

ASIA PROGRAMME

# RECENT TRENDS IN THE SOUTH CHINA SEA DISPUTES

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The South China Sea has been a focal point of regional activity in Southeast Asia for the past few years. It has made headlines for multiple reasons, from the construction of artificial islands to provocative military exercises and encroachment. In the summer of 2016 the International Court of Justice at the Hague ruled against Chinese claims in the South China Sea, stating they had no legal founding, in the proceedings the Philippines had first filed against China in 2013.

What, then, is the South China Sea? In short, it is 1.4 million square miles of ocean and islands (with a cumulative land area of about six square miles) caught between the coasts of Vietnam, Malaysia, Brunei, the Philippines, Taiwan, and the southernmost Chinese province of Hainan. The two largest island chains, known as the Spratlys and the Paracels, are largely uninhabited and carry no real importance in either size or resources. The real treasure is found below, where the waters of the South China Sea can run as deep as 4000 meters, giving enough room for nuclear submarines to maneuver freely and, more importantly, stealthily, while preliminary tests indicate that the area may be rich in unproved oils and hydrocarbons.

For the nations surrounding it, the South China Sea is the number one food source, totaling 8% of the world's total commercial fishing output, and is responsible for feeding several of the most populated nations today, from the 249 million people in Pakistan to the 1.3 billion citizens of China. It is home to the single largest marine biodiversity, 40% of the world's tuna, and accounts for 22% of the average Asian diet. The South China Sea is undeniably essential to the Southeast Asian way of life, and yet it is besieged by its inhabitants by way of overfishing, resource exploitation, land reclamation and various other pollutions. Today, 40% of the sea's fish stocks have disappeared, while 70% of the remaining coral reefs are categorized as being in “fair to poor” conditions due in no small part to the reclamation works and dredging activities carried out by China, Vietnam, and the other claimant states<sup>1</sup>.

Additionally, fears of an arms race increase as China, Vietnam, Malaysia and the Philippines all publicly increase their military buildup and exercises in response to each other's claims and reclamation efforts. With the arrival of the politically belligerent President Duterte in the Philippines, the increasing military budget in Vietnam, and the as of now unpredictable implications of a Donald Trump presidency, the future of the South China Sea is murky at best. As tensions rise in these waters, the role of each surrounding nation and power is becoming increasingly critical. The United States Seventh Task Fleet present since 1947, originally charged with maintaining peace and

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1 Johnny Langenheim, “Preventing Ecocide in South China Sea”, *The Guardian*, <http://www.theguardian.com/environment/the-coral-triangle/2015/jul/15/preventing-ecocide-in-south-china-sea>, July 15, 2015.

stability in the region, is now being challenged by Chinese military advancements and is seen by some as kindle for the fire burning in Southeast Asia.

The main conflict in the South China Sea can be traced as far back as 1279, when China drew up a territorial map of its influence which included the whole of the South China Sea. Since then, influence in the region has switched hands between regional powers and, later, colonial states. However, most would agree that the bulk of the issues are a result of the San Francisco Treaty of 1951 following Japan's defeat in World War II. In the terms of surrender, Japan gave up its rights to its islands in the South China Sea and effectively left a power vacuum in the region. No one nation was explicitly given sovereignty over these waters, and China pressed their advantage by submitting, in 1946, the now infamous “nine-dashed line” claim covering the near-entirety of the South China Sea<sup>2</sup>.

The United States Seventh Fleet positioned itself one year later, 1947, in Pacific waters near Japan and Guam and has looked to the defense of Japan, South Korea, and the Philippines ever since. Vietnam then submitted its own claim in 1954, backed by historical data dating from the 15<sup>th</sup> and 17<sup>th</sup> century as well as a French colonial territory records. Filipino claims are on shakier ground, having only settled part of the Spratlys after World War II. The Philippines put forth the argument of “prescriptive acquisition”, basing their claims on their usage of the island settlements they have installed in the Spratlys and the essential strategic and economic role they play.

The rest of the claimants are limited by their own size and power. Taiwan, the official heir to the Nationalist China that submitted the original claim in 1947, presents the same nine-dashed claim and controls the largest natural islet in the Spratlys. Meanwhile, Malaysia and Brunei have submitted claims to islands off their respective coasts based on the principles of continental shelf and exclusive economic zones. These claimant states stand no chance in a test of military might with China and while Vietnam is fervently increasing its deterrence capacities, these nations have also opted to wield the law as their weapon of choice, a move that was spearheaded by the Philippines.

## **UNDERSTANDING THE PERMANENT COURT OF ARBITRATION'S RULING**

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The Montego Bay Treaty of 1982, part of the United Nations Convention on the Law of the Sea (UNCLOS), was the most important event for maritime law and a turning point for disputes in the South China Sea. Among the many concepts and rules brought forth by the UNCLOS, it established the rights of a sovereign state over the continental shelf

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<sup>2</sup> By U.S. Central Intelligence Agency - Asia Maps — Perry-Castañeda Map Collection: South China Sea (Islands) 1988, Public Domain, <https://commons.wikimedia.org/w/index.php?curid=17066897>

surrounding it and the creation of Exclusive Economic Zones (EEZ). Put simply, there are three zones of sovereignty off any nation's coast:

- *Territorial waters*: These are the waters within 12 nautical miles (22 kilometers) off a coastal state, and fall within total jurisdiction and sovereignty of the state in question.
- *Contiguous Zone*: Found 12 nautical miles further, the coastal state can continue to enforce their law in this zone but only in four categories: immigration, pollution, taxation, and customs.
- *Exclusive Economic Zones*: Finally, EEZs are at the heart of the debate in the South China Sea. An EEZ guarantees exclusive exploitation rights over any resource within a 200 nautical mile radius of the coastal state.

Claimants have thus used these zones to extend their reach in the South China Sea. By claiming the reefs and atolls in the Paracels and Spratlys as islands, they hope to legally extend their territory and push the extent of their EEZ's starting point much farther than if it respected their actual continental coastline. UNCLOS defines an island as “a naturally formed area of land, surrounded by water, which is above water at high tide”, while also stating that “Rocks which cannot sustain human habitation or economic life of their own shall have no Exclusive Economic Zone or continental shelf”<sup>3</sup>.

As a result, the creation of artificial islands over a natural base of rocks and atolls sets out to not only establish strategic footholds in the sea itself, but also to find a legal loophole in this UNCLOS definition by artificially sustaining life and habitations through constructs and supplies on these “new”, upgraded or wholly man-made, islands. Although China had been painted out to be the main culprit in these constructions, and is indeed responsible for the largest projects, Vietnam, the Philippines, and Malaysia had all been constructing on or around these rocks as well, albeit on a lesser scale.

In 2013, the Philippines submitted a case to the International Court of Justice's Permanent Court of Arbitration in The Hague. It challenged China's maritime claims and the actions it has taken in the South China Sea. Following this, China accelerated its construction and deployment in the South China Sea and created landmasses in the span of a few months, sometimes just weeks, including the construction of 3 airstrips. This was done in part to change the “facts on the ground”, but also to avoid having to sidestep international law if the ruling did not end in their favor, choosing instead to complete the construction before the verdict could even drop. On July 12<sup>th</sup> 2016, the International Court ruled in favor of the Philippines and declared the nine-dash line claim as invalid under international law. In addition, the tribunal ruled that none of the islands in the

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<sup>3</sup> United Nations Convention on the Law of the Sea, Article 127.

Spratlys, both natural and newly man-made, fell under the UNCLOS definition of an island and thus do not serve to extend the Exclusive Economic Zone of any nation with claims to these islands<sup>4</sup>.

This ruling was seen as a great victory for the Philippines and as a strong basis for the settlement of disputes in the region going forward. The feeling was not shared by Chinese officials, who immediately reacted stating that the tribunal's award has no binding force, and that China would neither accept nor recognize it. Although the ruling is legally binding, there are no actual means in place to enforce the decisions, and nobody strong enough to impose them on the Chinese People's Liberation Army Navy (PLAN). With satellite scans showing that several Chinese installations in the South China Sea are now equipped with point defense systems and the deployment of the first Chinese aircraft carrier, the Liaoning, in the contested waters over the last week of 2016, it has become clear that China is looking to test the incoming American president Donald Trump as well as the other regional claimants.

Chinese president Xi Jinping had previously stated there was no intention to militarize the installations in the South China Sea, now a fleeting ideal. The Philippine's legal victory is coupled with the arrival of President Duterte's intentions to pull away from the United States and warm up to China, paving the way for negotiations and concessions that were not on the table mere months ago. The situation seems to have turned on its head compared to barely one year past, and these changes to the playing field may very well be the first of many heading into 2017 where the Donald Trump administration will truly begin, and the ASEAN chairmanship rotates to Manila with President Duterte at the helm.

## THE PHILIPPINE PIVOT

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The relationship between the Philippines and the United States is an exceptional one, ranked among the very rare “special relationships” that America holds. In 2016, the Filipino defense budget was slated to increase by 25%, pushing it over the 500 million dollar mark. Across the sea, the Chinese defense budget hovers around 130 billion dollars and rising. Despite this, the previous Philippine President Benigno Aquino was counted among the most outspoken of officials who denounced Chinese action and claims in the South China Sea. He reaffirmed the basis of the US-Philippine bilateral relationship with the 2011 Manila Declaration, had appealed to the U.S.S North Carolina during the 2012 Scarborough Shoal standoff with the Chinese PLAN, and, in 2013, renewed the Mutual Defense Treaty originally signed with the United States in 1951.

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4 Jane Perlez, “Tribunal Rejects Beijing's Claims in South China Sea”, *New York Times*, <http://www.nytimes.com/2016/07/13/world/asia/south-china-sea-hague-ruling-philippines.html? r=0>, July 12<sup>th</sup> 2016.

Many headlines would have readers believe that the end of this special relationship is looming as current Philippine President Rodrigo Duterte has repeatedly insulted President Obama and threatened to back out of various bilateral agreements, notably in matters of defense. Over the past few years, the Philippines had been increasing its deterrence capabilities to ward off Chinese aggression; it had acquired patrol boats from Japan and France as well as training facilities and coastal radar installations from the United States. Together with Vietnam, Brunei and Malaysia, they concerted their efforts to bring this conflict into the limelight and have engaged in the “three warfares” that China excels at: psychology, media, and legal warfare.

Today, the populist President Duterte wasted no time following his election in stating that he would make normalizing relations with China a priority. During an October 2016 trip to Beijing, President Duterte met with Chinese President Xi Jinping and signed 13 bilateral cooperation documents, famously announcing a “separation” from the United States. It is important to note that both Duterte himself and several official spokesmen have gone on record to say that the sometimes outrageous comments made by President Duterte were more to grab the attention and get people to start listening rather than insult other parties and shake up relations. The re-balancing of Philippine foreign policy towards China can be seen as a move for the Philippine President to reclaim more autonomy and independence in how it handles its state-to-state affairs, a move that nations of Southeast Asia have all been working towards. On the other hand, Duterte's resentment towards the United States is both personal yet seemingly rooted in a string of experiences with the current Obama administration, having congratulated President-elect Trump on his victory. This friendlier approach means that the arrival of a new American president and a new set of ambassadors could pave the way for a renewed positive relationship between President Duterte and the United States of America<sup>5</sup>.

As it stands, the United States remains the Philippines premier defense ally and largest foreign direct investor. Perhaps more important is the special place the United States holds in Filipino society today. America is viewed very favorably not only among the Philippine bureaucracy and elite, but by the general population while China is largely viewed negatively in public opinion<sup>6</sup>. In October 2016, Philippine Defense Secretary Delfin Lorenzana publicly stated that while President Duterte often made grandiose statements concerning the United States without consulting his cabinet, the current Philippine-U.S defense relationship and schedule was fully functioning. Currently, military officials from the Philippines have reaffirmed their intention to maintain close relations with the United States, but have announced a scaling back of military joint exercises for the 2017 year from the 13 that were planned to 6 or 7. At the same time,

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5 Prashanth Parameswaran, “The Limits of Duterte's US-China Rebalance”, *The Diplomat*, <http://thediplomat.com/2016/10/the-limits-of-dutertes-us-china-rebalance/>, October 24<sup>th</sup> 2016.

6 Prashanth Parameswaran, “Will Duterte End the US-Philippines Military Alliance?”, *The Diplomat*, <http://thediplomat.com/2016/10/will-duterte-end-the-us-philippine-military-alliance/>, October 27, 2016.

Russian warships are now visiting the Philippines and talks of arms sales have opened up between the Philippines and Russia. In addition to these developments, Russian Pacific Fleet Deputy Commander Eduard Mikhailov publicly stated he was confident that the future holds tighter cooperation between not only the Philippines and Russia, but also China and Malaysia. Realistically, however, the Philippine's military is among the weakest in Southeast Asia and a radical departure from American aid would not serve their goals of political independence further. The biggest loss of this unexpected Philippine presidency going forward will be that the previously loudest claimant is now downplaying the importance of the South China Sea issues and has the potential to shift ASEAN priorities away from it<sup>7</sup>.

## THE ROLE OF REGIONAL ACTORS AND ASEAN

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Vietnam now runs the risk of standing alone in calling out for a stronger U.S position in Southeast Asia. Of all the active claimants, Vietnam is the actor most invested in defense and deterrence capabilities and has seen its defense budget increase yearly since 2003. It has expanded its fleet through deals with Russia, the United States and even India. Most of the ships and submarines bought are dated, however, and this military buildup pales in comparison to the Chinese PLAN not just in numbers but also technologically. To make up for this disparity Vietnam is extremely proactive in its diplomacy and has tightened cooperation between itself and both American and Indian navies in the form of joint exercises and, more recently, a 500 million dollar credit from India to Vietnam to further deepen defense cooperation. Vietnam is aware that it cannot rely on India to halt China's rise by any means, the credit was accompanied by the signing of 12 treaties including a 15 billion dollar target for bilateral trade, currently sitting at 9 billion. By increasing ties with India, Vietnam hopes to adopt a similar approach as their neighbors in moving away from China and the U.S to gain in autonomy. For now, and the past 12 years, China has been Vietnam's premier trade partner for an estimated trade worth anywhere between 60 to 90 billion dollars, a far cry from the 15 billion mark it hopes to achieve with India<sup>8</sup>.

As for the remaining claimants, Brunei has been mostly quiet on the matter, seemingly content with stating that it has faith in the ability of China and ASEAN to further provide the means to settle the disputes. Malaysia increased its defense budget by 10% in 2014 and is undergoing considerable modernization efforts, but has signed a treaty increasing its naval cooperation with China as recently as November 2016.

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7 Manuel Mogato, David Brunnstrom, "Philippines, U.S. Agree to reduce joint military drills: Philippine general", <http://www.reuters.com/article/us-philippines-usa-defence-idUSKBN13H0UW>, November 22, 2016.

8 Manoj Joshi, "Vietnam Will Never be for India What Pakistan is to China", <https://thewire.in/63871/vietnam-will-never-india-pakistan-china/>, September 9<sup>th</sup> 2016.

ASEAN as a whole is now the only local counterweight to China's presence in the region, and it has no mechanisms in place to investigate the issues that arise in the contested waters, ranging from environmental pollution to blockades and attacks on fishermen from all claimant states. With 5 trillion dollars in trade passing through the South China Sea every year, ASEAN has a responsibility to protect these economic interests and the environment they find themselves in. Despite a strong showing at the 22<sup>nd</sup> ASEAN Regional Forum in 2015, during which a united front presented its intention to settle disputes in the South China Sea despite China explicitly stating it did not wish to discuss the matter, ASEAN has shown itself to be incapable of showing leadership and adapting its needs to today's political context and challenges. This will remain extremely difficult to envision while Duterte's Philippines chairs ASEAN for the next year, potentially pushing the South China Sea outside of the agenda altogether.

Unfortunately ASEAN's decision making process depends on a consensus being reached among its members, an increasingly tall order when most of its members are entirely dependent on China for their development and trade. Cambodia and Laos, for example, have decided to sideline themselves in this conflict due to their almost complete dependence on a smooth Chinese partnership, officially throwing their support in with China's claims. Simply put, China is ASEAN's number one trade partner, from Singapore to Vietnam, and going against China would spell misery for most of its members to downright bankruptcy for a select few. Until the member states of ASEAN can all be on equal standing, in their dependence not only to China but the United States as well, the consensus necessary to take concrete action in settling the South China Sea disputes is unlikely to be found<sup>9</sup>.

Today, there are anti-aircraft guns installed on all seven of China's islands in the Spratlys, breaking Xi Jinping's pledge to not militarize them, and the Court of Arbitration's ruling goes wholly ignored. China continues to insist on bilateral negotiations with the other claimants for two reasons. First, China is vastly superior to the other claimant states across the board and can simply strong arm their way through any one-on-one negotiation. Secondly, bilateral negotiation limits the United States' ability to get involved. Multilateral negotiations, such as through ASEAN, would be too much regional pressure and plays against China's currently very favorable position.

## CONCLUSION

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The Obama administration's Asia-Pacific pivot is, on the whole, seen as a failure. To say that it served no purpose would do it a disservice, but the general argument finds it to be “too little, too slowly”. The situation in the South China Sea has been acknowledged by the United States as a danger and a priority, the Maritime Security Initiative is a

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<sup>9</sup> Linh Tong, “The ASEAN Crisis Parts 1-2-3”, *The Diplomat*, December 2016.

testament to this. In a bid to stand up for the freedom of navigation and communication lines in this region, the Initiative was created to let regional states sort out their own claim and make sure navigation in these waters remained open. These operations were going well, and the situation seemed to be the complete opposite barely a year ago, with the aforementioned strong ASEAN showing and the Philippine's victory at The Hague. Additionally, Japan and Taiwan have been issuing bolder statements regarding China's claims and ramping up military exercises in the disputed waters, a surprise involvement from Japan who is trying to counter Chinese influence in the region and in its own East China Sea conflict<sup>10</sup>.

On the long term, however, the Asia-Pacific pivot also consisted of fostering closer diplomatic ties with the rising giant that was China, meaning that these separate but very much intertwined goals would eventually butt heads. Walking the fine line between defending its interests in the South China Sea while trying to gain a new partner in China would eventually lead the United States to have to make a choice, and priority was ultimately ceded to the diplomatic goals. With most of the claimant states quieted through economic dependence or simply a radical change of leadership, China's control of the South China Sea is now seemingly a question of *when* rather than *if*. Whatever the end result, the United States' reputation, and consequently its soft power, has greatly suffered in the region. Pacific nations now look to keep a healthy distance between the United States and themselves in part to bolster their own national identity and political compass, but also because the United States is simply not considered as reliable as it once was. President-Elect Trump's decisions to upset Chinese officials regarding Taiwan and the South China Sea before even being sworn in are being heralded as the beginning of worsening relations with China, but Chinese Officials are famous and infamous for their pragmatism. Both countries are currently far too dependent on one another to let diplomatic spats hinder their extremely productive relationship ; however, with the looming death of the Trans-Pacific Partnership (TPP) and the Seventh Fleet's inability to deter Chinese PLAN operations in the South China Sea it stands to reason that United States defense and diplomacy will have their work cut out for them in the coming year, where China may very well continue to gain the upper hand in the South China Sea and the broader Asian Pacific. ■

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10 Panos Mourdoukoutas, "South China Sea: Japan and Taiwan Send Their Own Strong Messages to Beijing", <http://www.forbes.com/sites/panosmourdoukoutas/2017/01/02/south-china-sea-japan-and-taiwan-send-their-own-strong-messages-to-beijing/>, January 2, 2017.

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### ASIA FOCUS

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