are now available for some claimants to engage in competition over sovereignty and sovereign rights without necessarily triggering armed clashes. The advent of 'white-hull' coastguards and other maritime law enforcement agencies has further complicated the strategic environment.

This trend consequently brought the South China Sea issue into a whole new level. Whereas in the past, the South China Sea was just a 'dispute', or 'disputes' involving multiple claimants, it is now a full-fledged crisis. The use of 'crisis' here is not to be taken lightly. It adopts a definition by John Richardson in his *Crisis Diplomacy*:

*An international crisis is an acute conflict between two or more states, associated with a specific issue and involving a perception by decision-makers of a serious risk of war.*²

Against the backdrop of this definition, the South China issue clearly fulfills the description of a crisis. It has become internationalised, involving multiple claimant and non-claimant states, with a serious risk of war involved. One geopolitical analyst even describes the South China Sea as the "future of conflict" and "Asia's cauldron".³ This notion seems more compelling after China, with the largest claim in the South China Sea colloquially known as the '9-dash' or 'U-shaped' line, refused to join the Arbitral Tribunal case initiated in 2013 by the Philippines in the Permanent Court of Arbitration (PCA).

Gone are the days when the risk of short and lightly armed clashes among the claimants could be underrated. The risk of armed escalation has magnified considerably, commensurate with enhanced capabilities of the claimants to wage war at and from the sea, with the potential involvement of non-claimant major powers. That the verbal exchanges between some claimants of late, such as in Malaysia and the Philippines, have somewhat been "friendlier" belie the mistrusts and suspicions still lingering beneath the surface.⁴ Moreover, the South China Sea issue has become truly internationalised with the United States, although a neutral

party in the dispute, declaring that it is a “national interest” worthy of defending by force, if necessary.⁵ Save for Japan, other non-claimant major powers have responded in similar fashion, albeit less assertively.⁶

What then are the consequences of the South China Sea issue as a crisis for ASEAN? How does it impact Indonesia’s interests? First, it is apparent that the South China Sea crisis has become an embodiment of great power rivalries not just between China and the United States, but also Japan, Russia, and India. The logic of rivalries has compelled the great powers to use all available avenues to pressure their rivals. It is, for instance, not unreasonable to expect Russia to lend more support to China in the South China Sea for greater leverage over the United States in Eastern Europe. While great power rivalries are not (yet) hostile, they have begun to characterise and complicate the issue, which makes its resolution doubly difficult. No longer can a *modus vivendi* be found unless the claimants also sufficiently accommodated the interests of the non-claimant great powers.⁷

Second, as a consequence of the first, ASEAN would find it increasingly difficult to adopt a common position on every incident related to the South China Sea, especially when it involves China. The reason is less about China’s influence among Southeast Asian countries, and more about the absence of a fallback position, lest their retaliatory posturing towards Beijing backfires. The South China Sea is not just a crisis in the sense that conflict between the claimants could at anytime break out, but also a crisis in the sense that no claimant state feels confident enough that help is forthcoming when they must punch above their weight. No ASEAN leader puts this crisis of confidence more starkly than President Rodrigo Duterte of the Philippines, who believed that his country only had two options: “We talk or we fight. Philippines to fight China, it will be slaughter so we talk. We cannot match.”⁸ At the same time, Duterte is unconvinced that the US would honor its alliance treaty with the Philippines to the extent of defending Manila’s claim.

Third, the South China Sea has increasingly assumed a multi-dimensional character. While in the past it concentrated on the politico-security dimension, the South China Sea of today has crept into economic and demographic dimensions as well. For example, Southeast Asian economic ties with China are manifestly contingent upon their attitudes and policies towards Beijing’s position on the South China Sea. The sharp difference in Chinese attitude towards the Philippines’ Duterte and that of his predecessor is a case in point. Simply put, Beijing is not an “all-weather friend”; the more one criticises China over the South China Sea, the dimmer the prospects for closer ties with Beijing.

Less apparent, but equally significant, is the issue of overseas Chinese in Southeast Asia.⁹ The link between the perceptions of the Chinese

ASEAN would find it increasingly difficult to adopt a common position on every incident related to the South China Sea, especially when it involves China.

diaspora in Southeast Asia and Beijing's position on the South China Sea is tenuous at best. Yet perceptions matter. Beijing's insistence on Southeast Asians to accept its position in the South China Sea could incite a backlash against ethnic Chinese populations in the region, especially in Indonesia and Malaysia, where anti-Chinese sentiments run deep beneath the surface. One can argue that Indonesia's restrained and cautious attitude towards the South China Sea issue might partly stem from Jakarta's concern over any potential backlash against the local ethnic Chinese community—who have little, if anything, to do with the South China Sea—that a confrontational diplomatic posture against Beijing would consequently bring about.

Finally, the South China Sea crisis could raise the risk of armed clashes between the claimants, possibly with the involvement of non-claimants. Between the mid-1960s and early 1980s, Indonesia was the sole submarine operator in Southeast Asia.¹⁰ By 2016, Singapore, Malaysia, and Vietnam are all operating submarines, with Thailand, Myanmar, and the Philippines intending to follow suit. The South China Sea might not motivate these acquisitions, but they certainly affect the regional balance of naval power between the claimants. The strategic picture is more complicated with the presence of non-claimant great powers asserting their “freedom of navigation” through naval and air patrols, using portions of occupied features. Thus far, there seems to be a tacit understanding, albeit not acceptance, by the claimants of what is permissible under such patrols. Yet, tacit understandings could easily fail to prevent a misunderstanding and miscalculation.

Beijing's insistence on Southeast Asians to accept its position in the South China Sea could incite a backlash against ethnic Chinese populations in the region.

Disunity and Desperation

As the South China Sea evolves from a mere dispute into a full-fledged crisis, Indonesia finds itself disunited and desperate to present a workable solution with China, as well as between ASEAN and China. The year 2016 for Indonesia began with a terrorist attack at the heart of the capital city, Jakarta, on January 14th by the Islamic State (IS) or Daesh.¹¹ Terrorism has defined Indonesia's security landscape since the Bali Bombings in 2002, the so-called ‘Indonesia's 9/11’. What many now find unprecedented is the overt display of sympathy to IS by some radical fringes on Jakarta streets before and after the attack. The religious extremism and terrorism that has locked Indonesian attention for more than a decade, has resulted in the neglect of the geopolitical challenge in the South China Sea.

That challenge came demonstrably in March, when an Indonesian fishery enforcement vessel found itself harassed by two Chinese coastguard vessels in the vicinity of the Natuna Islands located at the southern fringes of the South China Sea.¹² That a similar incident occurred only two months later, while being mindful of pre-2016 incidents, suggests a wider pattern

is at play. These incidents came at a time when Indonesia was staging the most vigorous campaign against illegal, unreported and unregulated (IUU) fishing in its history.¹³ Yet unlike the pre-2016 incidents, when silent diplomacy was the norm, the March-June incidents prompted Indonesia to openly stage official and public protests, much to the chagrin of Beijing.

While some assume that the protests in Jakarta were fanned by exhortations from the Fishery Minister, Susi Pudjiastuti, it does not obscure the fact that sentiments against China's growing assertiveness at sea are shared by many policymakers and pundits in Indonesia. It was only in 1990 that Jakarta officially resumed full diplomatic relations with Beijing after a hiatus since 1967. The issue of overseas Chinese in Indonesia, however, still remains controversial, as demonstrated in protests by radical Islamic groups on the election of the first Chinese-Indonesian Governor of Jakarta, Basuki Purnama.¹⁴ In defence and security circles too, several senior policymakers have spoken openly of their concern and dismay against Beijing's attitudes and policies towards Indonesia, especially in the Natunas. Regardless of the accuracy of their claims, it is fair to conclude that strategic anxiety towards China persists, even after the elevation of Sino-Indonesian relations to a "Comprehensive Strategic Partnership" in August 2013.

That the Sino-Indonesia relationship has changed for the better is both an opportunity and a cause for celebration. China has provided Indonesia with a large export market for its trade commodities, especially in raw materials. The potential of Chinese investment is also an opportunity that remains to be untapped. Aspiring to uplift its maritime economy and infrastructure, Indonesia cannot afford to be selective in choosing the source of foreign investment, especially when the investor is also the world's second largest economy.

On the other hand, foreign investment is still a contentious issue in Indonesia. Protectionism, economic nationalism, bureaucratic red tape, and legal uncertainties continue to spook foreign investors, not least from China. Even so, Indonesian government data shows that in 2015, China was only Indonesia's ninth largest investor well below Japan, the United States, and the European Union.¹⁵ Yet, post-colonial Indonesia has no precedent of China as the dominant economic partner. Doing business with Beijing involves a whole new set of standards, characteristics, and challenges -- from the controversial use of Chinese manual labourers to the question of trade deficits.

If the national scene vis-à-vis interaction with China as 'great power' appears uncertain, the regional scenario is even more unpredictable. Given that all international politics in ASEAN states is usually domestic, regional policymakers are coming to terms with the fact that all things

remaining same, friendship with Beijing is indispensable, even if only for reasons of economics. After the Duterte government's inauguration in Philippines, the country has moved from being ASEAN's staunchest critic of China to one of its most ardent appeasers. Nothing demonstrated this more clearly than the change in Manila's attitude towards the decision of the Arbitral Tribunal. Announced in July 2016, the decision is binding to all signatories of UNCLOS, including China. While Manila called on China to abide by the decision, the tone softened considerably following the presidential election in June 2016.

Meanwhile, ASEAN and its related meetings held in 2016 have had modest success. Despite a deliberate attempt by regional leaders to avoid mentioning the Tribunal's decision to China, ASEAN has been "seriously concerned over recent and ongoing developments" in the South China Sea, including Chinese "land reclamation in the Spratly islands."¹⁶ Thankfully, Beijing has been persuaded to desist from "inhabiting on the presently uninhabited islands, reefs, shoals, cays and other features."¹⁷ The adoption of a naval Code for Unplanned Encounters at Sea (CUES) as a sort of crisis management mechanism, also counts as a positive move. On the other hand, the controversial uses of white-hull vessels and "maritime militias", such as fishing fleets, to enforce maritime claims remain unaddressed. Worryingly, despite considerable efforts, ASEAN and China have failed to effectively implement the 2002 Declaration of Conduct of Parties and formulate a Code of Conduct that is legally binding and operationally enforceable.

The adoption of a naval Code for Unplanned Encounters at Sea (CUES) as a sort of crisis management mechanism counts as a positive move. On the other hand, the controversial uses of white-hull vessels and "maritime militias", such as fishing fleets, to enforce maritime claims remain unaddressed.

Breaking the impasse

Seemingly lacking are fresh initiatives to break the impasse. The initiatives ASEAN presented thus far revolve mainly around confidence-building measures. Despite being well-intended, these have not added significant value to the existing initiatives. One may recall the Indonesia-facilitated informal technical workshops on the South China Sea in the 1990s. The contribution of such CBMs towards actual de-escalation is hard to measure. Inter-claimant tensions seemed to generally follow a rising pattern, albeit with fluctuating dynamics, after China had re-issued the U-shaped line map before the UN in 2009.

ASEAN might want to take a cue from the recent PCA award. The Arbitral Tribunal's decision cleared some uncertainties from a legal standpoint – none more than the verdict concerning Scarborough Shoal. While refraining from commenting on the issue of ownership, the Tribunal clarified that neither China nor the Philippines held exclusive control of the Shoal. It is now possible for the two countries to craft a provisional joint fishery arrangement. They could follow the Japan-Taiwan fishery agreement of April 2013, where neither country would subject the fishermen from either side to law enforcement measures

beyond the territorial sea around the Senkaku/Diaoyutai Islands.

Yet, such a model requires full consultations with the local fishermen from the two countries, including on the nature and method of catch, so as to prevent accusations of unfair exploitation by either side. It is also possible to designate a no-fishing zone within the Scarborough Shoal to replenish fishing stocks that a joint team with members from China and the Philippines could supervise and enforce. Success of this model could become an inspiration elsewhere, with some modifications to meet local conditions.

At the same time, it is in the interest of the Southeast Asian littoral states, especially claimant countries, to conclude their maritime boundary delimitation. Indonesia, Vietnam, and Malaysia have delimited their continental shelf boundaries, but they still need to delimit their exclusive economic zone (EEZ). Considering the purported overlap between Indonesia's claimed EEZ and China's U-shaped line in the South China Sea, Beijing will likely protest. The delimitation of EEZs among South China Sea littoral countries would, however, add credibility to an UNCLOS-based global maritime order, even lending support to the Arbitral Tribunal's decision. The suggestion to form a South China Sea Commission with "15 regional and international members", including from all the claimants could prove useful, provided it complements relevant UNCLOS provisions on maritime boundary delimitation.¹⁸

Even though the role of non-claimant major powers has complicated the regional picture, it is admittedly in the interest of ASEAN for them to stay, especially if they can offer constructive contributions to break the SCS impasse. They could lend diplomatic support for ASEAN to use UNCLOS as the only credible maritime regime to resolve current maritime disputes. Very much laudable is the recent India-Indonesia joint statement on maritime cooperation "to maintaining a maritime legal order based on the principles of international law, as reflected notably in [UNCLOS]." India set a good example by accepting third-party arbitration in settling its maritime dispute with Bangladesh in 2014, even when the decision finally came in favour of the latter.¹⁹

Other initiatives to promote cooperation are also possible. First, ASEAN could try and broaden the scope of CUES with China to include marine law enforcement agencies, such as coastguards. The formulation of such CUES will need to follow from existing principles of navigational safety, such as the International Regulations for Preventing Collisions at Sea (COLREGS). The suggestion to apply specific CUES for submarine operations, however, appears to be a case of too much and too soon. The fact that Southeast Asian countries just recently acquired such platforms and have yet to develop strategic trust means that cooperation in submarine operations, at least in the near future, is not a realistic

possibility.

Second, fishery stock agreements among littoral countries should take effect. The threats of overfishing and marine environmental degradation, even within undisputed territorial waters, are a shared challenge, because of the potential depletion of fish stocks available for all littoral countries. Littoral countries could set up a South China Sea fishery commission that would formulate a model to implement sustainable ways of fishing.

Capacity-building efforts among fishermen, or at least fishery officials, from all littoral countries could also ensure the adoption of non-violent ways to resolve fishing disputes and increase mutual familiarisation to avoid future physical clashes. Third, there should be calls for a collective action to ensure non-military use of reclaimed features. Greater transparency, in terms of mutual visits and inspection of features, by all claimants or through a trusted third-party observer should be encouraged. Finally, all littoral countries could form a joint search and rescue (SAR) arrangement in the South China Sea, which allows mutual assistance in their respective SAR regions. ASEAN states could also hold regular SAR exercises under this arrangement for counter-piracy and disaster response purposes.

-
- 1 *Risking Beijing's ire, Vietnam begins dredging on South China Sea reef*, Reuters, Dec 9, 2016 <http://www.reuters.com/article/us-southchinasea-vietnam-idUSKBN13X0WD>
 - 2 James Richardson, *Crisis Diplomacy: The Great Powers since the Mid-Nineteenth Century* (Cambridge, UK: Cambridge University Press, 1995), 12.
 - 3 Robert Kaplan, "The South China Sea is The Future of Conflict," *Foreign Policy*, August 15, 2011, <http://foreignpolicy.com/2011/08/15/the-south-china-sea-is-the-future-of-conflict/>; Robert Kaplan, *Asia's Cauldron: The South China Sea and the End of a Stable Pacific* (New York: Random House, 2014).
 - 4 *PH, China coast guards get friendly*, CBN News, December 16, 2016 <http://news.abs-cbn.com/news/12/16/16/ph-china-coast-guards-get-friendly>
 - 5 See, *U.S. Department of State, Remarks at Press Availability*, July 23, 2010, <http://www.state.gov/secretary/20092013clinton/rm/2010/07/145095.htm>; Colin Packham, *US ready to confront Beijing on South China Sea: admiral*, Reuters, December 15, 2016, <http://www.reuters.com/article/us-southchinasea-usa-idUSKBN1430CJ>
 - 6 Abhijit Singh, *India's Strategic Stakes in the South China Sea*, *Asia Policy* 21 (2016), 14-20
 - 7 Alice Ba, *ASEAN's Stakes: The South China Sea's Challenge to Autonomy and Agency*, *Asia Policy* 21 (2016), 52.
 - 8 Natashya Gutierrez, *Duterte attacks US, praises China in Indonesia*, *Rappler*, September 9, 2016, <http://www.rappler.com/world/regions/asia-pacific/indonesia/english/145706-china-united-states-duterte-massacre>
 - 9 See Abhanti Bhattacharya, *The Chinese Diaspora in Southeast Asia: Chinese Nationalism Reinforced*, *Diaspora Studies Journal*, Volume 2, 2009, at <http://www.tandfonline.com/doi/abs/10.1080/09739572.2009.10597332>
 - 10 See *Underwater ambitions: submarines and anti-submarine capabilities in Southeast Asia*, Jane's Navy International, 2015 at http://www.janes360.com/images/assets/006/50006/submarines_and_anti-submarine_capabilities_in_Southeast_Asia.pdf

- 11 *ISIS backers claim responsibility for Paris-style terror attack in Jakarta*, Fox News, January 14, 2016 <http://www.foxnews.com/world/2016/01/14/massive-explosion-gunfire-heard-in-indonesian-capital-jakarta.html>
- 12 *Indonesia's Government accuses Chinese coastguard of infringing on its waters*, ABC News, March 22, 2016 <http://www.abc.net.au/news/2016-03-21/indonesia-says-chinese-coast-guard-infringed-on-its-waters/7264368>
- 13 Prashanth Parameswaran, *Indonesia Could Sink 57 More Vessels in War on Illegal Fishing*, January 8, 2016 <http://thediplomat.com/2016/01/indonesia-could-sink-57-more-vessels-in-war-on-illegal-fishing/>
- 14 *How Jakarta's first Chinese Indonesian governor became an easy target for radical Islamic groups*, The Conversation, November 7, 2016 <http://theconversation.com/how-jakartas-first-chinese-indonesian-governor-became-an-easy-target-for-radical-islamic-groups-68178>
- 15 See, BKPM, *Realisasi Penanaman Modal PMDN-PMA Triwulan IV dan Januari-Desember 2014* (Jakarta: Badan Koordinasi Penanaman Modal, 2016), 26. http://www9.bkpm.go.id/images/uploads/investasi_indonesia/file/Bahan_Paparan_-_IND_-_TW_IV_2015_Final.pdf
- 16 *Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting*, Vientiane, 24 July 2016," <http://asean.org/storage/2016/07/Joint-Communique-of-the-49th-AMM-ADOPTED.pdf>
- 17 *Joint Statement of the Foreign Ministers of ASEAN Member States and China on the Full and Effective Implementation of the Declaration on the Conduct of Parties in the South China Sea*, July 25, 2016, <http://asean.org/storage/2016/07/Joint-Statement-on-the-full-and-effective-implementation-of-the-DOC-FINAL.pdf>
- 18 Sagara Kusuma, *Experts find new solutions to South China Sea dispute*, The Jakarta Post, September 6, 2016, <http://www.thejakartapost.com/news/2016/09/06/experts-find-new-solutions-south-china-sea-dispute.html>
- 19 Indian Ministry of External Affairs, *Statement by India and Indonesia on Maritime Cooperation*, December 12, 2016, <http://mea.gov.in/bilateral-documents.htm?dtl/27806/Statement+by+India+and+Indonesia+on+Maritime+Cooperation>

Vietnam's Regional Security Challenges



HA ANH TUAN

Ha Anh Tuan, PhD Candidate, The University of New South Wales, Sydney (South China Sea) Studies, Diplomatic Academy of Vietnam

Over the past few years, the South China Sea (SCS) has emerged as a flashpoint for conflict in the Asia-Pacific. Territorial disputes over structures in the Paracel and the Spratly islands have been difficult to resolve, because SCS users -- including claimant states and extra-regional powers -- remain in serious disagreement over sovereign and juridical rights within the critical waterway. This includes vexed questions of freedom of navigation, of over-flight, and the applicability of international laws, most notably the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

China's increasingly assertive moves in the region have been at the centre of all major recent incidents. Chinese law enforcement vessels have conducted frequent patrols in the SCS to interrupt economic activities of Southeast Asian littoral states operating within their exclusive economic zone (EEZ), even driving out Southeast Asian fishermen from their traditional fishing areas. In the face of rising Chinese aggressiveness, the Philippines filed a legal case at an international arbitration court at the Hague in 2013. The court made its final award on 12 July 2016, rejecting most of China's claims, even criticising its land reclamation and artificial island building in the Spratly islands. The ruling was widely viewed to have a profound impact on maritime disputes settlement procedures in the SCS.

Significant Developments in the SCS

The most recent succession of events began with China's artificial island building in the SCS. From early 2014, China started a large-scale and fast-paced land reclamation drive in the seven islands/structures it occupies in the Spratlys. Simultaneously, Beijing began constructing massive infrastructure on the reclaimed islands. By the end of 2015, the total land recovered from the seas was 20 times as much as that reclaimed by all other claimants (Malaysia, the Philippines, Taiwan, and Vietnam) in the previous four decades. Upon completion of its major work on its artificial islands, Beijing began installing equipment for dual purposes, including helipads, airstrips, surveillance radar, deep-water ports, hospitals, and lighthouses.

It also undertook construction of structures to house weapons, missile siloes and warship docks.

Maritime observers regard Beijing's large-scale artificial-island building as a serious challenge to regional security. China may be alone in undertaking maritime reclamation in the SCS, but the scale of its undertaking dwarfs all other attempts by regional states to build infrastructure on the islands they hold in the SCS. The worry for China's neighbours is that Beijing seems to be making modifications in its islands to turn maritime facilities into bases for the PLA Navy (PLAN) and Air Force (PLA-AF). Apart from expanding the PLA-AF's reach in Southeast Asia, the surveillance capabilities in the Spratlys would enable the PLA-N to exert operational influence over the SCS, thereby circumscribing freedoms enjoyed by other navies in the region. Regional policymakers believe China's military outposts in the SC would place Beijing in a position of advantage vis-a-vis other major powers, particularly Japan and the US, which will find it difficult to come to the assistance of smaller Southeast Asian states in any future stand-off with Chinese law enforcement agencies in the SCS.

Vietnam's Strategic Approach

The island-building activity is intimately related to legal questions surrounding the dispute. For many regional observers, the Permanent Court of Arbitration's ruling under the Annex VII of the UNCLOS was as a rebuff to China's legal claim in the SCS.¹ While Beijing rejected the court's decision—adopting a “three no-es” stance (no recognition of the court; no recognition of the award; and no use of the award as a basis for future negotiation) — maritime experts viewed the award as a clear repudiation of Beijing's maritime posture in the SCS. Yet the Philippines, under newly elected President Duterte, welcomed the award, avoiding any display of triumphalism; Vietnam, for its part, avoided expressing any criticism of China's position in the SCS.

While Hanoi has been concerned about China's land reclamation, it chose not to make an official comment on the content of the award. Vietnamese Prime Minister Nguyen Xuan Phuc visited Beijing a few weeks after the Tribunal's verdict, holding talks with his Chinese counterpart, Li Keqiang. As an outcome of that meeting Beijing and Hanoi agreed to hold “sincere and candid exchange of views on maritime issues”, “properly manage” their differences over territorial disputes in the South China Sea, and “safeguard stability”.²

Some Vietnamese scholars are of the view that the court's ruling is beneficial to conflict management and resolution in the SCS, as it significantly reduces the spatial scope of the territorial disputes. The tribunal's decision that no structure in the Spratlys is entitled EEZ and that China's nine-dash line has no basis in law significantly settles many

The worry for China's neighbours is that Beijing seems to be making modifications in its islands to turn maritime facilities into bases for the PLA Navy (PLAN) and Air Force (PLA-AF).

In the past few years, Vietnam has improved its defence capabilities by purchasing six submarines and a number of surface combatant ships, as well as strengthening security ties with major powers including the US and Japan.

disputed principles. Alongside determining the extent of the overlap between EEZs among regional countries, experts say, the decision also facilitates maritime demarcation negotiations. Sovereignty disputes over structures in the SCS can now be negotiated and settled in a separate process. More importantly, the court's ruling increases the chance for regional countries to find areas for practical cooperation in the SCS.

This does not mean Hanoi is depending entirely on maritime law to address the dispute in the SCS. In the past few years, Vietnam has improved its defence capabilities by purchasing six submarines and a number of surface combatant ships, as well as strengthening security ties with major powers including the US and Japan. Vietnam is even said to have quietly begun dredging work on a reef in the strategic waterway and fortified several islands with mobile rocket artillery launchers capable of striking China's holdings across the vital trade route.³ While no Vietnamese official statement on this issue has been made, such activity, if indeed any, is incomparable with what China has done in the region in both scale and defensive-offensive nature.

Future Challenges

The question, therefore, of how the situation in the SCS will look like in the future remains an issue of concern. Making predictions about the SCS is fraught with risk because future outcomes are likely to be dependent entirely on evolving variables. At the systemic level, the prospect of global security, political and economic trends, and commercial development would have a profound impact on states' foreign policy objectives, priorities, and options, thus influencing their interest and the management of maritime disputes. Some economic research institutions have forecast that the global economy will grow in the coming years, with large economies, namely the US, China, and Japan having positive economic growth rates. Such a scenario would enable these countries to pay more attention to global security issues, including maritime disputes in the SCS.

However, international terrorism, the instability in Syria and Middle East, and continuing migration to Europe could steer Atlantic countries towards issues directly impacting their national security. Some argue that with Brexit and Donald Trump's inward-looking posture, some EU states will turn isolationist, even possibly withdrawing from the Union. This would imply a reduction in commitment to trade and global issues. More importantly, continuing isolationism of the west would worsen uncertainty in other countries about the role of multilateral institutions. China would see these developments as opportunities, jockeying for an advantageous position to settle the maritime disputes in its favour.

At the national level, the coming years will be crucial for the shaping

of foreign policy of Southeast Asian states. US projection in the SCS under the Trump administration remains unpredictable, dependent as it is on Trump's own foreign policy prejudices. But changing economic prospects for the US, the role of other influential American politicians, and the behaviour of other states in the SCS are some other factors that will likely define the maritime dynamic. Under the circumstances, it is hard to say if Trump's administration would pursue a stronger position in the SCS in the coming years.

China is also at a crucial juncture in 2017, with the Chinese Communist Party (CCP) scheduled to hold the 19th National Congress. Xi Jinping has made efforts to strengthen his power in the Chinese political system to safeguard his second term in office, but he faces significant domestic economic and political challenges. How China will behave in the SCS in the coming years depends on China's future economic prospects, the Chinese government's assessment of the new challenges and opportunities in the SCS, coordination between different Chinese authorities under Xi Jinping's leadership, and Beijing's strategic goals and foreign policies.

Going forward, Southeast Asia is likely to continue to experience developments that will affect the situation in the SCS. The most significant one is a radical rebalance in the Philippines' relationship with China. Indications are that President Duterte is attempting a fundamental shift in Manila's political approach to Beijing, changing it from a hard stance (as previously witnessed under former President Aquino) to a more 'pragmatic' and 'cooperative' posture. Duterte seems to have downgraded Philippine-US military ties, instead favouring economic cooperation agreements with China.⁴ During a recent visit to Beijing, the new president only tangentially touched on SCS issues, instead focusing his energy on securing a fishing agreement around the Scarborough Shoal.⁵

A review of Manila's position in the SCS would have a significant impact on regional development. The Philippines has been a vocal opponent of Chinese maritime policies and is scheduled to take over as ASEAN's rotating Chair, as well as ASEAN's coordinator in Sino-ASEAN relations. Despite doubts that Sino-Philippines 'springtime' ties will be long-lasting, growing bilateral warmth between Beijing and Manila could potentially push other Southeast Asian littoral states to follow Manila's example.⁶

This, in itself, could alter US security policies in Southeast Asia. Under the Obama administration, Washington has adopted strategies in the SCS that have been broadly perceived by Beijing as ways to contain China. Indeed a series of events in the SCS, involving US maritime vessels—including the *Impeccable* incident in 2009 and USNS Bowditch in 2013 and 2016—have convinced China of America's attempts to undermine Chinese power and influence in the region. The latest incident occurred

Beijing will realise that the reason most Southeast Asian countries adopted moderate positions, was to assuage Chinese indignation at having its stand rejected by the Arbitral Tribunal.

on 15 December 2016 when an US Unmanned Underwater Vehicle (UUV) was captured by a Chinese navy ship⁷

If the US under Trump pursues a 'peace through strength' strategy, as is being suggested, Beijing is unlikely to suspend its reclamation activities and island-building in the SCS.⁸ If China militarises the islands, by installing heavy weapons as missiles, aircraft, or war-ships, Sino-US ties could be placed at high risk.

Beijing will realise that the reason most Southeast Asian countries adopted moderate positions, was to assuage Chinese indignation at having its stand rejected by the Arbitral Tribunal. Yet China's rejection of the court's ruling and continuing assertion in the SCS has meant that the fundamental causes of conflict remain unresolved. The key question about the future of the SCS disputes is not whether peace and cooperation will sustain, but when and how new causes for conflicts and tension will arise. Direct armed confrontation between any two states in the SCS might be unlikely, but in the absence of strategic trust, not improbable. As such, any misperception, miscalculation, or misbehaviour at operational level, if not properly managed, could escalate into serious political confrontation at a higher level.

Fostering cooperation in the SCS

Securing peace and stability in the SCS is in the common interest of all countries in the region, especially littoral states, so that they can pay more attention and invest more resources on economic and social developments.

There are opportunities for regional cooperation in the SCS. To begin with, littoral stakeholders around the SCS have abundant experience in maritime cooperation. Some outstanding examples include the Sino-Vietnamese border demarcation in the Gulf of Tonkin and bilateral fishery cooperation agreement, the Malaysia-Philippines agreement on turtle protection zone, and the Philippines-Taiwan agreement on maritime law enforcement cooperation. Looking at the global level, a lot of countries have engaged in maritime cooperation in many areas, including joint-development, petroleum exploration cooperation, and fishery cooperation. These cooperation agreements could provide practical lessons to foster cooperation in the SCS.

In addition, regional countries have already reached a number of political agreements and frameworks to exchange views and settle disputes in the SCS. The 2002 Declaration of Conduct of Parties in the South China Sea (DOC) is certainly the most prominent document signed between China and ASEAN in this regard. The DOC sets out basic principles to regulate conducts of signatories in the SCS. Apart from the DOC, China

and ASEAN engaged in a number of other security agreements and mechanisms in which the SCS disputes have been discussed, including the ASEAN Plus (ASEAN+), ASEAN Defence Ministerial Meeting Plus (ADMM+), and the ASEAN Regional Forum (ARF). The arbitral award in the legal case between the Philippines and China in the SCS could also be seen as one important reference for future cooperation in the SCS, although the Chinese government has still not officially recognised it.

However, given the challenges and some uncertainties in the future of security in the SCS, it is important for regional countries to have strong political will to foster cooperation and manage differences and disputes in the region. Four principles should be adhered to facilitate cooperation in the SCS. The first principle is the rule of law, which has long been the most important principle in modern international relations, ensuring equality between states. The second principle is self-restraint, which has been well-addressed in the DOC.

The third is a gradual approach. As maritime disputes in the SCS are unlikely to be resolved in the foreseeable future, adopting a graded approach is the most pragmatic strategy. Here countries try to reach preliminary agreements on less sensitive issues, which assist in building confidence, resulting in deeper cooperation on more sensitive issues. Finally, cooperation in the SCS must be inclusive. Certainly, issues concerning bilateral relations, such as territorial disputes over some features in the South China Sea between two countries should be resolved directly and bilaterally between concerned parties. However, the complexity of the disputes requires all stakeholders to be part of the process so that any cooperative agreement reached would be sustained.

SCS cooperation projects could be conducted either at the political or operational level. At the political level, the efforts by China and ASEAN to reach a framework for COC in 2017 appears promising. However, many observers do not have genuine belief in the significance of the COC, given the lack of mutual confidence and the significant divergence of national interests of parties in the SCS. China and Southeast Asian states may also find opportunities to foster cooperation multilaterally or bilaterally. At the operational level, cooperation between maritime law enforcement agencies (MLEAs) is of particular importance as a majority of recent incidents in the SCS have involved the MLEAs. Regional countries may work towards producing a certain code of conduct for MLEAs operation and encounter at sea, a CUES-like document as what the Singaporean government proposed.

A third comprehensive way for fostering cooperation in the SCS is the combination of political and operational approaches to repair ties. Traditionally, governments often focus on a top-down approach, which

As maritime disputes in the SCS are unlikely to be resolved in the foreseeable future, adopting a graded approach is the most pragmatic strategy.

comes from global guidance to regional adoption and local enforcement. However, many efforts in recent years to apply global regulations, laws, and norms into the SCS have not brought about fruitful results. It is the time to think about fostering cooperation in the reverse order: creating norms, rules, and principles at the local level, proposing them to regional governments for adoption, and if successful, then turning them into global norms. Such a scenario, however, would require the evolution of mechanisms to manage disputes in the SCS.

Two potential areas of cooperation in the SCS are fishery management and confidence-building at the operational level between MLEAs. Fish stock in the SCS has been rapidly depleting as regional countries continue to expand their deep-water fishing fleets, and cooperation to preserve fish resources is urgently needed. Fishery preservation is a non-traditional, less sensitive, and no-lose area for cooperation. In the initial stage, regional countries could establish a joint-study group to conduct research on fishery stock, and total annual fish catch volumes, and make recommendations for coordinated policies between governments. Regional countries could then think of more practical cooperation, such as setting up maritime preservation zones in the SCS to allow fish stock to recover. With regards to MLEAs' confidence-building at the operational level, littoral states in the SCS could establish a platform for MLEAs to regularly meet so they can better understand each other's role and policy. Personal contacts at the operational level are also important for crisis management should accidents or incidents occur at sea. In the long run, through regular meetings, regional MLEAs would develop a set of basic principles and protocols for cooperation and incident prevention at sea. This document would then be submitted to their countries' respective government agencies for adjustment and adoption.

In short, recent developments in the SCS have presented significant challenges and potential risks for regional security. However, opportunities are still available for states to foster cooperation and manage potential conflicts. Based on the rule of law, self-restraint principle, and inclusiveness and gradual approach, regional countries may strengthen cooperation in such less sensitive issues as fishery preservation and confidence building between maritime law enforcement agencies of littoral states. A successful result would lead to deeper cooperation in more challenging issues in the future.

- 1 *China's claims in South China Sea invalid, tribunal rules, in victory for the Philippines*, Asia Maritime Reviews, July 12, 2016 <http://asiamaritime.net/chinas-claims-in-south-china-sea-invalid-tribunal-rules-in-victory-for-the-philippines/>
- 2 *China, Vietnam to 'properly manage' differences over South China Sea*, The Times of India, September 13, 2016 <http://timesofindia.indiatimes.com/world/china/China-Vietnam-to-properly-manage-differences-over-South-China-Sea/articleshow/54311854.cms>
- 3 *Vietnam Begins Dredging On South China Sea Reef*, NDTV, December 9, 2016 <http://www.ndtv.com/world-news/risking-beijings-ire-vietnam-begins-dredging-on-south-china-sea-reef-1635803>
- 4 Pia Ranada, *What Duterte accomplished in China*, Rappler, October 23, 2016 <http://www.rappler.com/nation/150049-duterte-accomplishments-china-visit>
- 5 *Duterte and Xi talked about fishing rights in Scarborough Shoal*, Rappler, October 23, 2016 <http://www.rappler.com/nation/150052-duterte-brought-up-fishing-rights-china-xi>
- 6 *Will Duterte's 'Springtime' in China-Philippines Relations Prove Short-Lived?* Forbes, November 3, 2016 <http://www.forbes.com/sites/riskmap/2016/11/03/will-dutertes-springtime-in-china-philippines-relations-prove-short-lived>
- 7 *China Captures a U.S. Navy Drone in the South China Sea*, STRATFOR, December 16, 2016 <https://www.stratfor.com/sample/snapshots/china-captures-us-navy-drone-south-china-sea>
- 8 *The Trump Doctrine: Peace through Strength*, The National Interest, March 31, 2016 nationalinterest.org/feature/the-trump-doctrine-peace-through-strength-15631

Duterte's Geopolitical Game-play



RICHARD JAVAD HEYDARIAN

Richard Javad Heydarian is an academic, foreign affairs columnist, media pundit and author of “Asia’s New Battlefield: US, China & the Struggle for Western Pacific” (Zed, London). He had taught as a political science professor at De La Salle University and Ateneo De Manila University, and is a regular contributor to the Center for Strategic & International Studies (CSIS) and Council on Foreign Relations (CFR).

The ebbs and flows of Philippine policy in the South China Sea marks the confluence of (perceived and objective) shifts in the domestic political calculations of the ruling elite faction, which dominates foreign policy decision-making, and the regional security environment, which is broadly shaped by great powers, namely the United States and China.

In open, democratic societies like the Philippines, which have an in-built system of checks and balances, there is obviously less insulation for the foreign policy decision-making process from public scrutiny. Thus, domestic political dynamics tend to exert even greater pressure on foreign policy formulation. In the Philippines, interference of external powers, legislative oversight and judicial review by co-equal branches of the government, and lobbying by influential business groups constantly shape and constrain the executive’s constitutional prerogative in shaping foreign policy. Recent historical evidence also shows that changes in the administrations tend to be accompanied by a perceptible shift in approaches to key foreign policy challenges, particularly the South China Sea disputes.

This has been most prominent in the 21st century under the past three administrations, from President Gloria Macapagal-Arroyo (2001-2010) and Benigno Aquino III (2010-2016) to Rodrigo Duterte (2016-2022). While the Arroyo administration broadly adopted an equilateral balancing strategy towards both powers and sought a pragmatic accommodation with China in the South China Sea, the Aquino administration largely adopted a counter-balancing strategy, soliciting maximum security assistance from America and other longstanding strategic partners like Japan to check China’s ambitions in the South China Sea.

The current president, Duterte, however, has raised the specter of bandwagoning with China and abandoning the Philippines’ long-standing alliance with America. “I will be chartering [sic] a [new] course [for the Philippines] on its own and will not be dependent on the United States,” the Philippines’ tough-

talking leader declared immediately after securing electoral victory in May 2016, a particularly polarising and vicious contest that mirrored the American presidential elections as well as the British referendum on ending its European Union membership.

The Philippines has never had any president like Duterte, the first self-described ‘socialist’ as well as Mindanaoan top leader in the country’s history. And like none of the Southeast Asian nation’s presidents, Duterte has lashed out at America and its supposed ‘interference’ with particular ideological conviction and rhetorical venom, including insults against American Ambassador Philip Goldberg and President Barack Obama.¹

During the Association of Southeast Asian Nations’ (ASEAN) summit in Vientiane, Laos, he reminded America of its mass atrocities in the early-20th century and a radical shift in Philippine foreign policy by declaring: “I am ready to not really break ties [with America] but we will open alliances with China and . . . Medvedev [Russia],” the firebrand president exclaimed. “I will open up the Philippines for them to do business, alliances of trade and commerce.”² He also became the first Filipino leader to choose Beijing for his first major state visit, where he, to the consternation of many Filipinos and government officials, declared “separation” from America by offering to re-align his country’s foreign policy with Beijing’s “ideological flow”.³

Not to mention, at some point, Duterte stretched the limits of his bolt-from-the-blue rhetoric by even threatening to take the Philippines out of the United Nations over disagreements vis-à-vis human rights issues. On the surface, this represents nothing short of a revolution in Philippine foreign policy. And yet his approach revealed a more nuanced and less dramatic picture of justifiable strategic recalibration built on amateurish tactics and often-inappropriate rhetoric.

Understanding Philippine policy in the South China Sea cannot be confined to analysing domestic political shifts alone. More often than not, external factors have proven more decisive in shaping the mid-sized country’s foreign policy. After all, small powers are often at the mercy of greater forces, which shape the international environment. For instance, back in 2004, the Arroyo administration was in a strong position to improve ties with Beijing, precisely because the latter maintained a sober and tempered policy in the South China Sea. This was not the case from 2010 onwards, when China progressively stepped up its maritime assertiveness in adjacent waters, both in the East and South China Seas. More importantly, the United States, the world’s leading power, also experienced a shift in its strategic focus and resolve throughout this period. In short, the Philippines has operated in and has had to cope with a fluid external environment, which was primarily shaped by external powers.

Nevertheless, it is clear that strong-willed leaders such as Duterte can—and often do—exercise a surprising level of agency in re-shaping their respective country's foreign policy, for better or worse. At this point, what is clear is that the Philippines is, at the very least, shifting to an equi-balancing strategy, whereby Manila seeks to maintain friendly relations with both America and China, but with certain game-changing modifications. Under an emerging 'grand bargain', the Philippines will maintain the fundamentals of bilateral security relations with America, but downgrade military cooperation in the South China Sea. In exchange, the Duterte administration expects China to step up its development aid and, more importantly, make concessions in the disputed waters, particularly over Filipino fishermen's access to the bitterly disputed Scarborough Shoal. But nothing is set in stone. The trajectory of Philippine relations with both powers will depend on Duterte's domestic political standing, relations with the incoming administration of Donald Trump, and the prospects of joint development schemes with China in the South China Sea.

Strategic Dependence

Philippines is, at the very least, shifting to an equi-balancing strategy, whereby Manila seeks to maintain friendly relations with both America and China, but with certain game-changing modifications.

For much of the 20th century, Manila outsourced its external security requirements to Washington, which, in exchange, gained full-spectrum access to Philippine civilian and military facilities. In effect, the Philippines, a formally sovereign nation, became America's protectorate. This patron-client strategic relationship was undergirded by a series of foundational agreements, particularly the US-Philippines Military Assistance Pact (1947), the Military Bases Agreement (1947), and the Mutual Defense Treaty (MDT) of 1951, which transformed America into the de facto guarantor of the Philippines' survival against external aggression.⁴

The end of Cold War, however, represented a shock to the bilateral relations. Absent a common enemy, namely the Soviet Union, America began to reconsider its exorbitant military deployments overseas, while the Philippines agitated for actual independence. The upshot was the exit of American bases in 1992, which came amidst the euphoria of economic globalisation in the immediate aftermath of the collapse of the Communist bloc. It did not take long, however, before Manila experienced a rude awakening, specifically when China extended its creeping occupation of contested land features in the South China Sea into the Philippines' Exclusive Economic Zone (EEZ) in 1994.

The following year, the two neighbours almost came to blows, as the Ramos administration (1992-1998) struggled to respond to the shock of what it saw as Chinese territorial usurpation. In response, Manila adopted a three-pronged approach. First, seeking the return of American military presence in the region under a Visiting Forces Agreement (VFA), which coincided with the Clinton administration's growing anxieties

over a rising China in light of the Second Taiwan Strait Crisis. Second, Manila stepped up its military buildup under the Armed Forces of the Philippines (AFP) Modernization Act.⁵ The aim was to develop at least a credible minimum defence posture, absent permanent American bases in the Philippines that served as a strong deterrence in the past. Finally, the Ramos administration adopted a pro-active multilateral diplomacy, particularly towards the Association of Southeast Asian Nations (ASEAN), which culminated in the 2002 Declaration on the Conduct of Parties in the South China Sea.⁶

The early years of the Arroyo administration were dominated by the Bush administration's 'Global War on Terror', which was focused on both the Middle East and Southeast Asian regions. But by the mid-2000s, the Philippines began to step up its relations with China, which, under a charm offensive strategy, adopted a policy of moderation and self-restraint in the South China Sea. Arroyo's September 2004 state visit to Beijing proved decisive, as it heralded a sudden uptick in bilateral security and economic cooperation. The same year, the two sides signed a Memorandum of Understanding (MOU) on Defense Cooperation, with China offering \$1.2 million in military assistance to the Philippines.⁷ The two sides also took concrete steps to resolve their disputes in the South China Sea.

Under the Joint Maritime Seismic Undertaking (2005-2008), the two neighbours, together with Vietnam, explored a joint exploration scheme in specific areas of overlapping claims in the Spratlys. The hope was that this would serve as a concrete confidence-building measure as a prelude to more high-stakes joint development scheme in the South China Sea. In a characteristic exercise of its statecraft, China also offered massive infrastructure deals, particularly the NBN-ZTE telecommunications and the North Rail transpiration projects, to upgrade the Philippines' lackadaisical economy. Over the next few years, bilateral trade boomed, increasing from \$17.6 billion in 2005 to \$23.4 in 2006 and \$30.6 billion in 2007.⁸

But this 'golden age' of bilateral relations was short-lived, as corruption scandals undermined the Arroyo administration's major investments deals with China and the JMSU came under attack for violating the Philippine Constitution. Against this backdrop, Aquino, who ran on the platform of fighting corruption, rose to presidency. Under these trying circumstances, inevitably there were to be tensions with China, which was embroiled in various corruption scandals under the previous administration.

The bone of contention was the South China Sea, specifically after Beijing began to effectively occupy the Scarborough Shoal following a tense naval standoff in mid-2012. In response, the Aquino administration filed an

arbitration case against China, accusing the Asian giant of violating the Philippines' sovereign rights in the South China Sea. It also stepped up the Philippines' security cooperation with the Obama administration, which began its much-touted 'Pivot to Asia' policy in 2011. Meanwhile, institutionalised diplomatic and bilateral state-to-state investment relations were essentially frozen.⁹

To the Aquino administration's chagrin, China continued to tighten the noose around the Philippines, building massive artificial islands in the Spratlys, deploying a growing number of coast guard vessels and fishermen to the Scarborough Shoal, and threatening Philippine detachments in places such as the Second Thomas Shoal and Thitu Island. Bilateral tensions reached new heights when it became increasingly clear that China would suffer a huge legal setback. By 12 July 2016, an arbitral tribunal at The Hague, constituted under Article 287, Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS), ruled against China's doctrine of 'historic rights', deeming it incompatible with modern international law, as well as massive reclamation activities in the contested Spratlys, which inflicted huge ecological damage in the area.¹⁰ The court also ruled that China and the Philippines had no overlapping EEZs, and that none of China's claimed features in the area were naturally-formed 'islands', which could generate their own EEZ.¹¹

Duterte took a dramatically different position on the arbitration issue, making it clear that he will not flaunt any favorable arbitration verdict to taunt Beijing.

Strategic Recalibration

Less than two weeks in office, Duterte took a dramatically different position on the arbitration issue, in particular, and the South China Sea disputes, in general.¹² The new administration immediately called for 'sobriety and patience' after the release of the arbitration verdict. Duterte himself made it clear, upon his inauguration as the Philippine president, that he will not flaunt any favorable arbitration verdict to taunt Beijing.¹³ Later on, before the ASEAN summit, Duterte also made it clear that he will not raise the arbitration issue at multilateral fora. In short, he forewent the option of aggressively leveraging the arbitration award to push China to the corner by mobilising international diplomatic pressure. Instead, Duterte called for essentially bilateral settlement of the disputes.

To be fair, while many were surprised by a seeming volte-face in Philippine foreign policy, Duterte has always been transparent about his position on the territorial disputes and the necessity re-open frayed communication channels with China. Unlike his predecessor, who pushed for robust pushback against Chinese maritime assertiveness through legal warfare and deeper security cooperation with America and other likeminded countries, Duterte believed that standing up to China on the issue was too risky. As if abruptly cooling down tensions with China—after an arbitration body made it clear that the Asian giant was violating Philippine sovereign rights—was not shocking enough, Duterte also spent much of

his first six months in office lashing out at America and threatening total ‘separation’ from the Philippines’ sole treaty ally and former coloniser.

To understand Duterte’s emerging foreign policy, which has jolted allies and rivals as well as much of the Philippine public, one should analyse the intersection of five key elements. The first thing to keep in mind is that Duterte’s political success has been built on an ‘anti-establishment’ brand of populism, which represents a wholesale rejection of the Philippine political elite and their policies. In this sense, Duterte shares significant similarities with other successful leaders such as Turkey’s Recep Tayyip Erdoğan and Donald Trump, who upended the politics of their respective countries by promising an alternative form of governance under their firm and decisive leadership.

But Duterte’s ability to overhaul the Philippines’ business-as-usual politics and position on the South China Sea would not be possible absent his domination of the state apparatus. And this brings us to the second factor, which is the ‘authoritarianisation’ of Philippine political system. Or, to be more specific, the rapid concentration of power in Duterte’s hands as normal institutions of checks and balances fall into a state of hibernation.¹⁴ Within two months into office, Duterte managed to score the country’s highest popularity rating (91 percent) approval rating ever, build a supermajority bloc in the Philippine Congress, and gain the full-fledged support of the law enforcement agencies and military by promising them better salaries, benefits, and equipment. His grip on the judiciary is set to strengthen too, since he will be appointing most of the justices in the coming years. As studies show, the emergence of such personalistic administrations is usually accompanied by wild swings in foreign policy.¹⁵

The third factor is the lack of clear American commitment to the Philippines in the South China Sea. Year after year, the Obama administration has refused to clarify whether it would come to the Philippines’ rescue in an event of conflict with China in the South China Sea.¹⁶ This is precisely why Duterte, on multiple occasions, openly questioned whether America is a reliable ally or not. In contrast, and this is the fourth element, China has made it clear that it is willing to offer the Philippines both maritime and economic concessions in exchange for Manila setting aside the arbitration issue and, if possible, downgrading ties with America.¹⁷ Duterte is considering a joint development agreement with China in the Scarborough Shoal and eyeing billions of dollars of infrastructure investments, particularly in his home island of Mindanao, which is in desperate need of development.¹⁸

The Asian powerhouse also made the sticks clear: The Philippines risks military confrontation, diplomatic isolation, and significant foregone investment opportunities if it refuses to change gear in the South China

Year after year, the Obama administration has refused to clarify whether it would come to the Philippines’ rescue in an event of conflict with China in the South China Sea.

Sea. In fact, Duterte has met the Chinese ambassador in Manila more than any other diplomat in recent months. In disputed areas, China could make life hard for the Philippines by imposing an Air Defense Identification Zone (ADIZ), pushing ahead with establishment of military facilities on the Scarborough Shoal, and stepping up military and para-military deployments into Philippine waters. Indeed, shortly after the arbitration award was announced, China deployed fight jets and a long-range bomber to the Scarborough and increased the number of military and quasi-civilian vessels in the area.¹⁹

Lastly, it is important to take into account Duterte's "personalisation" of foreign policy. Not only has he strengthened his grip on the state apparatus, but he has also injected more of his own personal emotions into the policy-making process as well as diplomatic pronouncements. His tirades against America, for instance, are largely driven by his personal antipathy towards America, which stretch back to his years as mayor of Davao.²⁰ These historical wounds were rekindled when America began to criticise Duterte's signature policy, the campaign against drugs, in his first month in office. Meanwhile, China has consistently expressed its support for Duterte's war on drugs and has offered to help in terms of logistics, equipment, criminal investigations, and establishment of rehabilitation centers. America's vocal criticism of Duterte eventually prompted him to direct foul language against no less than America's top leaders, including Obama.²¹

Prospects and Challenges

To be fair, there is a significant gap between Duterte's often-hyperbolic rhetoric, on one hand, and more subdued policy, on the other. As of this writing, security agreements with America continue to be respected. Deployment of American Special Forces to Mindanao has also gone per routine. There has been not 'separation' or rupture in bilateral security relations, so far. But it is important to note the Duterte's threats are not just pure bluster. As a part of an emerging 'grand bargain', the Duterte administration is dispensing with major bilateral military exercises with the United States, which were aimed at enhancing interoperability in an event of joint military operations against China in the South China Sea, Duterte has also made it clear that American access to Philippine bases will remain under strict conditions. For instance, Washington, for the meantime, cannot use Philippine bases to launch Freedom of Navigation Operations (FONOPs) against Chinese excessive maritime claims in the South China Sea. Nor will there be any joint patrols in disputed waters as previously planned.²² In exchange, China is expected to draw down its harassment of Philippine supply lines and reconnaissance activities in the South China Sea, grant access to Filipino fishermen in the Scarborough Shoal, and pour in major investments into the Southeast Asian country.

The future of the Philippines' policy in the South China Sea is not clear. So far, Manila and Beijing have struggled to find a common ground on the Scarborough Shoal, despite repeated talks of a joint development agreement, which could raise both political and legal controversy. It also remains to be seen whether China will actually translate its economic pledges into tangible and large-scale investments in the Philippines. If the two parties fail to find a common ground in the disputed waters in a year or two, it is highly likely that the recent strategic flirtation will lose steam, especially if Manila's relations with America begin to recover from recent dust ups. So far, there is clear indication that Duterte looks forward to a Trump administration, which is likely to put less emphasis on human rights and democracy issues and instead focus on strategic cooperation and economic ties.

Duterte's ability to unilaterally shape the Philippine foreign policy, particularly on sensitive issues such as the South China Sea, is also highly contingent on his popularity as well as the coherence of political opposition. Given the fluidity of Philippine politics, Duterte may find himself in a radically different political position in a year or so. And this could also reshape his foreign policy calculus. At this point in time, what is clear is that the Duterte administration, at the very least, is eager on reviving bilateral ties with China and reducing the Philippines' century-old dependence on America. Thus, the Philippines is increasingly following in the footsteps of almost all ASEAN countries, which have adopted an equi-balancing strategy towards the two great powers.

-
- 1 Richard J Heydarian, *Can Ramos Break the Ice in Philippines-China Relations*, Asia Maritime Transparency Initiative, August 16, 2016; <https://amti.csis.org/can-ramos-break-ice-philippines-china-relations/>
 - 2 *Philippines' Duterte wants to 'open alliances' with Russia, China*, Reuters, September 26, 2016, at <http://www.reuters.com/article/us-philippines-politics-duterte-idUSKCN11W17T>
 - 3 *In China, Duterte announces split with US: 'America has lost'*, CNN, October 20, 2016 <http://edition.cnn.com/2016/10/20/asia/china-philippines-duterte-visit/>
 - 4 *The US-Philippines Defence Alliance*, Council for Foreign Relations, October 21, 2016 <http://www.cfr.org/philippines/us-philippines-defense-alliance/p38101>
 - 5 *Military buildup still continuing*, the Manila Standard, Oct ober 25, 2015 <http://www.thestandard.com.ph/news/-main-stories/top-stories/190209/-military-buildup-still-continuing-.html>
 - 6 Richard Heydarian, *Karaoke Diplomacy: Can Ramos Restore Philippine-China Relations?*, August 7, 2016 http://www.huffingtonpost.com/richard-javad-heydarian/can-former-president-ramo_b_11382266.html
 - 7 Morada N, *Philippine Foreign Relations after September 11 (2001-2005)* in *Philippine Politics and Governance: An Introduction*. Eds. Morada N & Teresa Encarnaci on Tadem. Quezon City: University of the Philippines, 2016
 - 8 *China-Philippines trade declines 30% in 2009*, ASEAN Affairs, December 1, 2010 http://www.aseanaffairs.com/philippines_news/trade/china_philippines_trade_declines_30_in_2009

- 9 *Stirring up the South China Sea (II): Regional Responses*, Asia Report, International Crisis Group, July 24, 2012 <https://d2071andvip0wj.cloudfront.net/229-stirring-up-the-south-china-sea-ii-regional-responses.pdf>
- 10 *Tribunal rules against Beijing in South China Sea dispute, China rejects it*, Hindustan Times, July 12, 2016 <http://www.hindustantimes.com/world-news/china-has-no-historic-rights-in-south-china-sea-hague-tribunal/story-1hPgndEGl3wBF8dTAK0KJL.html>
- 11 See *Final Award. PCA Case No. 2013-19, Permanent Court of Arbitration*, July 12, 2016 <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf>
- 12 For a better understanding of the post-arbitration confrontational approach options see Antonio Carpio, *How the Philippines Can Enforce the South China Sea Verdict*, Wall Street Journal, July 17, 2016 <http://www.wsj.com/articles/how-the-philippines-can-enforce-the-south-china-sea-verdict-1468774415>
- 13 Duterte warns against using tribunal ruling vs. China to 'taunt or flaunt', GMA News Online, July 30, 2016 <http://www.gmanetwork.com/news/story/571930/news/nation/duterte-warns-against-using-tribunal-ruling-vs-china-to-taunt-or-flaunt>
- 14 Andrea Kendall-Taylor and Erica Frantz, *How Democracies Fall Apart*, Foreign Affairs, December 5, 2016 <https://www.foreignaffairs.com/articles/2016-12-05/how-democracies-fall-apart> <https://www.foreignaffairs.com/articles/2016-12-05/how-democracies-fall-apart>
- 15 Andrea Kendall-Taylor, Erica Frantz, and Joseph Wright, *The New Dictators*, Foreign Affairs, September 2016 <https://www.foreignaffairs.com/articles/2016-09-26/new-dictators>
- 16 Jay Batongbacal, *EDCA and the West Philippine Sea*, Rappler, December 12, 2014 <http://www.rappler.com/thought-leaders/77823-edca-west-philippine-sea-america>
- 17 *Beijing to focus on blunting impact of South China Sea ruling*, Financial Times, July 12, 2016, <https://www.ft.com/content/bb8d42d6-47fa-11e6-8d68-72e9211e86ab>
- 18 *Philippines' 'realistic' Duterte to shift focus from South China Sea in dealings with Beijing*, South China Morning Post, June 9, 2016 <http://www.scmp.com/news/china/diplomacy-defence/article/1966920/philippines-realistic-duterte-shift-focus-south-china>
- 19 Akira Hiroyuki, *Two contrasting theories about China's provocative actions*, Nikkei Asian Review, August 29, 2016 <http://asia.nikkei.com/Politics-Economy/Policy-Politics/Two-contrasting-theories-about-China-s-provocative-actions>
- 20 Trefor Moss, *Behind Duterte's Break with the U.S., a Lifetime of Resentment*, Wall Street Journal, October 21, 2016 <http://www.wsj.com/articles/behind-philippine-leaders-break-with-the-u-s-a-lifetime-of-resentment-1477061118>
- 21 Richard J Heydarian, *Duterte Shakes Up Philippine Foreign Policy*, Asia Unbound, Council on Foreign Relations. October 3., 2016 <http://blogs.cfr.org/asia/2016/10/03/duterte-shakes-up-philippine-foreign-policy/>
- 22 Jim Gomez, *Philippines says US on its own in South China Sea Patrols*, December 8, 2016, PhilStar Global <http://www.philstar.com/headlines/2016/12/08/1651525/philippines-says-us-its-own-south-china-sea-patrols>

A Japan-India Partnership in Maritime-Asia



SATORU NAGAO

Satoru Nagao is Research Fellow at The Tokyo Foundation, Lecturer in Security at the Department of Political Studies at the Faculty of Law, Gakushuin University, and Research Fellow at the Japan Forum for Strategic Studies

In recent months, Japan-India cooperation in the maritime commons has been a subject of animated discussion in strategic circles. Following Indian Prime Minister Narendra Modi's visit to Tokyo in November 2016, there is speculation that India and Japan might strike up a dynamic partnership in the littoral-Southeast Asia.¹ New Delhi and Tokyo have been active security players in Asia, with growing maritime presence in their near-seas. The Indian Navy and Japanese Self Defence Maritime Force have in recent years drawn closer, as evidenced by the increasing complexity to the Japan India Maritime Exercises (JIMEX) and exercise-MALABAR, where Japan is now a regular partner.²

Tokyo has also sought to expand its defence trade with India, with a reported bid to export the US-2i amphibious aircraft to India, as also to undertake construction of maritime infrastructure³, most notably in the Andaman and Nicobar Island (ANI). According to recent news reports, Japan is seeking to extend its financial support via the Japan International Cooperation Agency (JICA) to upgrade naval air bases and construct new signals intelligence stations along the ANI chain, with the goal of monitoring Chinese submarine activity in the region. The eventual aim is to integrate the new network of sensors into the existing Japan-US "Fish Hook" Sound Surveillance System (SOSUS) network.⁴ This would boost India's trilateral cooperation with the Japan and United States in countering China's assertive maritime policy in the Indo-Pacific region. The two countries have agreed to strengthen their maritime cooperation in the wider maritime commons.

Are Tokyo and New Delhi, in fact, going to expand their cooperation in the South China Sea?

Informed sources say, they well might. During Modi's visit to Japan, a joint statement categorically mentioned the importance of South China Sea security for both states. "The two Prime Ministers," the statement read, "stressed the importance of resolving the SCS disputes by peaceful means, in accordance with universally recognised principles of international law including the UNCLOS."⁵ This was much in

The South China Sea is important for Tokyo and New Delhi for the critical sea lanes of communications that it hosts. The waterway enables regional energy and trade flows and commerce and is a key determinant for Indo-Pacific prosperity.

keeping with a recent trend where India-Japan joint communiqués have taken care to mention the dispute in the South China Sea. Indeed, during Premier Shinzo Abe’s visit to New Delhi in December 2015, the SCS found clear reference in the joint statement. “The two Prime Ministers,” the joint statement read, “noted the developments in the South China Sea and called upon all States to avoid unilateral actions that could lead to tensions in the region.”

Interestingly, neither Japan nor India belongs to the Southeast Asian littoral. They also know well that their maritime cooperation mostly leads to an acerbic reaction from China, with calls to “countries from outside the area to stop pushing for the militarization of the South China Sea”. Despite the fact that the SCS remains an “outside” issue for Japan or India, both countries strangely display a keen interest in its affairs.

In order to decipher this peculiar dynamic, it is useful to pose three key questions: How important is South China Sea geographically for Japan and India? How do the territorial disputes in the critical waterway impact New Delhi and Tokyo’s geopolitical interests? What kind of security role do Japan and India see themselves playing in the South China Sea?

How important is South China Sea geographically for Japan and India?

Whereas 97 percent of India’s international trade by volume is conducted by sea, almost all of Japan’s international trade is ocean-borne. As energy-poor countries heavily dependent on oil imports from the Persian Gulf region, the two are seriously concerned by mercantilist efforts to assert control over energy supplies and transport routes. The maintenance of a peaceful and lawful maritime domain, including unimpeded freedom of navigation, is thus critical to their security and economic well-being.

In essence, the South China Sea is important for Tokyo and New Delhi for the critical sea lanes of communications that it hosts. The waterway enables regional energy and trade flows and commerce and is a key determinant for Indo-Pacific prosperity. SLOCs, however, are not the only reason why the South China Sea issue is important. The SCS is also important because it rims Southeast Asia, which is a strategically critical space. Situated in the middle of the Indo-Pacific, Southeast Asia is one of the most commercially dynamic regions in the world, and for many the epicentre of world geopolitics.

But Southeast Asia is peculiar because it isn’t really an integrated region. Unlike South Asia, where a power like India can be a net security provider, the picture in the Southeast Asian littorals is a lot more complicated. The fact that it is surrounded by great powers like China, Japan US, Australia and India, means Southeast Asia remains highly vulnerable to the great

power game.

In many ways, Southeast Asia can be compared with Central Europe during the Cold War. The combination of East and West Germany, Poland, Czechoslovakia, Hungary and other European states was not quite politically integrated but still a strategically important place, surrounded by great powers. Like Southeast Asia today finds itself caught between China and the US, Europe in the Cold War, suffered due to the great power game between the US and Russia.

And yet, the South China Sea is unique because it involves overlapping territorial claims that pose a threat to geopolitical stability. Today, within its arbitrary “nine dotted line” (9DL), China claims more than 80 percent of the SCS. Despite the Permanent Court of Arbitration’s rejection of its historic rights within the 9DL, Beijing continues to build artificial islands in the South China Sea. Both Tokyo and New Delhi have worries about China’s power projection in the Southeast Asia and the Eastern Indian Ocean, using its new bases in the South China Sea. Some even fear that China could deploy submarines and launch fighter jets from its Spratlys islands and attempt to obstruct all foreign warships and airplanes in the region.

Yet, China’s provocative behaviour is not entirely unanticipated. In August 2013, during a symposium in Tokyo, Japanese Defence Minister Itsunori Onodera’s statement had carried a prescient warning. Onodera had reiterated that “China has and will make more and more advancement into the seas.” In the absence of military capability, the Japanese veteran political pointed out, China tries to promote dialogue and economic cooperation, setting territorial rows aside. But when it sees a chance, any daylight between a nation and its ally, China makes blunt advancements.⁶ Just as Onodera had predicted, Southeast Asian countries today have neither the capability nor their main ally’s support to deter Chinese assertiveness.

How does China’s assertiveness in the SCS impact New Delhi and Tokyo’s geopolitical interests?

Much of China’s maritime expansion is driven by its need to create a new military balance in the Asia Pacific. Since the 1950s, when China captured half of Paracel islands following France’s withdrawal from Vietnam, Beijing has dominated the Southeast Asian littoral. China occupied another half of the Paracel islands in 1974 just as the Vietnam War ended and America withdrew its troops from the region. After the Soviets’ own withdrawal from Vietnam in 1988, China moved to attack the Spratly islands. Even in the Philippines, the PLA Navy occupied the Mischief Reef, immediately after the US vacated Philippines bases.⁷

Both Tokyo and New Delhi have worries about China’s power projection in the Southeast Asia and the Eastern Indian Ocean, using its new bases in the South China Sea.

It is the militarisation of the PLA that worries Japanese and Indian strategic experts. Over the past two decades, China's submarine arm has grown from a few to almost 42 submarines. During the same period, Singapore acquired five submarines, while Vietnam got four, and Malaysia, two.

Both Japan and India know they do not individually possess the capability to counter China. In the absence of hard military power, they are both dependent on the United States to maintain a favourable military balance in that region. But the US is itself a declining power in the Asia-Pacific. Since 2000, the US Navy has acquired only 13 submarines while its total number of submarines has declined from 127 in 1990 to 73. Although US submarines are far more sophisticated than China's, their numerical shortfall is significant.⁸

In addition, there is growing sense that given its problems in other parts of the world, Washington cannot afford to focus all military power in Asia. Like smaller Southeast Asian countries, Japan worries about a scenario where US involvement in conflicts in the Eastern Europe and Middle East might leave Washington with a shrunken appetite for issues in the South China Sea.

This is not to say that the United States is vacating the Asia-Pacific anytime soon. Far from it. With the Trump team announcing plans to increase the number of warships from 276 to 350 for greater deployments in the East, not many doubt Washington's Pacific ambitions.⁹ Japanese analysts do wonder, however, how America's approach to the Asia-Pacific can "remain one of commitment and strength and inclusion" if it is, in the words of US Secretary of Defense Ashton Carter, simultaneously "countering Russian aggression and coercion in Europe, checking Iranian aggression and fighting ISIL's malign influence in the Middle East." It does appear odd that Washington today has neither the budget nor the warships for a sustained presence in the Asia-Pacific.¹⁰

Japanese analysts wonder how America's approach to the Asia-Pacific can "remain one of commitment and strength and inclusion"

What kind of security role do Japan and India see themselves playing in the South China Sea?

For India and Japan, it appears, maintaining the military balance in Asia is a priority. Both sides would like to be ready for a worst-case scenario. In view of declining US military power, the best method for maintaining military balance is to cooperate with other regional powers. Each would ideally like to see China as a responsible power in the Pacific. India might particularly expect China to accept the Arbitral Tribunal's decision in the same way that New Delhi embraced a tribunal ruling on the India-Bangladesh sea boundary dispute in 2014 in favour of Bangladesh. But modifying its strategic behaviour might be hard for Beijing, not least because the stakes for China appear much higher.

Strategic security in Asia has for a long time been underwritten by the United States. Its bilateral partnerships with Japan, South Korea, the Philippines and Australia have been critical in providing maritime security in the regional commons. Now that these alliances appear to be fraying, regional states need to develop closer intra-ties to tide over strategic uncertainties. Indeed, in the absence of preponderant US military power, the old system of strong bilateral ties with Washington system is not enough to maintain peace and order in this region; which is why Japan, India, Australia and Singapore are cooperating in the maritime realm. Their mini-lateral interactions could potentially culminate in a collective security system.

In this regard, the Japan-India-Australia Trilateral Dialogue held in June 2015 is a particularly significant initiative. By keeping the United States out of their grouping, the three sides sought to independently evolve a system of responsibility sharing in the maritime commons. It is now hoped that Vietnam, Indonesia and other Southeast Asian states would separately join the system to maintain the military balance with China. This is not to suggest that there is a deliberate attempt to isolate China. Regional states are open to working alongside China, provided it agrees to acting responsibly under an agreed set of rules. Indeed, India, the US, Australia and other Southeast Asian countries have also all held joint exercises with China, even cooperating in areas such as anti-piracy patrols along the coast of Somalia. These examples indicate that this cooperative multilateral security framework is a good way to both establish strategic balance and defuse emerging tensions.

Japan-India Operational Cooperation

For a few years now, India has vigorously pursued the ‘Look East Policy’ as a guiding foreign policy principle. Under its broader ambit, New Delhi has supported regional security efforts in Southeast Asia. An updated version—the ‘Act East Policy’—unveiled by Prime Minister Narendra Modi in 2014 seeks to widen India’s operational presence in the Asia-Pacific. Besides operational forays in Southeast Asia, New Delhi has also been providing support to regional armed forces. From providing training to Malaysian fighter pilots, to facilitating maintenance of Indonesian Air Force fighters, and offering air and land bases for the training of Singaporean forces, India has sought to expand its security contribution in maritime-Asia.

Japanese experts say Tokyo regards India’s defence relationship with Vietnam as a model to be followed in New Delhi’s security ties with other Southeast Asian countries. Alongside training naval submarine crews and fighter pilots, New Delhi has undertaken to supply spare parts of Soviet-origin warships and jets for the Vietnam Navy and Air Force, even donating some patrol ships.

An updated version—the ‘Act East Policy’—unveiled by Prime Minister Narendra Modi in 2014 seeks to widen India’s operational presence in the Asia-Pacific.

For its part, Tokyo has been indirectly supporting Southeast Asia – providing maritime equipment including anti-piracy system, tsunami warning system, cyber defence system, and also building infrastructure. In addition, the Abe administration has also been donating maritime platforms to these countries. In the recent past, Tokyo has donated patrol ships to Vietnam, the Philippines, Malaysia and Indonesia, also leasing a TC-90 training plane to the Philippines.

In effect, India-Japan cooperation is a potential source of strength for Southeast Asian countries. If their navies could forge a closer partnership in the South China Sea they could provide critical balance to the Asia Pacific region. Japan's superior infrastructure-building capability could help install operational systems -- such as air control equipment -- in the South China Sea, while India's significant personnel training capacity can be leveraged to benefit regional maritime forces.

To this end, India and Japan seem to be moving towards a favourable arrangement – albeit progressively. In January 2014, when PM Abe visited Delhi, the two prime ministers “welcomed the launch of a bilateral dialogue on ASEAN affairs.” Japan and India have been encouraging practical trilateral strategic dialogues and have supported the idea of security through mini-laterals with Vietnam, Singapore, Philippines, Indonesia, and Malaysia. Their active collaboration will result in more effective sharing of information, enabling Southeast Asian countries to better identify particular challenges in the maritime commons.

Connectivity and Infrastructure Building

India believes it is important to cooperate not only in the security realm but also in building connectivity and infrastructure in the wider Asian commons. During his last visit to Tokyo, Modi emphasised the importance of an inclusive outlook, to help create connectivity and build regional capacity on the inter-linked waters of the Indo-Pacific. India's outlook complements Japan's ‘Free and Open Indo-Pacific Strategy’¹¹ in the Indo-Pacific region that has been driving regional prosperity. Underlining the intent of the two Asian powers, the statement reminded that Japan's presence in the Malabar naval exercise “underscored the convergence in our strategic interests in the broad expanse of the waters of the Indo-Pacific.”¹²

Clearly, maritime power is not the only area where Japan must compete with China. Beijing has steadily become one of the biggest donors of development aid in South East Asia. By providing massive aid and assistance to countries like Cambodia and Laos, Beijing has successfully created a rift within ASEAN members on how to tackle the South China Sea dispute.

To counter China's growing influence, Japan has had to dig deep into its pockets, sponsoring entire networks of development projects in South East Asia. In this, it has sought support from regional states. Prime Minister Abe has also proposed a new initiative combining "human, financial and technological resources" to build up connectivity in South East Asia, including through Japanese Overseas Development Assistance projects.

In contrast, India's development aid strategy for ASEAN has been relatively modest. While it has undertaken some infrastructure projects in Myanmar, New Delhi's connectivity initiatives in Southeast Asia have been limited to involvement in the Asian Highway Project sponsored by the Asian Development Bank (ADB). Importantly, India and Japan have expressed a willingness to include Africa in their development strategy, by implicitly setting up a rival to China's 'One Belt, One Road' project. By improving connectivity between Asia and Africa, through realising a free and open Indo-Pacific region, India and Japan hope to provide substantive maritime goods in Asia, also countering growing Chinese influence in the region. This is one reason why synergy between India's 'Act East' Policy and Japan's 'Expanded Partnership for Quality Infrastructure (EPQI)' is a good idea. Japan has set aside \$700 billion over five years to finance infrastructure projects across the world under the EPQI initiative, which was unveiled at the -7 Summit in 2016.

For India, it is encouraging to see Japan's interest in developing Iran's Chabahar port, which will provide an alternate sea route to land-locked Afghanistan instead of depending on Pakistani ports. India also welcomes the prospects of cooperation with Japan for the promotion of peace and prosperity in South Asia, particularly Afghanistan.

The Way Forward

At a time when Asia faces the prospect of power disequilibrium, India and Japan, as natural allies, must help promote regional stability by adding concrete strategic content to their fast-growing relationship. Both sides are aware that the balance of power in Asia will be determined by events in East Asia and the Indian Ocean. As things stand, it is the developments in the South China Sea that threaten to have the most long-lasting impact on regional security.

Tokyo and New Delhi have an important role to play to advance peace and stability and help safeguard vital sea lanes in the wider Indo-Pacific region. Since Asia's economies are bound by sea, maritime democracies like Japan and India must work together to help build a stable, liberal, rules-based order in Asia.

Bilaterally, Japan and India need to strengthen their still-fledgling

India and Japan have expressed a willingness to include Africa in their development strategy, by implicitly setting up a rival to China's 'One Belt, One Road' project.

strategic cooperation by embracing two ideas, both of which demand a subtle shift in conventional thinking and policy. Their first objective would be to build interoperability between their naval forces. Together, Tokyo and New Delhi can undergird peace and stability in the Indo-Pacific region.

- 1 Prakash Panneerselvam, *Modi's Trip to Tokyo: Takeaways for India-Japan Relations*, The Diplomat, November 17, 2016 at <http://thediplomat.com/2016/11/modis-trip-to-tokyo-takeaways-for-india-japan-relations/>
- 2 *India-Japan relations: the China factor*, South Asia Monitor, February 1, 2014 <http://southasiamonitor.org/news/india-japan-relations-the-china-factor/sl/7241>; also Prashant Parmeshwaran, *Japan to Join US, India in Military Exercises this Year*, The Diplomat, July 1, 2015 <http://thediplomat.com/2015/07/japan-to-join-us-india-in-military-exercises-this-year/>
- 3 Satoru Nagao, *The Importance of a Japan-India Amphibious Aircraft Deal*, The Diplomat, December 12 2016 (Tokyo) (<http://thediplomat.com/2016/12/the-importance-of-a-japan-india-amphibious-aircraft-deal/>)
- 4 Abhijit Singh, *India's "Undersea Wall" in the Eastern Indian Ocean*, Asia Maritime Transparency Initiative, June 15, 2016 <https://amti.csis.org/indias-undersea-wall-eastern-indian-ocean/>
- 5 Devirupa Mitra, *South China Sea: India, Japan Indicate Dispute Should Be Resolved Under UN Law*, The Wire, November 12, 2016, at <https://thewire.in/79646/india-japan-modi-abe-visit-south-china/>
- 6 Harumi Ozawa, *Japan Could Be 'Main Player' in Asia Conflict: Minister*, Defense News, August. 26, 2013 <http://www.defensenews.com/article/20130826/DEFREG03/308260005/Japan-Could-Main-Player-Asia-Conflict-Minister>
- 7 Ministry of Defense, *Government of Japan "China's activities in the South China Sea* (Japanese), December 22 2015 http://www.mod.go.jp/j/approach/surround/pdf/ch_d-act_20151222.pdf
- 8 ViceAdmiral Joseph Mulloy, deputy chief of naval operations for capabilities and resources, told that China has more diesel- and nuclear-powered submarines than the United States in February 2015. *China submarines outnumber U.S. fleet: U.S. admira*," Reuter, February 25 2015 <http://www.reuters.com/article/2015/02/25/us-usa-china-submarines-idUSKBN0LT2NE20150225>
- 9 Yeganeh Torbati and Phil Stewart, *Trump could easily erase much of Obama's foreign policy legacy*, Reuter, November 10 2016 <http://www.reuters.com/article/us-usa-election-obama-foreignpolicy-idUSKBN1352UE>
- 10 Ashton Carter, *Meeting Asia's Complex Security Challenges*, The IISS Shangri La Dialogue: The Asia Security Summit June 4 2016. <https://www.iiss.org/en/events/shangri%20la%20dialogue/archive/shangri-la-dialogue-2016-4a4b/plenary1-ab09/carter-1610>
- 11 Ministry of Foreign Affairs, Government of Japan, *Japan-India Joint Statement*, November 11 2016 <http://www.mofa.go.jp/mofaj/files/000202950.pdf>
- 12 Raija Susan Panicker, *Full Text of PM Narendra Modi's Statement During His Visit To Japan*, NDTV, November 11, 2016 <http://www.ndtv.com/india-news/full-text-of-pm-narendra-modis-statement-during-his-visit-to-japan-1624339?browserpush=true>

This compilation looks at emerging security dynamics in the Southeast Asian littorals and their impact on Asian geopolitics and security. It presents country perspectives of the strategic implications of recent developments in the South China Sea, their implications for maritime security and the regional balance of power. After an Arbitral Tribunal pronounced a verdict in July 2016, invalidating China's historical rights in the South China Sea, there is fear that the dispute might turn into a flashpoint for conflict. Beyond dwelling on the strategic deadlock that characterises the current state-of-play, contributors outline possible solutions and a way forward.
