

# 'The South China Sea in 2020'

## Statement before the U.S.-China Economic and Security Review Commission hearing on "U.S.-China Relations in 2020: Enduring Problems and Emerging Challenges" Wednesday 9 September 2020

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### **1. What have Beijing's military and paramilitary activities in the South China Sea this year revealed about its objectives and hard power capabilities in the region?**

China's activities, both this year and over the longer term, indicate three main objectives in the South China Sea:

- To protect Communist Party of China (CPC) rule through the creation of 'strategic depth' around China's coastline, particularly through the construction of island bases in the Spratlys, and also the development of a submarine 'bastion' between the Chinese mainland and the Spratly Islands within which to deploy the country's strategic nuclear deterrent.
- To 'reclaim' (in its own view) 'lost' territories: Taiwan, the various rocks and reefs of the Spratly Islands and Scarborough Shoal.
- To extract resources (oil, gas, hydrates, fish, etc) from areas beyond its legitimate Exclusive Economic Zone (EEZ) entitlements through a strategy of coercive 'joint development'.

In addition to these 'whole state' objectives, various Chinese state agencies, notably the military, coastal provinces and state-owned enterprises, pursue their own objectives under the 'umbrella' of national interests. Promoting a 'patriotic' agenda in the South China Sea can be a means of gaining extra funding, political promotion or simply kudos for the agency or individual concerned – regardless of whether it actually advances the national interest. Successful Chinese bureaucratic actors are adept at instrumentalising state objectives for their own purposes and any single action is likely to involve elements of all four sets of objectives.

#### *Strategic depth and submarine bastion*

During 2020, China has stepped up its 'sea denial' strategic messaging towards the United States through the testing of anti-ship ballistic missiles (ASBMs) and associated public diplomacy. The first publicly-known tests of an ASBM in the SCS were conducted on 1 July 2019. The second set was conducted on 26 August 2020. These tests followed a high-profile US naval exercise, the first time two aircraft carrier groups had operated together in the SCS since 2014.<sup>1</sup>

The hawkish English-language news outlet 'Global Times' made sure that these missile tests and China's increasing capabilities received international attention by publishing articles with headlines such as 'Hopefully, 'carrier killer' missiles would never be used in the South

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<sup>1</sup> <https://news.usni.org/2020/07/06/u-s-china-navies-hold-dueling-exercises-in-the-south-china-sea>

China Sea' (28 Aug 2020)<sup>2</sup> and 'China has wide selection of anti-aircraft carrier weapons at South China Sea' (4 July 2020)<sup>3</sup>. The timing of the tests and the headlines suggest a concerted campaign to deter the United States from regarding the area within the U-shaped line as 'safe'. They also have the effect of alarming the region and thereby inducing criticism of the United States in some quarters.

In the same vein, Chinese media publicised joint anti-submarine drills which took place in March<sup>4</sup> and exercises led by the aircraft carrier *Liaoning* in April.<sup>5</sup> Chinese shadowing of transiting US warships in the SCS is now completely routine. It is clear that the Chinese navy has sufficient vessels in the right places to be able to maintain constant surveillance over the disputed islands and the spaces in between. China's second aircraft carrier, the *Shandong*, is currently undergoing sea trials and can be expected to operate in the SCS in the future. An increased Chinese carrier presence in the SCS will enable more frequent challenging of overflights by planes from the US and Southeast Asian countries.

In April the US State Department noted that China had "landed special military aircraft on Fiery Cross Reef". This would not be the first time that military transport aircraft had landed in the Spratlys. (One was used to evacuate injured construction workers in April 2016.) However, it does mark another step towards the normalisation of such visits by military aircraft.

It appears that China is rapidly developing the capabilities to exclude other navies from the South China Sea and that this will enable it to protect a manoeuvring space for its ballistic missile submarines within a 'bastion' defence.

#### *'Reclaiming' 'lost' territories*

China's efforts to build up its sea denial capabilities can also be seen as part of a long-term strategy in support of a future invasion of Taiwan. Artificial island bases in the southern part of the SCS combined with ASBM threats to US carrier groups would complicate American operations in support of Taiwan in the event of conflict.

China also maintains the long-term ambition to occupy every land feature within its 'U-shaped line' claim in the South China Sea. In April 2020 the State Council announced two new district councils in the South China Sea, as subsidiaries of the 'prefecture level city' of *Sansha*, established in 2012 to administer the SCS. One district is *Nansha* – 'South Sands' – to manage the Spratlys. The other is *Xisha* – 'West Sands' to manage the Paracel Islands and also *Zhongsha* – 'Central Sands' – the Macclesfield Bank and Scarborough Shoal.<sup>6</sup> Given that China does not occupy the Scarborough Shoal and that the Macclesfield Bank is entirely underwater, this move can be read as a statement of intent to both occupy Scarborough Shoal and build on the Macclesfield Bank.

China may try to extend its territorial claims to underwater features. In April 2020, the Chinese government announced names for 55 underwater features, all of them on Vietnam's continental shelf. It also continues to regard James Shoal, off the coast of Borneo, as the

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<sup>2</sup> <https://www.globaltimes.cn/content/1199208.shtml>

<sup>3</sup> <https://www.globaltimes.cn/content/1193485.shtml>

<sup>4</sup> <https://www.scmp.com/news/china/military/article/3076273/chinese-naval-planes-conduct-anti-submarine-drills-south-china>

<sup>5</sup> <https://news.cgtn.com/news/2020-04-13/Chinese-navy-conducts-regular-training-in-South-China-Sea-PEUvg6bvbi/index.html>

<sup>6</sup> <https://amti.csis.org/sansha-and-the-expansion-of-chinas-south-china-sea-administration/>

southernmost point of Chinese territory even though that feature is actually 22 metres below sea level.

### *Resource extraction*

During 2020 China has successfully coerced both Vietnam and the Philippines into abandoning or suspending their plans to develop offshore natural gas reserves and attempted to do the same to Malaysia. It has also engaged in 'punitive' oil survey work in the Exclusive Economic Zones (EEZs) of Vietnam and Malaysia: using seismic research vessels escorted by flotillas of coastguard and maritime militia vessels.

In March, the Chinese Ministry of Natural Resources announced a successful experiment had taken place between 17 February and 18 March to extract methyl gas hydrates from the sea floor of northern part of the South China Sea.<sup>7</sup> The process is currently far from commercial development but it provides another incentive for Chinese interests to want to control the sea's natural resources.

From 1 May until 16 August, China once again imposed its unilateral annual fishing ban in the area north of 12° North, ie north of the Spratly Islands.<sup>8</sup> While the geographical scope of the ban is rejected by the other claimant states there were no reports of confrontations during the period of the ban. However, a China Coast Guard (CCG) vessel rammed and sank a Vietnamese fishing boat with eight people on board near the Paracels on 2 April, triggering a protest. In an interesting development, the Philippine government issued a statement of solidarity.<sup>9</sup> A Philippine fishing boat was sunk by a Chinese vessel in June 2019.

In January 2020, an organised flotilla of at least 50 Chinese fishing boats sailed to the southern extremities of China's 'U-shaped-line' and operated within the EEZs of Malaysia and Indonesia under the protection of CCG vessels.<sup>10</sup> In response Indonesia deployed warships and summoned the Chinese ambassador in protest.

## **2. Do these activities reflect recent shifts in Beijing's policy or capabilities, or are they extensions of existing policy?**

Beijing's overall objectives in the SCS have remained consistent since at least the 1970s. Over the past decade, however, the pursuit of these objectives has become much more aggressive. This is for three main reasons:

- Increased capabilities and resources – The 18<sup>th</sup> CPC Congress in November 2012 mandated the leadership to transform China into a 'strong maritime power'. As a result, state agencies were allocated the funds and political support to construct and maintain artificial islands and naval bases far from home. The navy, coastguard and maritime militia forces were expanded. These two developments have enabled Chinese forces to deploy in strength in contested parts of the SCS.
- Greater central direction of state agencies – The appointment of Xi Jinping as CPC General-Secretary was followed by the imposition of stronger central control over hitherto rival maritime agencies. A decision to merge some of them was announced in

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<sup>7</sup> <https://www.scmp.com/news/china/society/article/3077156/china-extracts-861400-cubic-metres-natural-gas-flammable-ice>

<sup>8</sup> [http://www.xinhuanet.com/english/2020-05/01/c\\_139024157.htm](http://www.xinhuanet.com/english/2020-05/01/c_139024157.htm)

<sup>9</sup> <https://www.gmanetwork.com/news/news/nation/733212/philippines-calls-out-china-on-ramming-of-vietnamese-vessel/story/>

<sup>10</sup> <https://www.reuters.com/article/us-indonesia-china-southchinesea-waters/indonesian-military-says-chinese-vessels-left-disputed-waters-idUSKBN1Z8146>

March 2013 and since 2014, the China Coast Guard has been seen to act with greater assertiveness.

- Increased willingness to incur reputational costs – China appears increasingly unconcerned about international criticism. Actions such as sinking foreign fishing boats, threatening neighbouring governments over offshore energy developments and testing long-range missiles in the South China Sea have all generated ill feeling in the region yet China appears unconcerned. Where once the fear of public criticism seemed to restrain Beijing, this appears to be less and less true.

I do not believe that the recent increase in Chinese activity in the SCS has been a response to the COVID-19 pandemic. While the fight against the virus has distracted many states from focusing on foreign policy issues, I would argue that China's actions in the SCS are simply the continuation of the country's previous trajectory.

### **3. How does Beijing evaluate the success of these activities? Please address how China has used military and paramilitary coercion in your response.**

China's policy in the South China Sea is akin to a ratchet. It moves forward, sometimes takes a break but never moves backwards. Its pattern of behaviour, evident since the 1950s, has displayed a clear territorial agenda. It seeks ultimately to occupy every single land feature within the U-shaped line. Since the 1990s, when it added 'historical rights' to its legal strategy it has extended its agenda to include maritime resources outside its EEZ claim.

The Chinese leadership must be feeling relatively pleased with the outcome of its activities in 2020. Its strategic growth has continued, its ability to project force has strengthened and it has successfully coerced Vietnam and the Philippines into abandoning or suspending their oil and gas developments within the 'U-shaped line'. Malaysia, however, has continued with its offshore drilling.

Beijing has lost much goodwill in the region but incurred few substantive costs. Its neighbours still seek to trade with China and receive its aid and investment. Chinese actions have triggered an increasing US naval presence in the South China Sea, but Beijing's response has been to double down: make its military posture even more assertive and its public diplomacy more hawkish.

China's overall approach is one of 'active defence' in which its adversary is subjected to various forms of harassment with the objective of inducing some kind of hostile response, at which point the Chinese side may 'retaliate' with force while claiming to be responding to the other side's provocation. Different forms of the same strategy are used against China's two different sets of adversaries in the SCS. Neighbours are pressured with predominantly 'civilian' coastguard and militia while 'near peer adversaries' such as the United States and Japan are pressured with military forces.

### **4. What economic and political means has China used to coerce Southeast Asian neighbours in the South China Sea?**

It is important to recognise that China's methods of influencing its Southeast Asian neighbours involve a range of tactics beyond simply 'coercion'. Over the past few years, China has been able to fill a void left by the diplomatic and economic withdrawal of the United States. Some Southeast Asian analysts describe Beijing's approach as 'comprehensive' – in contrast to Washington's apparent single-minded focus on security. In the words of one regional commentator, "The US can sometimes appear like a one-trick donkey." Southeast Asian

colleagues sometimes characterise the Trump White House as lacking a systematic agenda beyond trying to undo the work of previous US administrations.

Some Southeast Asian contacts describe China as being a 'better neighbour' during the past four years, and particularly during the COVID-109 pandemic. It has remained engaged across all channels in a way that the US has not. While officials in Washington have spent time blaming 'the China virus', Chinese diplomats have pressed on with the work of building relationships: stepping up aid, diplomacy and communication with Southeast Asian governments. In fact, there are plenty of Southeast Asian officials who would describe China's presence in the region as 'positive'. In the Philippines, for example, officials say they have been impressed by Chinese diplomats willingness to listen and consider Philippine opinions during the pandemic. This contrasts with what another Philippine analyst described as their "wariness about unilateral American decisions on important matters. [The US offers] no trial balloons, no deep consultations, yet expects us to accept its leadership on the issue."

China's tactics in the SCS have become increasingly coercive over the past decade, however Southeast Asian claimants are prepared to see this as a problem that can be 'ring fenced' and managed. They are all apprehensive about China's behaviour, but they balance those concerns against other, positive, aspects of their relationship. The United States should not assume that confrontation at sea will necessarily make governments in Bandar Seri Begawan, Hanoi, Jakarta, Kuala Lumpur or Manila to hostile towards Beijing.

There is no doubt that, during the past year, China has engaged in coercion against energy companies and Southeast Asian governments. China Coast Guard vessels have harassed offshore hydrocarbon development and protected unauthorised commercial surveys in other countries' EEZs. From December 2019 until May 2020, the CCG ships *Haijiang 5202*, *5203*, *5305*, *5403* circled and obstructed the activity of the West Capella drilling rig off the coast of Sabah.<sup>11</sup> In response the US deployed, at different times, the USS Gabrielle Giffords, USS Montgomery and USNS Cesar Chavez and the USS America to observe developments. The Royal Australian Navy frigate HMAS Parramatta was also present for a time.<sup>12</sup> In a highly significant statement, the Commander of U.S. 7th Fleet, Vice Adm. Bill Merz stated "The U.S. supports the efforts of our allies and partners in the lawful pursuit of their economic interests."<sup>13</sup> This appears to be an attempt to get behind the needs of the Southeast Asian claimants and therefore a major evolution of the US position.

From mid-April until mid-May, the Chinese research ship *Haiyang Dizhi 8*, accompanied by several coast guard and maritime militia vessels, encroached into Malaysia's exclusive economic zone (EEZ) and carried out unauthorised seismic surveys. This involved sailing up and down an area of sea in a 'lawnmower' pattern for several weeks. This was a very similar episode to one in 2019 when the same survey ship had conducted surveys in a similar manner in Vietnam's EEZ. Both incidents seem to have been attempts to punish Malaysia and Vietnam for going ahead with offshore development in areas inside China's self-declared 'U-shaped line' claim. The Malaysian standoff ended after the *West Capella* left the area after completing its work on May 12, followed by *Haiyang Dizhi 8*, which left three days later.

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<sup>11</sup> <https://amti.csis.org/malaysia-picks-a-three-way-fight-in-the-south-china-sea/>

<sup>12</sup> <https://thediplomat.com/2020/06/chinas-tightening-grasp-in-the-south-china-sea-a-first-hand-look/>; <https://www.c7f.navy.mil/Media/News/Display/Article/2184969/us-navy-maintains-persistent-presence-near-west-capella/>; <https://news.usni.org/2020/05/13/maritime-standoff-between-china-and-malaysia-winding-down>

<sup>13</sup> <https://www.c7f.navy.mil/Media/News/Display/Article/2184969/us-navy-maintains-persistent-presence-near-west-capella/>

China's actions are already having negative effects on those countries' security. Fishing communities are losing income and governments are losing tax revenue. Vietnam has been unable to develop energy resources to meet the needs of its growing economy and the Philippines faces the loss of over 20% of its electricity generating capacity within a few years. Its Malampaya gas field is running out. It could be replaced by gas from the Reed Bank, but China is preventing that development, despite the 2016 Tribunal ruling.

## **5. How have these tactics changed in recent years?**

From 2006, until 2017, China's main method of coercion was to apply pressure directly upon international oil companies. Exxon, BP, Conoco, Pogo and Pearl Energy were all threatened with consequences for their operations in China if they persisted with developments off Vietnam. Most complied with the Chinese demands.

Tactics changed in 2017 because the Spanish company Repsol refused to back down. The Vice-Chair of China's Central Military Commission, Fan Changlong, visited Madrid in June 2017.<sup>14</sup> Sources reported that during this visit, General Fan warned Repsol against pursuing the development. However, Repsol had minimal interests in China and made clear that it intended to continue with its work. General Fan then flew to Hanoi where he had meetings with the Vietnamese leadership.<sup>15</sup> Almost immediately afterwards, the Vietnamese government ordered Repsol to stop its activities. My understanding is that Beijing made a specific threat to attack Vietnam's 'DK1' isolated stilt platforms that sit in shallow waters on the Vanguard Bank and nearby features.

In March 2018, just as Repsol prepared to drill again, China assembled a flotilla of 40 naval vessels, including its *Liaoning* aircraft carrier, near Hainan Island.<sup>16</sup> Shortly afterwards the Vietnamese government again cancelled Repsol's development work. Subsequent to both these cancellations Repsol has exited its interests in the disputed areas of the SCS. The Vietnamese government was obliged to pay over a billion dollars (US) to Repsol and its partners in compensation.

In 2020, the Vietnamese state-owned energy company PetroVietnam cancelled a planned development with its Russian partner Rosneft. This was for a drill that was to take place on a field that had been already operating for 18 years. The details have not been made public but Rosneft cancelled its contract with the drilling contractor, Noble.<sup>17</sup> Oil industry observers assume that this was again due to political pressure on the Vietnamese government.

It is worth noting in this context that in May 2017, President Rodrigo Duterte of the Philippines stated publicly that President Xi Jinping had threatened his country with war if it tried to develop gas reserves located under the Reed Bank in the SCS.<sup>18</sup>

## **6. How have other countries' changing economic interests in the region altered Beijing's ability to use economic coercion?**

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<sup>14</sup> [http://www.xinhuanet.com/english/2017-06/14/c\\_136365772.htm](http://www.xinhuanet.com/english/2017-06/14/c_136365772.htm)

<sup>15</sup> <https://thediplomat.com/2017/06/is-a-new-china-vietnam-maritime-crisis-brewing-in-the-south-china-sea/>

<sup>16</sup> <https://www.reuters.com/article/us-china-defence/exclusive-satellite-images-reveal-show-of-force-by-chinese-navy-in-south-china-sea-idUSKBN1H3135>

<sup>17</sup> <https://www.rfa.org/english/news/vietnam/oil-china-07132020173206.html>

<sup>18</sup> <https://www.reuters.com/article/us-southchinasea-philippines-china/duterte-says-chinas-xi-threatened-war-if-philippines-drills-for-oil-idUSKCN18F1DJ>

China has only rarely used overt economic coercion in the context of the SCS disputes. As outlined above, between 2006 and 2017 it pressured energy companies that were operating off Vietnam with considerable success.

The other example is the restrictions on banana imports from the Philippines imposed during the 2012 Scarborough Shoal crisis. The process had actually begun in March, before the standoff began, because of alleged contamination by pests. However, new quarantine measures were imposed on 4 May while the crisis was underway following alleged further discoveries of pests in other shipments. By May 12, 1,500 containers were being held in Chinese ports.<sup>19</sup> According to the Pilipino Banana Growers and Exporters Association, total exports of bananas to China by their members fell from just over 300,000 tonnes in 2011 (a record year) to around 150,000 tonnes for the following three years.<sup>20</sup> Exports only recovered following the election of President Duterte and his reorientation of Philippine foreign policy in 2016.

The form of economic sanctions most likely to be used by China is a tourism ban. This was a feature of its dispute with South Korea over the THAAD system in 2017/18 and was also used against Taiwan in 2019. However, it has not been used in the context of the South China Sea disputes. Given the current suspension of tourism because of the COVID-19 pandemic the use of such a tactic is highly unlikely.

In Southeast Asia, China's economic power is more likely to be wielded in the form of carrot than stick. Governments are keen to receive the benefits of trade and investment. In the words of one Southeast Asian analyst, "ASEAN leaders may be concerned about the regional imbalance of military power, but they are also fearful about economic performance at home." China also needs to trade and invest in order to maintain domestic growth. Since it enjoys huge trade surpluses with almost every ASEAN state it could be argued that China is also vulnerable to retaliation for any sanctions it might impose. In 2019, ASEAN became China's second-largest trade partner (overtaking the US).<sup>21</sup>

## **7. How has the new U.S. position on the South China Sea changed the regional dynamic?**

Southeast Asian analysts and policy advisors regard Secretary of State Michael Pompeo's statement of 13 July 2020 as both 'new', in that it was an explicit demonstration of commitment to the region, and 'not new' in that they had assumed that the contents of Secretary Pompeo's statement were already implicit in US policy. One official noted that, "ASEAN is itself starting to realize the importance of finding a collective voice. ... The evolution of positions is clear and unmistakable."

Some believe that US support for the principles of UNCLOS will give extra confidence to negotiators from ASEAN states in their dealings with China, particularly during their talks on a 'Code of Conduct in the South China Sea' (COC). However, these talks have already dragged on for more than twenty years and there is little sign that China is willing to make the concessions necessary to satisfy ASEAN governments' concerns.

The main concern of Southeast Asian governments is over the long-term durability of the United States' position in Southeast Asia. At the moment they are waiting to see the outcome of the US presidential election. They expect that a Biden victory will lead to more full-fledged

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<sup>19</sup> Michael Green, Kathleen Hicks, Zack Cooper, John Schaus, and Jake Douglas, *Countering coercion, Case 3: Scarborough Shoal Standoff*, CSIS 2017

<sup>20</sup> Pilipino Banana Growers & Exporters Association, Inc; 'Philippine Banana Exports to China: Dealing with Sanitary and Phytosanitary Concerns', presentation during the Roundtable Discussion on Philippine-China Trade and Investment Relations in Astoria Plaza, Pasig City on 11 June 2015

<sup>21</sup> <http://english.customs.gov.cn/Statics/f63ad14e-b1ac-453f-941b-429be1724e80.html>

'pivot' to Asia whereas a Trump victory will leave them more exposed while the US engages in a unilateral fight with China. In the words of one regional official "If the US demonstrates strong continuity, there will be no doubt that many countries... will become more confident about taking the Pompeo statement at face value."

### **8. How have ASEAN countries responded to the U.S. position?**

To date, there has been no collective ASEAN response to Secretary Pompeo's announcement. However, Vietnam is chair of ASEAN this year, and the collective statements it has drafted on the SCS have been more robust than in previous years, emphasizing in particular the importance of UNCLOS in guiding how should states behave.<sup>22</sup> ASEAN's next foreign minister's meeting (AMM) is expected to take place in September but it would be surprising if the ministers agreed a direct response to the US announcement.

Most ASEAN governments have simply noted the statement rather than overtly supporting or disagreeing with it. No ASEAN state is currently willing to take a leading position over the SCS. Until 2016, the Philippines was willing to make vocal criticism and other governments, notably Vietnam, provided quiet support. However, that changed in July 2016 after the election of Rodrigo Duterte and his 'pivot' away from the United States.

The new US statement provides an opportunity for a new beginning. It aligns well with the positions of ASEAN members and has been generally viewed as a welcome return to the normal process of diplomacy. US diplomats toured the region in advance of the statement, giving foreign ministries advance warning of its contents and allowing them to prepare responses.

#### *Brunei*

On 20 July, the Brunei Ministry of Foreign Affairs issued a rare statement declaring that the country "maintains its two-step approach in addressing the South China Sea". The first 'step' is bilateral discussions of specific issues between "the countries directly concerned". This is also the way forward preferred by Beijing. However, Brunei's insistence "that such negotiations on the South China Sea should be resolved in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and the rules and principles of international law" would not be to Beijing's liking. Brunei's second 'step' is that "all countries concerned need to promote a calm, peaceful and conducive environment, building confidence and enhancing mutual trust". Its statement stressed the importance of "the early conclusion of an effective and substantive Code of Conduct".<sup>23</sup>

#### *Indonesia*

Indonesia has not responded to the statement. A very brief statement from the US State Department, issued after a telephone conversation between Secretary Pompeo and the Indonesian foreign minister Retno Marsudi noted only that they spoke about, "the two countries' shared goal of respect for international law in the South China Sea." However, Ms Marsudi, in her comment on Twitter about the conversation, made no mention of the South China Sea.<sup>24</sup>

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<sup>22</sup> <https://abcnews.go.com/International/wireStory/asean-takes-position-chinas-vast-historical-sea-claims-71489629>

<sup>23</sup> <http://www.mfa.gov.bn/Lists/Press%20Room/news.aspx?id=841>

<sup>24</sup> [https://twitter.com/Menlu\\_RI/status/1290455276919951362](https://twitter.com/Menlu_RI/status/1290455276919951362)



### *Malaysia*

On 16 July, the Malaysian government issued a particularly bland statement in response to both Secretary Pompeo's announcement and the Chinese government's response to that. It noted that "Malaysia maintains its position that all parties must work together to ensure peace, security and stability in the South China Sea." It also highlighted the importance of UNCLOS in peacefully resolving the disputes.<sup>25</sup> Malaysia did, however, make a surprisingly dramatic submission to the UN Commission on the Limits of the Continental Shelf on 31 July protesting against China's claims in the South China Sea.<sup>26</sup> It asserted that, "the Government of Malaysia considers that the People's Republic of China's claim to the maritime features in the South China Sea has no basis under international law." Taken at face value, this could be taken as Malaysia rejecting Chinese sovereignty claims over every feature in the SCS, however Malaysian insiders advise that it was only aimed at features in the Spratly Islands.

### *Philippines*

The Philippines government issued a statement the day before Secretary Pompeo's – marking the fourth anniversary of the Arbitral Tribunal ruling.<sup>27</sup> It was the first time that the Duterte administration publicly called on China to comply with the ruling. It asserted that "Compliance in good faith with the award would be consistent with the obligations of the Philippines and China under international law, including UNCLOS to which both parties are signatories. ... The award is non-negotiable."

### *Vietnam*

Vietnam welcomed Secretary Pompeo's statement, although without explicitly saying so. On 15 July its Foreign Ministry spokesperson said, "Viet Nam welcomes other countries' positions on the East Sea issue that are in accordance with international law and shares the view [set out in the Statement of the 36th ASEAN Summit, held in June 2020 that] the UNCLOS sets out the legal framework within which all activities in the oceans and seas must be carried out."<sup>28</sup>

## **9. How do ASEAN partners each see the United States' military and diplomatic presence in the region with regard to their respective interests?**

Most Southeast Asian governments regard the United States' military presence in the SCS as a stabilising factor in the region. Without the US, no country has sufficient confidence to resist China. However, they have three major concerns:

- they remain sceptical of the US's long-term commitment to Southeast Asia
- they are concerned by the US's unwillingness to engage with ASEAN's established multilateral frameworks

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<sup>25</sup> <https://www.nst.com.my/news/nation/2020/07/609154/hishammuddin-south-china-sea-issue-requires-peaceful-resolution>

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[https://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mys\\_12\\_12\\_2019/2020\\_07\\_29\\_MYS\\_NV\\_UN\\_002\\_OLA-2020-00373.pdf](https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_07_29_MYS_NV_UN_002_OLA-2020-00373.pdf)

<sup>27</sup> <https://dfa.gov.ph/dfa-news/statements-and-advisories/update/27140-statement-of-secretary-of-foreign-affairs-teodoro-l-locsin-jr-on-the-4th-anniversary-of-the-issuance-of-the-award-in-the-south-china-sea-arbitration>

<sup>28</sup> <http://news.chinhphu.vn/Home/Viet-Nams-response-to-US-Secretary-of-States-position-on-East-Sea/20207/40779.vgp>

- they are absolutely adamant that they do not want to be forced to choose between the US and China

In the words of different analysts in the region,

“the countries of Southeast Asia, see little choice but to prepare for the possibility that American strategy in Asia becomes unsustainable, thus exposing them an almost unfettered China.”

“ASEAN states are certainly wary of US abandonment, but at the moment they want more US presence not less because of the security that only Washington can bring.”

“Although not speaking out publicly, most ASEAN countries see the US as a source of counterweight to China, to constrain China's adventurism.”

ASEAN leaders are worried about the hardening of attitudes between the US and China and the growing confrontation between them. Increased US military activities in the region are not welcomed by those governments with lower concerns about China (Cambodia, Laos, Myanmar and Thailand). However, all governments want to see the situation de-escalated. Unlike the United States they don't see China as an “existential threat, systemic adversary, ideological rival, or revisionist hegemon”, to quote a Malaysian analyst.<sup>29</sup> They recognise that China's behaviour needs to be countered but do not wish to see it ‘cornered’.

Southeast Asian analysts and officials want the United States to remain an effective player in the region. In order to do that, the US has to convince leaders and the general public alike that its presence there is sustainable. At the moment it seems that the US is spending billions on security for little economic return. The only way to convince Southeast Asians that the American presence is permanent is to treat the region as China does – with comprehensive engagement based on investment, trade and exchange. In the words of one official, “whenever ASEAN diplomats talk about China and its foreign policy, they always speak about the long game, and China's consistency”. They want the United States to do the same – as they believe it used to do before 9/11.

## **10. In what way do U.S. and ASEAN positions complicate China's operations in the South China Sea?**

China has the military capacity to overrun almost all the island features in the South China Sea in a day or two. The fact that it has not done so tells us that it feels restrained by something. The US presence in the region is part of the explanation but a greater part is reputational: China fears the consequences of appearing too aggressive towards the region.

That does not prevent it from appearing to be aggressive towards the United States. A key plank of China's public diplomacy strategy towards Southeast Asia is to paint the US as a threat to regional peace, take actions that increase the risk of confrontation and thereby encourage calls for restraint from Southeast Asia.

It is notable that despite decades of pressure from China, none of the ASEAN states have backed down on the core principles of UNCLOS. They insist they have the exclusive right to control the development of resources within their own EEZs. So far none of them have conceded to China's demands for ‘joint development’. This should be acknowledged as a vital contribution to the maintenance of UNCLOS as a key plank of the rules-based order.

Malaysia has responded to China's pressure with legal submissions to the UN Commission on the Limits of the Continental Shelf. Vietnam hints that it could initiate legal action against China in the same way that the Philippines took China to an International Arbitral

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<sup>29</sup> <http://www.scspi.org/en/dtfx/1591153812>

Tribunal in 2013. However, the close relations between the communist parties of Vietnam and China make this unlikely.

The Philippines has upgraded the facilities on Thitu/Pagasa, the largest of the islands it controls in the Spratlys. On 9 June 2020, Defence Secretary formally opened a new beaching ramp, which will allow supplies to be directly unloaded from ships for the first time since the island was occupied in the early 1970s. The works had taken two years longer than scheduled.<sup>30</sup>

### **11. How are Chinese state-owned enterprises participating in Beijing's expanding presence in the South China Sea?**

The best work on this topic has been carried out by the Singapore-based researcher Xue Gong.<sup>31</sup> She notes that centrally-managed SOEs “often use national interests as pretexts to maximize their own economic interests.” She identified three different strategies adopted by Chinese Central-SOEs in the SCS:

- Those that serve as political tools to undertake strategic tasks for the state but also reap commercial benefits. A prime example would be the construction company CCCC.
- Those large enough to influence state policy and even pursue their own initiatives under the umbrella of national policy in order to secure economic and political benefits. A prime example would be the oil company CNOOC.
- Those that don't shape the political agenda but respond when their commercial interests align with central government policy incentives. Prime examples include the South China Sea tourism industry.

Gong concludes, “China will continue to support CSOE activities in the South China Sea. And so long as their business interests converge with the country's national interests, CSOEs will maintain their support for China's assertive policy in the South China Sea.”

### **12. What are your recommendations for Congressional action related to the topic of your testimony?**

To engage properly with Southeast Asia, the US needs to think beyond traditional diplomacy and shows of military force. In the words of one Philippine colleague, “Consistency is highly valued here and without the presence of ambassadors at the ASEAN mission and some Embassies, it is difficult to see how the US can consistently send its message. The US must aim for a holistic response.” This was echoed by a Malaysian contact, “Other departments – Agriculture, Commerce, Education, etc. – need to be encouraged to find effective and visible ways of generating links between Southeast Asia and the United States. What needs to be underscored and made a reality is for Southeast Asian countries to be convinced that China is not the only game in town.” Another asked, “How will the US follow-through in order to make it appear a regional leader. There is one school of thought that thinks this is already too late and a lot of Southeast Asian countries are enmeshed too deeply with China for better or for worse.” And a veteran think-tank analyst observed that, “America needs to be prepared to pursue its strategies without being cheered along the way.”

Contacts among the Southeast Asian policy community have made the following suggestions for legislative action:

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<sup>30</sup> <https://rappler.com/nation/national-news/more-plans-upgrade-pagasa-island-lorenzana-unveils-beaching-ramp>

<sup>31</sup> Xue Gong, ‘The Role of Chinese Corporate Players in China's South China Sea Policy’, *Contemporary Southeast Asia* 40, No. 2 (2018), pp. 301–26

- The Senate should ratify the United Nations Convention on the Law of the Sea as a matter of priority. The United States' loses credibility when it lectures other states about their responsibilities under UNCLOS when it has not ratified the convention itself.
- Congress should prioritize confirming ambassadors to ASEAN countries who are either career diplomats or individuals who can provide the needed reassurance to US partners and allies.
- Congress should allocate more funds to maritime security initiatives, particularly:
  - Multilateral maritime law training bringing together Southeast Asian countries with ongoing disputes between them e.g. Malaysia-Vietnam or Malaysia-Indonesia-Philippines
  - Maritime domain awareness
  - Maritime enforcement activities
  - Coordination between maritime agencies
  - Other practical cooperation activities undertaken by ASEAN, CSCAP and Expert Working Groups
- Congress must compete with China on people-to-people exchanges. There is, for example, no substitute for the Fulbright program in bringing future economic, political, and security leaders, to the U.S. to acquire an American education.
- Congress should allocate more funds to water issues in the Mekong.
- The development of regional expertise is critical, particularly since so few countries have adequate policy-making infrastructure. Therefore, Congress should support capacity-building in SCS policy-making, academic exchanges and think-tank engagements
- Congress should play important role in solidifying the US's position in the SCS by making clearly what it regards as lawful and what not.
- Congress could re-table the bill drafted by Sen. Marco Rubio, providing a mandate to the US government to respond to China's current and future actions. Imposing travel bans on individuals and entities for historic actions is a tough measure, but not meaningful enough. Deterrence works on future actions, not in the past."

One final suggestion. Ultimately, the only way to de-escalate the situation in the SCS is to persuade all sides to compromise on their rival territorial claims. The Southeast Asian claimants have broadly accepted this principle, at least on a *de facto* basis. Chinese decision-makers, on the other hand, refuse to do so because of a mistaken confidence in the superiority of their own claims. There are documents in the Republic of China archives (in Taiwan) that clearly demonstrate the weakness of Chinese claims in the South China Sea. Congress could contribute towards the de-escalation of tensions in the SCS by funding efforts to educate the Chinese public about these documents and thereby reduce opposition to the principle of compromise.

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