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[Borders](#)

Showdown Ahead?

Border Conflicts in the South China Sea and
the Struggle to Shape Asia's Destiny

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The struggle over the South China Sea is a matter of international peace and prosperity. China claims sovereignty over some 90 per cent of the South China Sea with the nine-dash line and is therefore a threat to peace and free trade in the region. This article sheds light on how recent developments such as the ruling by the Permanent Court of Arbitration and the presidency of Donald Trump might impact the status quo.

Three developments in the second half of 2016 have reconfigured the South China Sea conflict. First, in July 2016, the Permanent Court of Arbitration (PCA) ruled that, inter alia, China's historically-based nine-dash line (NDL) claim had no legal validity. Second, the inauguration of Rodrigo Duterte as president of the Philippines on June 30, 2016 repositioned his country in the South China Sea conflict. Finally, the election of Donald Trump to the U.S. presidency in November 2016 promised a more confrontational U.S. approach to China's expansive claims of territorial and governance rights in the South China Sea. Any one of these developments would be enough to unsettle matters in the South China Sea; converging as they do, they are likely to sharpen U.S.-China strategic rivalry, encourage greater involvement by external stakeholders, and further polarise the region.

The Importance of the South China Sea

The South China Sea (SCS) is a shallow semi-enclosed sea in the heart of maritime Southeast Asia that is critically important to economic and geopolitical order at national, sub-regional, macro-regional, and global levels. Its marine life supplies ten per cent of the world's annual fishing catch; it has large undeveloped undersea gas deposits needed by nearby energy importing economies; and it has rare and valuable marine biodiversity that is threatened by accelerating economic and land reclamation activity.

Geo-economically speaking, the SCS is a critical maritime crossroads that sustains Indo-Pacific integration and global economic growth. It not

only connects Southeast Asian economies to Northeast Asian markets, but also links the economies of the Pacific Rim and the Indian Ocean/Persian Gulf littorals via the Malacca and Sunda Straits. The Asian portions of the combined Indo-Pacific macro-region alone account for 40 per cent of global GDP in PPP terms. The integration of South Asia into established East Asian logistical and production networks via the SCS is creating growth that is expected to lead the global economy in coming decades. Already over 40 per cent of India's trade transits the SCS, and the fact that over one trillion of the five trillion dollars of trade carried in the SCS involves the U.S. illustrates the global significance of freedom of navigation (FON) in the SCS.

Geopolitically, maintenance of FON in the SCS engages the interests of the global community. The right of all states to transit the sea and airspace there in a free and unhindered fashion sustains Southeast Asian, Indo-Pacific, and global economic growth. It also ensures the security and political stability of states that are critically dependent on food, energy, and trade delivered through the SCS. In fact, whoever or whatever governs the right to transit the SCS controls the security, prosperity, and independence of almost all East Asian states, and it materially affects the entire Indo-Pacific region. The issue of freedom of navigation on the high seas, which, as explained below, is engaged in the SCS, affects the legal foundation of the existing global order. Therefore, today's struggle over control of the SCS vitally concerns Asia and draws the interests of the global community.

Fig. 1: The South China Sea with Adjacent States and Territorial Claims



Sources: Own illustration based on Wikipedia, https://de.wikipedia.org/wiki/Territorialkonflikte_im_Chinesischen_Meer [30 Mar 2017]; © Natural Earth Data, <http://naturalearthdata.com> [30 Mar 2017].

The Freedom of Navigation (FON) Question

China’s ongoing effort to claim national sovereignty and establish exclusive control over the SCS has led China to construct seven artificial islands located in the heart of the SCS since 2014. This development together with Chinese assertions of a sovereign right to determine who and what may freely transit the SCS led the U.S. Navy to begin freedom of navigation operations (FONOPS) there in 2015.¹

FONOPS signal that the U.S. does not recognize China’s national sovereignty in the SCS, and that the U.S. Navy will defend freedom of navigation rights in the high seas there as provided under international law.

China is vigorously objecting to this U.S. position, and in 2016 China built weapons emplacements on some of its artificial islands with an eye toward enforcing its claims and defending its claimed sovereignty over the SCS.

Undeterred, the U.S. sent an aircraft carrier battle group into the SCS in February of this year.² Thus, it would seem that China and the U.S. are moving closer to armed confrontation over whether international law or Chinese national interests provide controlling SCS governance norms.

This question of FON in the SCS is different from the question of title over local islands or the question of exclusive rights over economic resources that involve China and neighboring South China Sea coastal states. The nexus of these disputes is China's expansive claim of national sovereignty inside its NDL. As China's ever more clearly expressed claim of sovereign authority shifts attention from land and economic disputes in the SCS to the FON issue, other states with a stake in free passage across the high seas may begin to pay more attention to the SCS disputes.

In the past few years Japan, India, and Australia have expressed clear support for internationally guaranteed freedom of navigation rights in the SCS, and have conducted naval operations there.³ And in 2016, both Britain and France pledged to send their respective naval vessels through the SCS to demonstrate their interest in the matter.⁴

The Permanent Court of Arbitration Award

Philippine efforts to negotiate with China over ownership and fishing rights in Scarborough Shoal, called by China Huangyandao, only led to China's unilateral and coercive takeover of this shoal in 2012. Scarborough Shoal is only 230 kilometers from the Philippines coastline of Luzon – well within its 370 kilometers exclusive economic zone (EEZ). But it lies some 870 kilometers distant from China's nearest coastline on Hainan Island.

The government of the Philippine's president Benigno Aquino asked the PCA in January 2013 to execute compulsory and binding arbitration with China as provided by the UN Convention of the Law of the Sea, which both countries

had signed and ratified. The Philippines asked the PCA to review the conflict over maritime boundaries and rights claims around Scarborough Shoal and in the Spratly Islands created by the overlap between the Philippines coastal EEZ claim and China's NDL claim. This move drew wide attention because the Philippines' complaint parallels the concerns of other SCS coastal states whose EEZ claims are overlapped by China's NDL claims.

The PCA agreed to arbitrate the Philippine case, and this resulted in an award that nullified China's NDL, i.e., the PCA ruled that the NDL has no basis in existing international law. China responded by angrily denouncing the ruling and vowed to ignore it. This legal finding and China's subsequent reaction indicate how different China's sense is of how regional relations should be ordered in a new era of Chinese predominance.

China's NDL sovereignty claims undermine the rights claims of other coastal states in the SCS.

The Extensive NDL Delimitation

China's NDL as indicated on a map it provided to the UN in 2009 encompasses Scarborough and passes only 70 kilometers from the Philippine coastline⁵. The NDL runs similarly close to the coasts of Brunei, Malaysia, Vietnam, and the Natuna Islands of Indonesia. The latter are some 1,600 kilometers south of China's Hainan Island coastline. The NDL therefore encompasses some 90 per cent of the South China Sea.

In interpreting the relevant provisions of UNCLOS, the PCA found, inter alia, that China's historical case for the nine-dash line has no legal validity; that no land feature in the Spratly group is a natural island that can generate an EEZ; that only some land features are rocks with rights



Resistance: Before Duterte took office, the Philippines' stance towards Chinese claims to power was abundantly clear. Source: © Eric De Castro, Reuters.

to a twelve nm territorial zone; that China has no right to construct artificial islands on reefs or shoals in the EEZ of another state; and that China may not use the NDL claim to obstruct or usurp a coastal state's economic rights inside its own EEZ (PCA).

The Significance of Scarborough Shoal

The PCA award did not address the question of who actually owns Scarborough Shoal or other South China Sea land features because such ownership questions are not governed by UNCLOS. But the PCA did rule that Scarborough is inside the Philippines EEZ, so China cannot lawfully turn Scarborough into an artificial island without Philippine permission. The PCA also ruled that Scarborough Shoal is not a natural island (i.e., it is not capable in its natural state of sustaining a permanent human community), so it is not entitled to an EEZ. At most the shoal (which is a high-tide elevation) gives its owner a twelve nm territorial zone. But regardless of who owns the shoal, the PCA ruled that both parties have traditional fishing rights there.⁶

Given China's defiant reaction to the PCA ruling, legal approaches to managing the SCS conflict might appear to be pointless. But such approaches are needed to maintain international legal norms. And the ruling seems to have changed China's approach to claiming ownership of the SCS, if not its abiding aims and behavior. In a Chinese white paper on national security issued after the PCA ruling, no mention of the NDL was made. Instead, Chinese claims in the SCS now seem to rest on delimitations and rights based on ownership of land features. Though China's claimed delimitations and rights have not substantially changed, they are now more in line with the UNCLOS principle that "land dominates the sea".

Aside from ownership of land and economic resources in the SCS, China has also been advancing a right to regulate international navigation in the SCS, but it is now shifting the basis of this right from owning the NDL delimitation to owning land features in the SCS. By claiming EEZ and territorial seas that attach to natural islands for all its claimed land features in the Spratlys – where the PCA found none that

qualify as natural islands – China still asserts “indisputable sovereignty” over the SCS. By warning off, obstructing, and at times endangering U.S. military vessels transiting the high seas in the SCS, China demonstrates its continuing claim of a sovereign right to freely determine whether and how other states may navigate the vitally important SCS air and sea lanes.

The Election of Rodrigo Duterte

The country best placed to take advantage of the PCA ruling and pressure China to move its SCS claims further in line with UNCLOS norms is the Philippines. However, it appears that the opportunity to press its advantage is being traded away by the new Philippine president Rodrigo Duterte in return for promises of Chinese economic assistance.

Duterte won the 2016 Philippine presidential election by promising to end a scourge of drug-related social ills by any means necessary. After taking office, he encouraged the extrajudicial killing of drug dealers and criminals as he had done when serving as mayor of Davao City in Mindanao. Less expected was Duterte’s reversal of Aquino’s approach to relations with the U.S. and China. Whereas Aquino embraced closer diplomatic and defense cooperation with the U.S. and challenged China’s expansive NDL claims, Duterte has reviled the U.S. and embraced closer economic and security cooperation with China.

Soon after taking office, Duterte made his new approach known by insulting the U.S. ambassador and president Obama, questioning the need for strategic partnership with the U.S., and cutting back defense cooperation under the Enhanced Defense Cooperation Agreement signed by Aquino in 2014. Duterte also abandoned Aquino’s demand that China strictly abide by the PCA’s arbitration award. Instead, he requested from China such things as railways in Mindanao; work permits for Philippine citizens currently working in China illegally; cessation of Chinese citizen involvement in the shipment to and sale of narcotics in the Philippines; and

non-interference with Philippine fishing activity in the South China Sea. In return for Duterte’s willingness to table sovereignty disputes, China pledged 13.5 billion U.S. dollars in economic assistance to the Philippines during Duterte’s aid-seeking visit to Beijing in October 2016.

Duterte’s brand of populism appeals to the Philippine public. He was elected with 39 per cent of the vote in a three-way election contest, but he enjoyed a 92 per cent public approval rating by the time he visited China in October 2016 and his approval rating averaged 83 per cent in the last quarter of 2016.

Duterte’s diplomatic deals with China have hamstrung the realization of the PCA award over sovereignty in the SCS.

Duterte’s antipathy toward a U.S. military presence in the Philippines will complicate the ability of the U.S. to access platforms in the Philippines if international navigation rights in the SCS needed U.S. military protection. Moreover, his willingness to ignore the PCA award allows China to deflect international scrutiny of its ambitions in the SCS. It also suggests that a region more polarised by U.S.-China strategic tension could ultimately benefit China.

Accommodation over Scarborough Shoal

During his visit to China, Duterte worked out an informal understanding over the Scarborough Shoal dispute. In return for Duterte allowing China to continue to claim sovereignty there, China is allowing Philippine fishermen to freely access fishing grounds around the shoal. China has surveyed the shoal as it did in the land features it occupied in the Spratlys before building seven artificial island bases atop them. This suggests that China’s aim in taking over Scarborough Shoal in 2012 involved China’s strategic ambition to control the SCS more than its desire for fish.

The disputed shoal's location close to the deep water Bashi Channel in the Luzon Strait would allow China to control this vital chokepoint between the South China Sea and the Western Pacific. China would like to control U.S. naval access to the South China Sea at this chokepoint, as well as guarantee its Hainan naval fleet safe passage into the Western Pacific Ocean.⁷ The Hainan fleet includes four newly operational ballistic nuclear missile submarines that must access the Pacific Ocean in order to bring the U.S. within range of its missiles, and China's second aircraft carrier will join the Hainan fleet after its completion. If Duterte permits China to build a new base atop Scarborough Shoal, the ability of the U.S. to guarantee FON in the SCS and the future of the Philippine-U.S. alliance would be in question.

The New Trump Administration

The Trump Administration signaled a particularly confrontational mindset when Secretary of State Rex Tillerson said during his Congressional confirmation hearing that he could envision blocking Chinese access to its artificial islands in the SCS. Nothing as harsh has been articulated since then, but there have been substantial indications that there will be a more assertive FONOPS program forthcoming perhaps even in cooperation with other like-minded states.

Donald Trump represents a new populist and nationalist orientation in U.S. foreign policy that contrasts with the liberal internationalist orientation of the Obama Administration. He believes that China is a threat to important U.S. interests that must be confronted to stop its undesired behaviours in respect to a wide range of issues. His advisers believe that China's economic advance has come at the expense of U.S. manufacturing industries, wages and employment, intellectual property rights, and trade balance. They also believe that China's growing military power and ambition challenge U.S. predominance in Asia and threaten important national security interests. And unlike previous U.S. administrations since that of Richard

Nixon, the predisposition of the Trump Administration is that the U.S. does not need to offer concessions to gain warmer and more intimate relations with China.

It is possible that U.S. actions will not match the tone of Trump's words, but early actions show that the new direction in U.S. policy is unmistakable. The close relationship developing between Trump and Japanese prime minister Shinzo Abe, who have met twice already since Trump's election, is notable, as well as the fact that the first overseas visit of U.S. Defense Secretary Mattis was to South Korea and Japan. In contrast, there has been limited high-level contact between the U.S. and China only by way of an exchange of perfunctory letters and phone calls between Trump and Chinese president Xi Jinping. This suggests that the U.S. will value its relationship with Japan and other U.S. allies in Asia more than the relationship with China and it dispels fears created by Trump's criticism of the low defense effort on the part of South Korea and Japan during his campaign that he would disengage from Asian security commitments.

Trump did call Xi Jinping just before he met Abe in February to reassure him that he would respect the "one China policy" of previous Administrations. This policy has never been in agreement with China's "One China Principle". The U.S. "one China policy" merely "acknowledges" that Chinese in Taiwan and China agree that there is but one China. It also states a U.S. desire for a peaceful resolution of this question. This formulation has been useful to paper over differences that otherwise could lead to armed conflict over Taiwan. But it contains no legally binding commitments – as does the Taiwan Relations Act of 1979, which requires the U.S. president to oppose any use of force to resolve the Taiwan question, and to assist Taiwan's self-defense efforts until the question can be resolved peacefully between Taiwan and China.

Thus, Trump's phone call to Xi was not a concession to China as much as a pragmatic move to maintain a relationship with China while acting

in other ways to show that China's status was downgraded in U.S. policy thinking. The key to the future of U.S.-China relations under Trump will be the understanding that comes out of the first serious meeting between Trump and Xi Jinping.

*After Obama's Strategic Rebalancing,
What Comes Next?*

The recent visits to Northeast Asia by Secretary of Defense James Mattis and Secretary of State Rex Tillerson signal that abiding U.S. strategic interests in Asia remain as important as ever, but the Trump administration will not be bound by the policies that defined the Obama Administration's Asia strategy. The elements of the Trump approach to Asia have yet to be fully fleshed out but it likely will be more narrowly self-interested and realist in both method and aim.

For example, the Tillerson visit to Tokyo, Seoul, and Beijing in mid-March showed that Obama's policy of "strategic patience" toward North Korean denuclearization is dead. With the quick deployment of THAAD in South Korea in March 2017 and a three-week deployment of the Carl Vinson carrier battle group in the South China Sea in February-March 2017, the Trump administration signaled that it is looking to act more assertively in cooperation with like-minded states to defend regional stability and U.S. interests in Asia.

The visits of U.S. Secretary of State Tillerson mark the end of Obama's policy of "strategic patience" toward North Korea.

In economic affairs, Trump has repudiated the Trans-Pacific Partnership (TPP). But this does not mean that targeted market-opening measures, including bilateral and regional trade liberalization agreements, will not be a part of a new U.S. strategy in Asia. There are strong advocates for such a course in the new

administration, and Japanese prime minister Abe is exploring a bilateral FTA with Trump that, if it follows the already negotiated TPP terms, may be quickly concluded and then opened to third parties using accession terms similar to what was already agreed under the TPP. Thus, a high-quality 21st century multilateral Asian trade liberalization agreement anchored by the U.S. and Japan may yet be possible. The prospects should be known by the next APEC meeting in November 2017.

Adjusting Bilateral Relations with China

Concerned by Trump's growing closeness to Japanese prime minister Shinzo Abe State Councillor Yang Jiechi visited the U.S. at the end of February and paid Trump a courtesy call after talking with his advisers. Yang succeeded in arranging an informal two-day meeting between Trump and Xi to be held at the beginning of April in Florida.

Subsequently, Secretary of State Rex Tillerson included Beijing in the itinerary of his trip to Tokyo and Seoul in mid-March where the main topic of discussion was North Korea's emerging ability to threaten others with nuclear weapons. This threat has been provisionally countered by South Korea's agreement to deploy the THAAD anti-ballistic missile defense system – a move that China has bitterly opposed and for which South Korea is being punished by a variety of Chinese economic penalties.⁸

Tillerson pleased his hosts in Beijing by publicly describing the U.S.-China relationship with words favored by China, but few observers doubt that in private Tillerson presented the Chinese side with new directions in U.S. Asia policy that will not be welcomed in Beijing. To have a successful informal U.S.-China leadership meeting one might expect China to announce additional token UN-authorized sanctions against North Korea, to be followed by a meeting between the two leaders in Florida where intense discussions will begin to shape the future direction of the bilateral relationship.

The Nature of Strategic Rivalry in the SCS

Sovereignty is an exclusive, zero-sum concept of coercive state power and political authority that gives the state assured security. For China, placing the SCS under its sovereignty improves its security and is a critical step toward unquestioned dominance in Asia. Sovereignty in the SCS means that China can legitimately exclude any other state, including the U.S., if it serves a Chinese national interest. Thus, China would gain leverage over all other states that rely on or benefit from access to the SCS. Finally, effective sovereign control gives the Chinese navy and merchant fleet secure access to the Indian and Pacific Oceans.

The rise of Chinese military power does not mean that strategic rivalry with the U.S. is inevitable. If both the U.S. and China agreed on the rules that would govern each other and all other states, their military power could grow and work together in harmony.

Strategic rivalry arises not so much from equal power capabilities as it does from differing concepts of international order. If states seek fundamentally different international arrangements, they will be tempted to develop and use military power to settle their differences when all else fails. In the SCS, divergent visions of regional governance are the root cause of strategic rivalry.

FON in the SCS is a key national interest of the U.S. The international rule of law and FON are pillars of free trade and the liberal international order that the U.S. built after WW II and seeks to maintain today. Without the ability of the U.S. Navy to access and patrol the SCS, the U.S. will be unable to maintain the security and well-being of key allies such as Japan, South Korea, the Philippines, Australia, and Thailand, or for that matter, any other state that relies on safe and reliable air and sea transport through the SCS.

When China says that it, too, desires FON in the SCS, it quickly adds that FON must be in accordance with China's sovereign dictates, i.e.,

in accordance with its domestic laws. When the U.S. says it defends FON, it means FON as provided by international legal norms and decided by impartial international legal authorities. This difference seems rather theoretical, but in the SCS it can have momentous implications that states may fight over.

Conclusion

The PCA award has shown that China's NDL claim is without legal merit; its actions to secure exclusive economic rights and construct artificial islands in the EEZs of other states is illegal; and its artificial islands create no new territorial or EEZ rights for China. Thus, the PCA award undercuts Chinese sovereignty claims and indirectly supports U.S. efforts to defend FON in the SCS. All this is clearly a setback for China.

Strategic balance in the SCS is dependent on future interactions between three political actors: China, the U.S., and the Philippines.

However, the willingness of Duterte to set aside the PCA ruling and devalue the strategic alliance with the U.S. supports China's effort to stage a unilateral and coercive Chinese "nationalization" of the SCS in three ways. First, it distracts from the fact that the PCA has ruled that China's behaviours and the historico-legal rationalizations that China uses to support its SCS campaign are unlawful. Second, it undermines the legal norms and political will among the Southeast Asian claimant states that have supported their resistance to China's bullying. Finally, if Duterte permits China to reclaim and militarize Scarborough Shoal, this new fait accompli added to the seven artificial islands already constructed by China in the Spratlys could hamper U.S. ability to defend FON in the SCS as well as its ability to defend the security of the Philippines.

Finally, the Trump administration promises a new and more assertive approach to the defense of U.S. interests in Asia. In the South China Sea this will include more FONOPS and a more concerted diplomatic effort to rally like-minded states in defense of the liberal rules-based order, even if the Philippines under Duterte backs away from previous alliance commitments. Though the meaning of each of these

developments is clear enough when viewed in isolation, what they mean altogether for the future of the SCS is less clear.

Other SCS claimant states will wait to see how far Duterte goes in repositioning himself between China and the U.S. If Duterte moves into China's strategic and economic orbit, the U.S. will lose access to military bases in the



Twittering Trump: The U.S. President stands for a foreign policy that is new in many respects, populist and markedly more nationalist. [Source: © Jon Woo, Reuters.](#)



Prospect: The Trump administration is likely to take a new and more self-assertive stand with regard to U.S. interests in Asia. [Source: © Aly Song, Reuters.](#)

Philippines, which in turn tips the local strategic balance. But if China fails to deliver on its promises, then Duterte will have foolishly alienated the U.S. and given national strategic and maritime assets to China for nothing.

The strong PCA ruling and more assertive actions by the U.S. may persuade some local states and external stakeholders to get more involved in defending FON. This could induce China to bring its ambitions into greater accord with international norms at a time when it seeks to present itself as a responsible global leader interested in advancing globalization as the U.S. under Trump retreats from the defense of multilateral institutions as such. But China may in fact respond by pressing its narrowly nationalistic demands even more aggressively

to quickly achieve its full aims in the SCS, thus precipitating a regional showdown. If the U.S. and China cannot reach some kind of strategic accommodation, they will continue to move toward this outcome. Meanwhile, other stakeholders may be forced to choose sides if or when a confrontation materializes.

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