

## High Tide in the South China Sea: Why the Maritime Rules-Based Order is Consequential

PRATNASHREE BASU

**ABSTRACT** The neighbouring waters around China have been marked by competing maritime territorial claims for decades. In recent years, tensions have intensified as Beijing's inroads have increased in pace and extent. Today China's economic security is closely linked to the South China Sea. With Beijing repeatedly engaging in acts that are widely seen as violative of international maritime law, there is a growing need to underscore the significance and utility of a rules-based order that governs and protects the interests of sovereigns. This brief assesses the need for such an order and the importance of designing sufficient incentives that would deter infringement.

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## INTRODUCTION

The maritime space of the Indo-Pacific, particularly the South China Sea,<sup>a</sup> has become a highly contested one in the past decade because of the expanding footprint of China. Beijing has progressively made inroads into a maritime area which is beyond not only China's territorial waters but also its Exclusive Economic Zone (EEZ), largely for two reasons: first, the country's rising energy requirements demand that it diversifies its sources. The waters of the South China Sea (SCS) are rich in hydrocarbons, oil and gas and much of this is still underexplored along with a seabed rich in natural resources. A greater political reach over this area would enable China to draw on the reserves it requires. Second, one of the world's busiest shipping routes, the east-west route, passes through this area. Trade being essential for an economy like China, there is a lot of dependence on seaborne freight, and therefore in China's perspective, it is vital that navigation along this shipping route remains in its favour.

To safeguard these interests, China has embarked on a comprehensive strategy that includes controlling different points along the shipping route; establishing its presence in areas of the South China Sea for the eventual drawing of energy; and building a naval presence. These developments have provoked apprehensions among both littorals as well as countries external to the region, as all of them have an interest in ensuring that commercial and military access across the Pacific remains unimpeded. Concerns regarding China's

forays have amplified as they are, in many ways, a direct challenge to the world order. The need for safeguarding the rules-based order is thus paramount. This brief outlines the prevailing circumstances in the South China Sea, analyses the responses to the same, and argues for the strengthening of the rules-based order.

## CHINA'S CONDUCT IN THE SOUTH CHINA SEA

### Energy and Trade

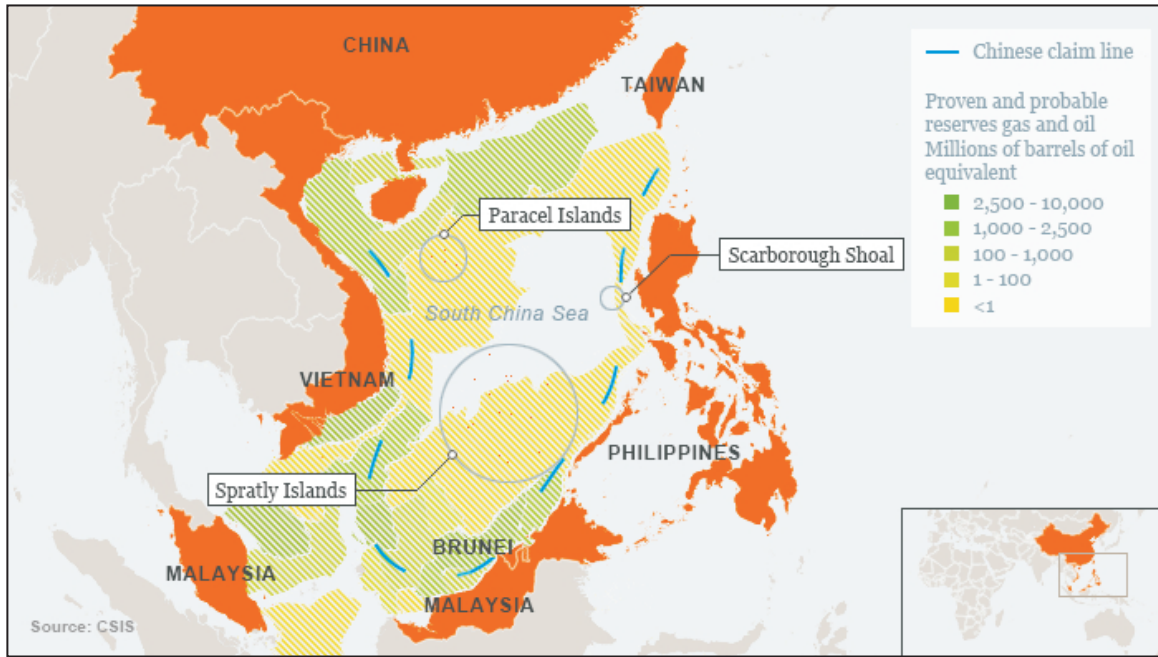
Securing supplies of energy has been a vital issue for China since the early 1990s as mounting demands began to outweigh production.<sup>1</sup> Since then, the country's reliance on the SCS has grown, and it has been conducting surveys and explorations in the area for oil and gas reserves. While there are varying estimates of proven and probable gas and oil reserves in the SCS, it is undisputed that the region is home to hydrocarbon reserves. Nevertheless, global oil companies have shown little interest not only because of the complex political nature of the region but also as the estimated reserves are insufficient.<sup>2</sup>

From China's perspective, however, tapping the reserves is beneficial because they are in immediate geographical proximity and would complement its domestic sources. China has thus sought to gain physical control over the area which is otherwise known as the 'U-shaped line.' It is this unilateral approach that has contributed to gnawing misgivings among littoral states.

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a The South China Sea is part of the eastern Pacific Ocean and stretches from the Karimata and Malacca Straits to the Strait of Taiwan.

Map 1: Proven and probable reserves of oil and gas in the South China Sea

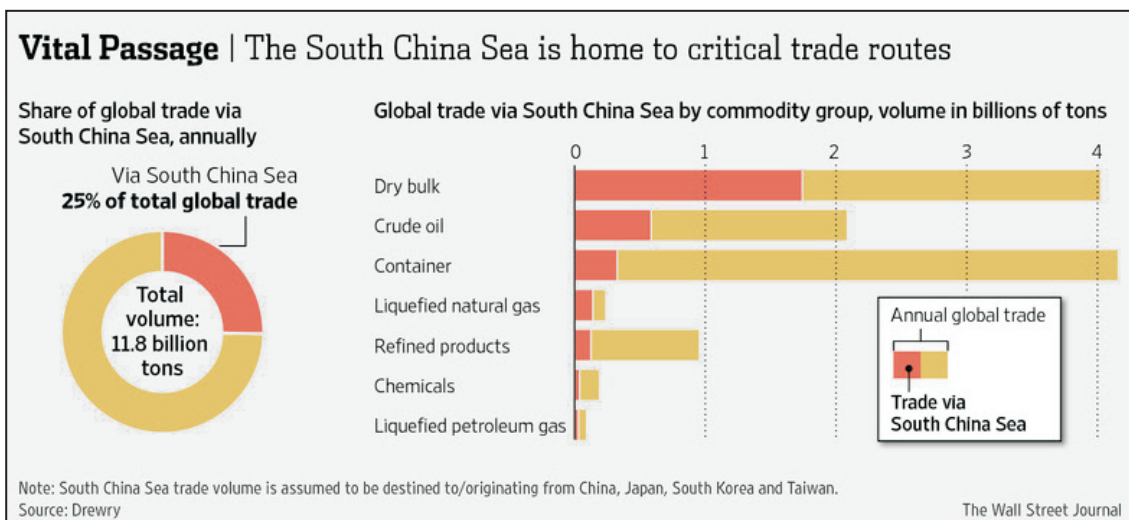


Source: Wesley Rahn, "Will the US fight for oil in the South China Sea?", Deutsche Welle, 22 February 2017, <https://www.dw.com/en/will-the-us-fight-for-oil-in-the-south-china-sea/a-37677319>

Another aspect of the country's reliance on the SCS has to do with the fact the establishment of greater reach and control over these waters would ensure uninterrupted imports of energy via the Strait of Malacca. The United Nations Conference on Trade and Development (UNCTAD) estimates that approximately 80 percent of global trade by

volume and 70 percent by value is dependent on maritime waterways; a third of global shipping passes through the SCS.<sup>3</sup> In 2016, trade worth around US\$ 3.4 trillion transited these waters. An earlier estimate of US\$ 5.3 trillion, made in 2010, failed to consider how much of that trade was maritime in nature and in fact crossed the SCS.<sup>4</sup>

Figure 1: Share of Global trade via the South China Sea

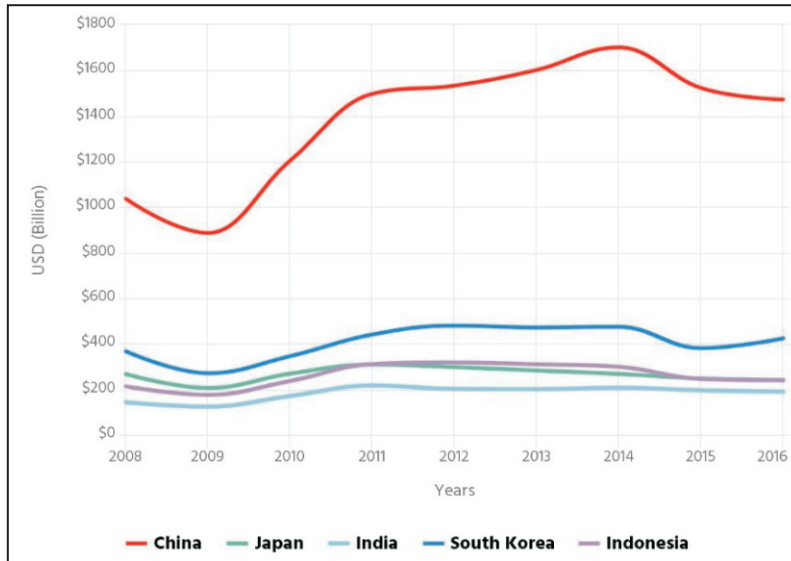


Source: Brian Spegele, "Competing Stakes Hamper Development of South China Sea", The Wall Street Journal, 13 May 2014, <https://www.wsj.com/articles/competing-stakes-hamper-development-of-south-china-sea-1399996465>

The top exporting countries through the SCS include China, South Korea, Singapore, Thailand and Vietnam, while the top importing countries are China, Hong Kong, Singapore, South Korea and Vietnam. (See Figure 2) Among the top economies of the

world, China’s reliance on trade via the SCS is clearly high.<sup>5</sup> It is estimated that around 80 percent of Beijing’s imports of oil reach the country through the South China Sea after passing the Strait of Malacca.<sup>6</sup>

**Figure 2: Trade of Key Countries South China Sea**



Source: “How much trade transits the South China Sea?”, China Power Project, [https://chinapower.csis.org/much-trade-transits-south-china-sea/?utm\\_content=buffer2dfa4&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://chinapower.csis.org/much-trade-transits-south-china-sea/?utm_content=buffer2dfa4&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

**Table 1: Percentage of Trade via the South China Sea**

Country	% Share of World GDP	Trade Value through South China Sea (USD billions)	South China Sea Trade As % of All Trade in Goods
United States	24.5	208	5.72
China	14.8	1470	39.5
Japan	6.53	240	19.1
Germany	4.58	215	9.00
United Kingdom	3.46	124	11.8
France	3.26	83.5	7.77
India	2.99	189	30.6
Italy	2.45	70.5	8.14
Brazil	2.37	77.3	23.4
Canada	2.02	21.8	2.67

Source: “How much trade transits the South China Sea?”, China Power Project, [https://chinapower.csis.org/much-trade-transits-south-china-sea/?utm\\_content=buffer2dfa4&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://chinapower.csis.org/much-trade-transits-south-china-sea/?utm_content=buffer2dfa4&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

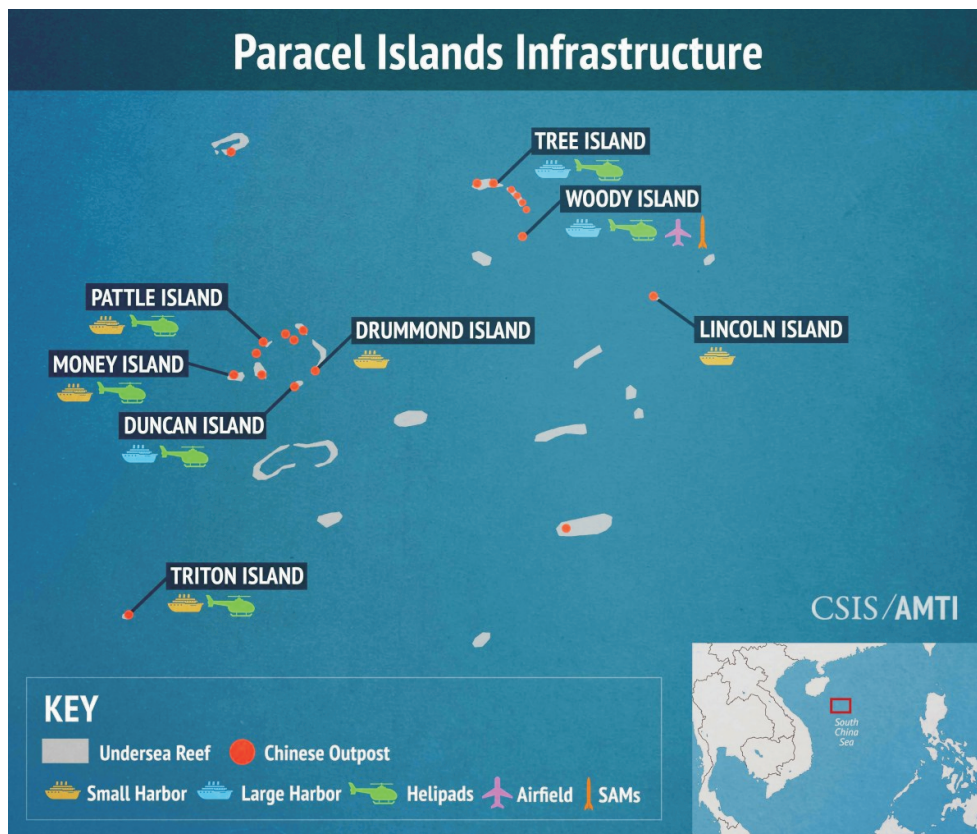
### ‘Salami Slicing’

China’s reliance on the SCS has resulted in its determined projection of control in the area, primarily by establishing physical presence in the many small islands, shoals, atolls and other rock formations that dot the SCS. Beijing has set about methodically testing international response to its actions. For instance, it seized the Scarborough Shoal from the Philippines in 2012 and did not receive any real censure from the US or other nations. It then deployed the Tianjin dredger to Cuarteron Reef and the Fiery Cross Reef where the dredger stayed stationary without any activity for weeks at a time; once again, the international community hardly gave it notice.

China would eventually commence its construction activities in the region, beginning

with the Johnson South Reef where the Tianjin dredger created 11 hectares of land in a matter of four months in 2013.<sup>7</sup> Since 2012 when the Chinese government established an administrative base for the SCS at Sansha city on Woody Island (part of the Parcel group of islands) and approved the establishment a military garrison,<sup>8</sup> Woody island has become the hub for maritime law enforcement by Beijing, operations by the maritime militia, and the functioning of surveillance and information networks.<sup>9</sup> Developmental work on the island continues on Sansha. Fiery Cross, Mischief and Subi reefs are already fully equipped with civilian and military facilities.<sup>10</sup> With military buildings, port facilities, airstrips, logistical warehouses and other installations, Beijing has considerably enhanced its ability to project strategic power across these waters.

Figure 3: Chinese Infrastructure in the Parcel Islands



Source: “China’s Continuing Reclamation in the Paracels”, Asia Maritime Transparency Initiative, 9 August 2017, <https://amti.csis.org/paracels-beijings-other-buildup/>

Analysts have observed how China employs “intimidation” to further its interests. Hayton, for instance, writes that “China has increased the degree of intimidation that it is prepared to use to achieve its strategic objectives.”<sup>11</sup> Indeed, in 2007, 2011, 2012 and again in 2017, Beijing has threatened energy companies, used force against Vietnamese oil survey vessels, and threatened to attack Hanoi’s positions in the Vanguard Bank in the SCS if exploration and production (E&P) work was not brought to an end.<sup>12</sup> In 2018, for the second time in less than a year, the Red Emperor oil and gas development project off the coast of Vietnam worth US\$ 200 million was suspended after Beijing deployed a naval flotilla close to the drilling location. The project, part of Block 07/03 in the Nam Con Son basin,<sup>13</sup> would have revived Hanoi’s oil and gas exploration which have been decelerating and helped provide respite to a strained domestic economy. China’s intimidation has reached a point where the politburo in Vietnam is debating which cost is higher: that of confronting Beijing or cancelling the contract for the project.<sup>14</sup>

Chinese actions comprise of frequent periodic acts of hostility in the region. Widely referred to as “salami slicing”, this strategy leads to a constant state of competition which, over time, has had a debilitating impact on resources and regional stability.

### **Regional and Extra-Regional Responses**

These acts have been met with an assortment of responses from the international community, ranging from official statements denouncing them to countries like the US conducting Freedom of Navigation Operations

(FONOPs). The US carried out five FONOPs in 2018, four in 2017 and two each in 2016 and 2015.<sup>15</sup> Another important indicator of the tenuous situation is the increased military spending by all littoral states of the SCS; China itself has increased spending by 132 percent.<sup>16</sup> In a first since the end of the second World War, the US Coast Guard joined the US Navy to counter ‘gray-zone’ operations<sup>17</sup> by the Chinese maritime militia as part of US treaty obligations with the Philippines after a Filipino fishing vessel was sunk by the militia in June 2019. The incident sparked sharp protests in Manila as it indicated an elevated level of impudence by China and the questionable role of the country’s maritime militia.<sup>18</sup>

The SCS is vital to US interests in terms of its treaty alliances and broadly, the preservation of the regional security architecture. The principle of freedom of navigation, which has a long history of about four centuries, forms the core component of the US narrative together with the non-use of coercion for the settlement of disputes. Interestingly, there lies a fundamental difference in the interpretation of this principle between the US and China.<sup>19</sup> The latter follows a limited definition which applies only to commercial ships while the US definition also includes naval vessels and aircraft. Therefore, China’s support of freedom of navigation is expedient for its own interests and allows the country’s maritime militia to wander beyond its territorial waters. US strategy in the SCS comprises deterring China from additional constructions and declaring straight baselines around the island features that it claims while encouraging it to abide by internal maritime law and thus refrain from extra-legal actions.

Table 2: FONOPs in SCS in 2019 (as of September 2019)

Date	Locations in South China Sea	US Navy Ship
7 January 2019	Tree, Lincoln, and Woody islands Islands in Parcel	McCampbell (DDG-85)
11 February 2019	Mischief Reef in Spratly Islands	Spruance (DDG-111) and Preble (DDG-88)
6 May 2019	Gaven and Johnson Reefs in Spratly Islands	Preble (DDG-88) and Chung Hoon (DDG-93)
19 May 2019	Scarborough Shoal in Spratly Islands	Preble (DDG-88)
28 August 2019	Fiery Cross Reef and Mischief Reef in Spratly Islands	Wayne E. Meyer (DDG-108)
13 September 2019	Paracel Islands	Wayne E. Meyer (DDG-108)

Source: U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress, Congressional Research Service Report, 24 September 2019, <https://fas.org/sgp/crs/row/R42784.pdf>

The *Indo-Pacific Strategy Report* released in June 2019 by the Pentagon underscores “preparedness, partnerships and the promotion of a networked region for acting as a force multiplier”<sup>20</sup> in efforts towards reinforcing established alliances and engaging in deterrence where necessary. The report categorically identifies China as a revisionist power and therefore inimical to US interests. It also highlights the importance of ASEAN countries, India, Japan in the sustenance of a free and open Indo-Pacific region. The US, as well as Japan and Australia, place significant emphasis on India as the most proximate and capable country in the region. India’s endorsement of maritime freedom and security is reasonable; after all, the country’s Act East policy is centred on connectivity and commercial and strategic ties with ASEAN countries.<sup>21</sup> This complements the ASEAN countries also looking for a greater role India in the region as they seek to diversify their options in the wake of China’s increasing

influence in the region. As SCS is not within the country’s immediate area of interest, it has generally refrained from taking a position that would back any particular party. At the same time, however, the country has invested efforts in forging stronger ties with littorals of the SCS. India’s approach with respect to the larger Indo-Pacific region has favoured inclusivity and plurality while acknowledging that institutions and orders need to be “consultative and non-prescriptive, respectful of the region’s preference for consensus-based approaches.”<sup>22</sup>

The Pentagon report was followed in July 2019 by the release of China’s latest Defense White Paper, *China’s National Defense in the New Era*. It acknowledges the shifts underway in the global order which begets what the Paper refers to as mounting strategic challenges for China. At the same time, it classifies the Asia-Pacific as a “generally stable”<sup>23</sup> area and identifies US presence as unwarranted and

contributing to the complexities in the region. Similar to previous Papers, there is reiteration of China's commitment to peace and win-win cooperation but it also focuses on areas of military modernisation (though in not too much detail as is typical) and recognises the salience of necessary technological advances. In a departure from earlier versions, however, the Paper cites the reforms taking place in the country's defence forces and the outreach that the PLA is participating in. It also mentions the country's efforts towards enhancing regional cooperation.<sup>24</sup>

Notwithstanding the fact that Beijing's presence demands a greater degree of attention and where pertinent, more concern, there is evidence that other littorals are also bracing for defending their interests.<sup>25</sup> For instance, constitutional reinterpretations are being made by Japan that would permit flexibility in the use of defence capacities and military modernisations undertaken by Vietnam and the Philippines. Japan has also been nurturing its maritime outreach and diplomacy in the region, helping in the development of ports and remote islands in Indonesia and supplying military equipment and vessels to Vietnam and the Philippines.<sup>26</sup> Littoral states have generally reacted sharply and condemned China's actions. However, most of these nations are also economically dependent on China and possess limited resources to confront Beijing. This is also the reason why China insists on bilateral negotiations where the littorals favour a multilateral approach.

In 2013, the Philippines moved the Permanent Court of Arbitration at The Hague against China's occupations of reefs and rock

formations that were within its EEZ. Although the court ruled in favour of Manila, China disregarded the verdict, challenging the very basis of the claim and the jurisdiction of the court. While pressures and intimidations serve to deter countries that are ill-equipped to resist, the disregard for international law challenges the fundamentals of the global order. The lingering uncertainty about the extent of US involvement has resulted in a greater interest in institutional mechanisms like the Association of Southeast Asian Nations (ASEAN).

Since the late 1990s, ASEAN members and China have been trying to work out a Code of Conduct (CoC) for the South China Sea – the closest iteration of a rules-based order – which would delineate the rules and responsibilities for the promotion of maritime cooperation. The CoC framework is yet to be settled considering the varied interests and orientations of all concerned parties. There is also a notion that the CoC will be figurative in nature<sup>27</sup> and lack the efficacy to bind parties to the rules and norms it establishes. While the momentum of the CoC over the years has been inconsistent and there is ambiguity regarding its legal status and purpose, the fact that the need for discussions on the CoC is recognised is important in pushing for the adoption of rules.<sup>28</sup>

At the East Asia Summit in November 2019, member countries emphasised the implementation of the CoC in its entirety and the requirement of maintaining a favourable approach for CoC dialogues. The ongoing negotiations for the CoC underscores the requirement of a legal system that would define user rights and responsibilities. In this



regard, the Code for Unplanned Encounters at Sea (CUES) adopted in 2014 by the Western Pacific Naval Symposium offers a useful template for “establishing international standards in relation to the use of the sea.”<sup>29</sup> Addressing navigational issues, CUES offers rules related to safety and communications procedures, guidelines for safe distance and speed, among others. Understanding that for a busy sea space like the SCS, a format like the CUES may prove to be beneficial, ASEAN countries and China developed CUES for the region in 2016 to reduce incidents of naval friction.

The *ASEAN Outlook on the Indo-Pacific*, released in June 2019, acknowledges the geopolitical shifts that characterise the region and underscores the strengthening of an ASEAN-led regional architecture for the promotion of cooperation. Typically, as a regional bloc, the ASEAN has been reluctant to take a position that may be perceived unfavourably by Beijing. As Acharya notes, there is no mention of the term “free” —which Beijing perceives as being directed against it—anywhere in the document.<sup>30</sup> Thus, the release of this document shores up support for the preservation of stability in the region and is a significant indicator of the organisation’s support for freedom of navigation and the sustenance of maritime safety, without particularly taking sides.

The responses of littorals as well as external powers have been largely episodic and reactive in nature. This is because there is as yet no design about any substantial measure that may be undertaken as a response to China’s overtures. As the core issue is legal, geographical, strategic and to some extent,

historical in nature, there are complexities in working out a common response. Moreover, as the interests, inclinations and capacities of different countries vary, there is also a gap in terms of how China’s advances can be tackled. The absence of concrete countermeasures not only emboldens China but also expands the threshold of what is understood as acceptable international behaviour.

John Chipman identifies this trend as ‘tolerance warfare’: “as the persistent efforts to test tolerances for different forms of aggression, to push back lines of resistance, probe weaknesses, establish new facts on the ground and thereby gain advantage over hesitant opponents.”<sup>31</sup> Chipman further notes that the “strategic arrival” of China “comes with the added weight of civilization.”<sup>32</sup> For China, the SCS issue is rooted in history and one that is intrinsically associated with its ambitions of becoming *haiyang qiangguo* (maritime superpower/strong maritime power) and sense of national pride. This observation is in line with Beijing’s aspirations of reestablishing its former glory and influence as the ‘middle kingdom,’ in the run-up to the centennial of the CCP’s rule in 2049.

## THE NEED FOR A RULES-BASED ORDER

Because of the growing apprehensions in the past decade, littorals as well as external powers have repeatedly called for adherence to a rules-based order. As stated in the 2016 Australian Defence White Paper, a rules-based order can be understood as “a shared commitment by all countries to conduct their activities in accordance with agreed rules which evolve over time, such as international law and regional security arrangements.”<sup>33</sup>

Such an order is underpinned by a system of global governance which has evolved since the end of World War II and comprises the foundation of global interactions. In other words, it indicates a framework that permits and facilitates cooperative efforts for the mitigation of global concerns and the arbitration of disputes.<sup>34</sup> While the principal intent of such an order is noble, the establishment and functioning of the same is often determined greatly by geo-political factors.<sup>35</sup> As Hall and Heazle write, these rules are adhered to because of the belief that they underwrite benefits while not jeopardising sovereign interests; they are equitable and fair and are not directed solely for the preservation of great-power interests; and they contribute to the stability of global affairs.<sup>36</sup>

In the maritime domain, countries are guided by the 1982 United Nations (UN) Convention on the Laws of the Sea, with the International Tribunal for the Law of the Sea and the Permanent Court of Arbitration having jurisdiction over disputes. The negotiations and final agreement of the principles of UNCLOS was protracted, with the majority of countries being party to the process. The ensuing agreement sought to establish balance and equity in the governance of the maritime sphere with defined rights for the exploitation of marine resources. A key understanding is that the ocean spaces were a common resource “available to all through a graduated system of rights – the further seaward from the baseline, the more diluted these rights become.”<sup>37</sup>

Despite its inclusive nature, however, the UNCLOS has legal nuances that can often be

ambiguous. For instance, UNCLOS establishes a 12-nautical mile territorial sea and a 200-nm Exclusive Economic Zone and this applies to islands; a rock, meanwhile, is only entitled to a territorial sea. Similarly, islands and rocks are subject to claims of sovereign acquisition but reefs and other low-lying formations are not. Therefore, there may be room for contesting understandings of legality for different land formations in maritime spaces. Nevertheless, these ambiguities do not create room for appropriation or unwarranted utilisation; nor do they justify them.

One of the primary limitations of UNCLOS is that its rules and norms are not enforceable. While cases of infringement by any country can be brought to the International Tribunal for the Law of the Sea (ITLOS), the court cannot put into effect its verdict if the country in question chooses not to conform. This is precisely what transpired in the case that the Philippines brought before the court against China. There are also ambiguities inherent in the UNCLOS provisions which, together with the complex geography of Southeast Asia, contribute to procedural intricacies as well as difficulties in interpretation among coastal states, user states and archipelagic states on issues of territorial baselines and navigation and transit rights.<sup>38</sup> While the UNCLOS provides an important foundation for maritime issues, it requires modifications that will enable it to serve the evolving necessities of maritime commerce and strategy.

Another challenge that often features in debates surrounding the efficacy of UNCLOS and broadly, a rules-based order, is the fact that the US is yet to sign the treaty. This,

**Table 3: Maritime Zones and their Entitlements**

Maritime zone	Extension seaward from baselines	Entitlements
Internal Waters (ie historical bays)	Located landward side of baseline	Full sovereign authority
Territorial Waters	12 nm	Set laws, regulate use, exploit resources, police zone. Foreign vessels permitted 'innocent passage'
Contiguous Zone	24 nm (overlaps territorial sea)	Enforce laws on pollution, smuggling, taxation, customs and immigration.
Exclusive Economic Zone (EEZ)	200 nm	Rights over all natural resources in the water column and seabed (ie fishing). Other states have rights of navigation, overflight, and the submarine pipes and cables
Continental Shelf	Up to 350 nm	Exploit resources in the seabed and subsoil (ie oil)

Source: Rebecca Strating, "Maritime Disputes and the Rules-Based Order", Australian Institute of International Affairs, 25 October 2018, <https://www.internationalaffairs.org.au/australianoutlook/maritime-disputes-and-the-rules-based-order/>

**Map 2: Territorial claims in the South China Sea**



Source: The Wall Street Journal, <https://blogs.wsj.com/briefly/2016/07/19/5-things-about-fishing-in-the-south-china-sea/>

despite the US having historically moulded the narrative on freedom of navigation and maritime safety and being an important party in the discussions that finally led to the agreement. There are two schools of thought in this matter. The first argues in favour of the US signing the treaty as it will boost US standing in terms of leadership and credibility, and enhance its ability to participate in multilateral negotiations under UNCLOS. This would serve to strengthen multilateral and bilateral partnerships. The other paradigm holds that signing the treaty will not bring about any substantial change in the advantages that US already enjoys; rather it would increase costs as the US would be bound by the norms of revenue-sharing requirements for seabed mining.

The challenge to the existing rules-based order is much deeper and highly political. Throughout history, the fundamental rules and norms of international law have been envisioned and interpreted by influential states in often incompatible ways. And these fundamental rules and laws which have more often than not been created as a result of conflict have in turn been challenged with the rise of a new order. What this implies is that states in position of power have interpreted and used existing legal systems in ways that would benefit their own interests.

As Ward writes, "...by giving special privileges to the victors, principally through veto rights held among a small group of permanent Security Council members, the UN reflected and perpetuated a certain historical circumstance: there was no formal institutional adaptation in its highest structures to account for a progressive

redistribution of international power, the rehabilitation of defeated countries, the rise of the decolonized world or the desire of emerging powers to assume international responsibilities commensurate with their heft. Rather than a mechanism for international governance, it remained an intergovernmental body through which states pursued their specific or collective priorities."<sup>39</sup>

This leads to the belief that the very concept of a rules-based order is flawed, and by extension, irrelevant as such an order will do little in the way of commanding adherence and meting out punitive measures otherwise.<sup>40</sup> Yet this view fails to take into cognisance that few instances of non-compliance do not outweigh the efficacy and utility of a system that governs state behaviour and interaction.

The attitude of Beijing towards the existing legal institutions and procedures is similar in that China has refused to acknowledge the jurisdiction of the International Court of Justice in the arbitration case brought to the Court by the Philippines. Repeatedly, China has maintained that its activities in the waters in the South China Sea are well within its territorial waters. Indeed, maps showing that the internationally disputed waters are Chinese territory have been published and released by China. Jorgensen therefore talks about the establishment of a "geolegal" order by China and for China as opposed to adherence towards the existing legal apparatus which is largely influenced by the west.<sup>41</sup> Jakobson and Medcalf note that there is a clash of perceptions regarding the presence of China and littorals in the SCS as interests

are deeply intertwined with perceptions.<sup>42</sup> The gaps exist, for example, in China's own approaches to the South China Sea which it perceives as its own territory and the Indian Ocean which the country insists should have free passage.<sup>43</sup>

Nevertheless, the argument that the UNCLOS is a creation of the West does not hold as it has been negotiated and agreed to by over 150 countries including China, which was an active participant in the negotiations.<sup>44</sup> The history of the law of sea dates back to the early 17<sup>th</sup> century when Hugo Grotius first articulated that freedom of the sea was under the purview of international law. After the second World War, the old legal order which had survived since the time of Grotius began to fracture due to three simultaneous developments: the emergence of new liberated developing countries that felt the need to involve themselves in the making of maritime law; advances in technology; and concerns of littoral nations regarding fishing.<sup>45</sup> What followed was a long process of negotiations, culminating in the adoption of the UNCLOS in 1982 which replaced the "old legal order with a new, modern and more equitable order."<sup>46</sup>

The apprehension today is not that rules will collapse but rather that "fragmented and competing bodies of rules will emerge in which rights and obligations of states vary across regions, incapable of reconciliation within an agreed system."<sup>47</sup> Therefore, claims by China for altered rules and institutions of international law may not be a "threat to overturn the global legal order as a whole, but rather of fragmentation in areas crucial to Chinese security and strategic interests."<sup>48</sup> For instance, China asserts multilateralism but

practices it selectively preferring binary transactions where it holds asymmetric advantages.<sup>49</sup> The Belt and Road Initiative is a case in point. Official statements from Beijing related to the expansive land and ocean connectivity project talk about it being for the benefit and prosperity of who are party to the Initiative. As being witnessed in the case of Sri Lanka, for instance, the promise of infrastructure and connectivity have come at too high a cost.

China's assertions are weakening the very basis of what are understood as international rules of peace and security. At the same time, it is also unlikely that Beijing would contend for a competing world order simply because it does not often enjoy the degree of international goodwill that is necessary for shoring up support.

## CONCLUSION

Today's world comprises of extensive interconnections. Any particular conflict, therefore, has the potential to have a ripple effect on countries and institutions other than the direct stakeholders. It is therefore desirable that potential conflicts not be unnecessarily stoked as competition for the sake of it will only result in a strain on resources. At the same time, however, it must be considered that in the case of China, for instance, it has had a history of violating international norms.

A more constructive approach to making China comply is to put in place deterrence measures while providing sufficient encouragement so that it eventually recognises the framework of international law

and order. One way of achieving this is through stronger and more dynamic institutional mechanisms. More importantly, there should be efforts towards ascertaining areas of common interests which offer scope for China to contribute constructively in order to draw it into the global rules-based order and leverage it in a beneficial role.<sup>50</sup>


A recent report by Chatham House observes, “Where China’s interests align with those of the international community, there are opportunities for the country’s influence and economic power to strengthen the rules-based international order. Where they do not, states that traditionally support that order should join together to push back.”<sup>51</sup> Thus there are instances where China has been willing to cooperate and provide necessary resources such as global health and climate change.

The maritime realm is not an area where the interests of China and other nations are likely to converge. The premium for engaging in undertakings which are beyond the established legal purview should be made higher than constructive engagements that lie within the current framework. In other words, the question is whether it is possible for China to benefit from the existing, albeit evolving, rules-based order.

While countries involved have yet to arrive at practicable and effective measures, there is growing consensus that measures need to be undertaken. The real challenge is in judging China’s legitimate interests, how far they must be accommodated, and where the line must be

drawn.<sup>52</sup> This would prove an arduous task as Beijing will likely reject assessments of its interests.

The issue is therefore not so much about the legitimacy of a rules-based system of international engagement but rather whose rules those are. The US-led order has offered economic opportunity and strategic stability to many countries including littorals of the SCS. Countries that are used to the US-led order are feeling off-balance because the existing order is familiar and not in contravention to their worldviews. Today, however, in a scenario where the presence and extent of US influence is being debated, China has been presented with the opportunity to create a regional order that is convenient for its interests. The rhetoric of China becoming a “responsible stakeholder” may not be a useful construct for gauging its role, as witnessed in recent years.<sup>53</sup>

While the establishment of rules of engagement has always been defined by reckonings of power, in a firmly polar set-up, the influence of power stands to be diffused in nature. Moves that seek to unilaterally manoeuvre, impact and extract are likely to be met with countermoves that aim to reorganise and reassign governance. It is unlikely that a new rules-based order would emerge. What is more probable is a readjusted order that maintains the fundamentals of the existing adjustments in response to the requirements of a changing world. Going forward, what will matter is the worldview which is expansive, accommodating, fair and opportune. 

#### ABOUT THE AUTHOR

**Pratnashree Basu** is an Associate Fellow with ORF’s Strategic Studies Initiative and Maritime Initiative.

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