

The South China Sea: Lynchpin of the Shifting Strategic Balance

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Daniel Hallock, Understanding American Geopolitics,
<https://www.danielhallock.com/blog/2015/8/28/understanding-american-geopolitics>.

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Part 1. Introduction

This paper addresses the critical importance of the South China Sea in international politics, and how the dispute has become an arena for the world's major powers to engage one another. Specifically, this paper examines China-United States relations and its impact on Southeast Asia and the Association of Southeast Asian Nations (ASEAN), what the shifting strategic balance means for the region, and in what ways the discord is shaping the relationship between the differing international and regional states.

This paper is divided into four parts. Part one, the introduction, defines the geographic scope of the South China Sea and its natural resources and sets out a framework to conceptualize what is meant by militarization. Part 2 discusses the South China Sea in the context of international politics and the militarization of the South China Sea. Part 3 discusses bilateral relations between China and the U.S., their relations with the states of Southeast Asia, and the impact of the shifting strategic balance on ASEAN. Part 4 concludes this paper by discussing the declaratory policy of the Trump Administration on the South China Sea and China's response.

Geographic Scope of the South China Sea. The South China Sea is a semi-enclosed sea shaped by seven littoral countries: China, Taiwan, Vietnam, Malaysia, Brunei, Indonesia and the Philippines. The South China Sea stretches from Taiwan in the north to the waters adjacent to Indonesia and the Straits of Malacca and Singapore in the south. The South China Sea is bounded on the east by the Philippines' archipelago, on the south by Indonesia, Brunei and Malaysia and on the west by Malaysia and Vietnam.

The International Hydrographic Organization defines the South China Sea as including the following area:

On the South. The Eastern and Southern limits of Singapore and Malacca Straits [A line joining Tanjong Datok, the Southeast point of Johore (1°22'N 104°17'E) through Horsburgh Reef to Pulo Koko, the Northeastern extreme of Bintan Island (1°13.5'N 104°35'E). The Northeastern coast of Sumatra] as far West as Tanjong Kedabu (1°06'N 102°58'E) down the East coast of Sumatra to Lucipara Point (3°14'S 106°05'E) thence to Tanjong Nanka, the Southwest extremity of Banka Island, through this island to Tanjong Berikat the Eastern point (2°34'S 106°51'E), on to Tanjong Djemang (2°36'S 107°37'E) in Billiton, along the North coast of this island to Tanjong Boeroeng Mandi (2°46'S 108°16'E) and thence a line to Tanjong Sambar (3°00'S 110°19'E) the Southwest extreme of Borneo. *On the East.* From Tanjong Sambar through the West coast of Borneo to Tanjong Sampanmangio, the North point, thence a line to West points of Balabac and Secam Reefs, on to the West point of Bancalan Island and

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to Cape Buliluyan, the Southwest point of Palawan, through this island to Cabuli Point, the Northern point thereof, thence to the Northwest point of Busuanga and to Cape Calavite in the island of Mindoro, to the Northwest point of Lubang Island and to Point Fuego (14°08'N) in Luzon Island, through this island to Cape Engano, the Northeast point of Luzon, along a line joining this cape with the East point of Balintang Island (20°N) and to the East point of Y'Ami Island (21°05'N) thence to Garan Bi, the Southern point of Taiwan (Formosa), through this island to Santyo (25°N) its North Eastern Point.¹

The South China Sea links the Indian Ocean with the Western Pacific. The littoral states have an obligation under the United Nations Convention on the Law of the Sea (UNCLOS) to cooperate to protect the marine environment and to enter into arrangements of 'practical nature' if they cannot resolve overlapping maritime claims.

The security of the sea lanes (SLOCs) that pass through the South China Sea are vital for global trade; it is estimated that more than US\$5.3 trillion in commerce passes through the South China Sea annually. China, Taiwan, Japan and South Korea are dependent on the SLOCs for their trade, including the import of oil and gas.

In addition, and equally important, secure passage - freedom of navigation - on and over the South China Sea are vital for the world's major maritime and military powers.

Resources in the South China Sea. The South China Sea contains three main resources – oil, gas and fisheries. In March 2008, according to the U.S. Energy Information Administration (EIA), the South China Sea had proven oil reserves of around 7.7 billion barrels. Chinese estimates range from 28 to 213 billion barrels or an order of magnitude 3.5 to 27.6 times greater than U.S. EIA estimates.

It is estimated that natural gas reserves total around 266 trillion cubic feet. The U.S. Geological Survey estimates that about 60 to 70 per cent of hydrocarbon reserves are natural gas located in south of South China Sea.

Approximately 10 percent of the world's fishery catch comes from the South China Sea. Three hundred million people depend on South China Sea's marine resources for their livelihood. Waters around China's coastline and South China Sea are either depleted, polluted or under severe strain from overfishing. Overfishing, threatens endangered species such as sea turtles, sharks, and giant clams. Since 2010 the fishery reserves in the Spratly Islands and western part of South China Sea have been reduced by 16 percent. China is the largest consumer of seafood in the world; it is also the largest producer and exporter of fish globally.

Defining Militarization. In 2015 the United States began to accuse China of militarizing the South China Sea through its construction of artificial islands that could serve as forward operating posts for military aircraft and ships. China responded by making three arguments. First, China will undertake 'some necessary defence measures' to protect its interests and that these measures would be determined by the level of threat that China

¹ <https://epic.awi.de/29772/1/IHO1953a.pdf>.

faces. China argues it has the right to self-defence.² Second, China argued it was only doing what other claimants had done by putting military personnel on its features to protect the infrastructure that it had built, such as docks and airstrips.³ Third, China counter-charged that the United States was militarizing the South China Sea by over flights by military aircraft and by conducting patrols and exercises with naval warships.⁴

Neither China nor the United States has defined what they mean by militarization. In everyday usage the term militarization means ‘to put weapons and military forces in (an area)’, ‘to give a military quality or character to (something)’, ‘to give a military character to’, ‘to equip with military forces and defences’, and ‘to adapt for military use’.⁵ Militarization can also be defined as equipping forces with weapons ‘in preparation for war’.⁶

Militarization should be viewed as a spectrum of activities ranging from the placement of lightly armed forces on islands for defensive purposes to the stationing of armed forces well equipped with sufficient weaponry to wage war (see Chart 1 below). This spectrum could include: stationing uniformed armed military personnel on features; building bunkers and defensive gun emplacements; constructing dual use infrastructure such as docks, jetties, airstrips, radar and communications equipment; placing long-range radar, SIGINT (signals intelligence) and ELINT (electronic warfare) equipment on features; deploying armed Coast Guard vessels, paramilitary fishing trawlers, aerial reconnaissance aircraft armed with air-to-surface or anti-submarine missiles, self-propelled artillery, anti-aircraft missiles, surface-to-surface missiles, amphibious craft and forces, naval warships, cruise missiles, submarines, jet fighters and bombers. Defining militarization is not clear-cut; there are grey areas where certain types of equipment or even ships and aircraft could have a dual civil-military purpose.

² Xinhua, ‘China’s construction on South China Sea islands should not be mistaken for militarization: Vice FM’, Xinhuanet.com, 22 November 2015; Bill Geertz, ‘War of words over South China Sea militarization heats up’, *Asia Times*, 30 November 2015; Reuters, ‘China Says South China Sea Militarization Depends on Threat’, *Jakarta Globe*, 4 February 2016; and Scott Murdoch, ‘China rejects island missile claims’, *The Australian*, 18 February 2016.

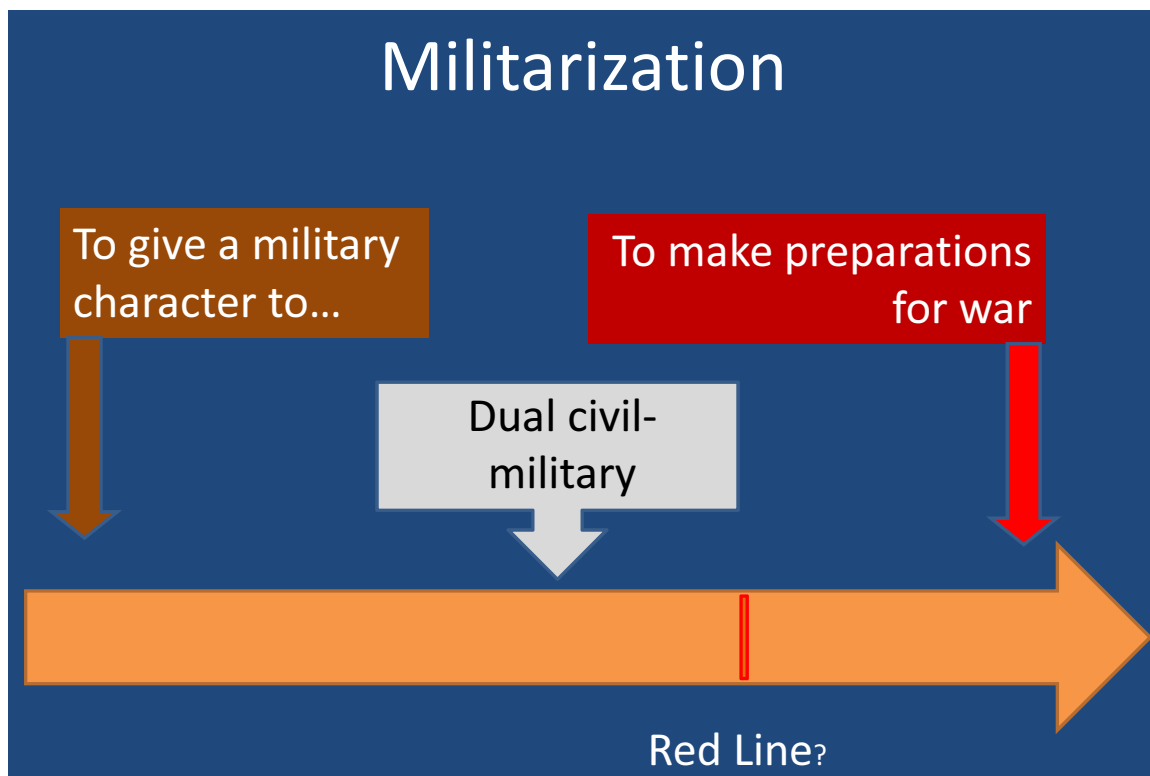
³ Matthew Lee and Eileen Ng, ‘US, China bicker over territorial claims in South China Sea’, *The Courier*, Associated Press, 5 August 2015, and Xinhua, ‘China’s construction on South China Sea islands should not be mistaken for militarization: Vice FM’.

⁴ ‘China Accuses US of Militarizing South China Sea’, Voice of America News, 30 July 2015 and Jim Sciutto, ‘Behind the scenes: A secret Navy flight over China’s military buildup’, 26 May 2015,

⁵ *Merriam-Webster Dictionary*, <http://www.merriam-webster.com/dictionary/militarize> quoted in Mark Valencia, ‘Who Is Militarizing the South China Sea?’, *The Diplomat*, 20 December 2015. <http://thediplomat.com/2015/12/who-is-militarizing-the-south-china-sea/>.

⁶ *The Free Dictionary*, <http://www.thefreedictionary.com/militarization>.

Chart I Militarization as a Spectrum of Activities



Part 2. The South China Sea in International Politics

The South China Sea first emerged as a bone of contention between the Obama Administration and China after May 2009 when China officially tabled at the United Nations its ambit claim to the South China Sea in the form of a map showing a nine-dashed line map enclosing from 60 to 80 percent of this semi-enclosed sea. China's response was prompted by submissions tendered by Malaysia and Vietnam for extended continental shelves.

China's actions promoted a major shift in U.S. declaratory policy on the South China Sea. At the 17th meeting of the ASEAN Regional Forum (ARF) in Hanoi in July 2010 Secretary of State Hillary Clinton moved beyond the standard formulation of U.S. policy on the South China Sea adopted by the Bill Clinton Administration in the 1990s to declare that '[t]he United States, like every other nation, has a *national interest* in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea [emphasis added]'.⁷

⁷ Hillary Rodman Clinton, Secretary of State, Remarks at Press Availability, National Convention Center, Hanoi, 23 July 2010. The standard U.S. formulation was that the United States took no sides on sovereignty disputes in the South China Sea but expected these disputes to be resolved peacefully in accord with international law. See the account in Jeffrey A. Bader, *Obama and China's Rise: An Insider's Account of America's Asia Strategy* (Washington, D.C.: Brookings Institution Press, 2012), 104-106. Bader was senior director for Asian Affairs on the National Security Council.

In 2012 two developments set the international context for U.S.-China relations. The first development was China's promotion of a 'new model of major power relations' (later recrafted as 'new model of major country relations') to enlist the United States in cooperation on global issues while conceding Chinese primacy in the Asia-Pacific. The second development was the adoption of a strategy of rebalancing toward the Asia-Pacific by the Obama Administration to counter-balance Chinese assertiveness in the waters of East Asia.

New Model of Major Country Relations? In 2009, Presidents Hu Jintao and Barack Obama agreed to pursue the joint objective of 'build[ing] a positive, cooperative, and comprehensive US-China relationship for the 21st century'.⁸ Three years later, Xi Jinping, the then Vice President, visited the United States. In remarks to the Department of State Xi noted that China and the United States shared few cultural or ideological similarities and 'there is no precedent for us to follow and no ready experience for us to refer' on how to manage relations between the 'world's largest developing country' and the 'largest developed country'.⁹

In a speech to the U.S.-China Business Council, Xi called for China and the United States to work towards a 'new type of relationship between major countries in the 21st century'.¹⁰ Xi included the following key components of his 'new model': increasing mutual understanding and strategic trust, respect core interests and major concerns, deepening mutually beneficial cooperation, enhancing cooperation and coordination in international affairs and global issues.¹¹ Xi listed three core interests- Taiwan, Tibet and China's development path.

The most important development in articulating the concept of a 'new model for major country relations' came at the June 2013 Sunnylands Summit between President Obama and China's new president, Xi Jinping. Obama spoke of the necessity to 'forge a new model of cooperation between countries based on mutual interest and mutual respect'. President Xi responded by including three principles to support the 'new model of major power relations': no confrontation or conflict, mutual respect and win-win

⁸ Xinhua, 'White House: U.S., China to build positive, cooperative, comprehensive ties for 21st century', 1 April 2019.

⁹ Quoted in Bonnie Glaser and Jake Douglas, 'The Ascent and Demise of "New Type of Great Power Relations" Between the US and China', in Council for Security Cooperation in Asia and the Pacific, *Regional Security Outlook 2016* (Canberra: Paragon Printers Australasia, 2016). 28.

¹⁰ Glaser and Douglas, 'The Ascent and Demise of "New Type of Great Power Relations" Between the US and China', 28 and Seiichiro Takagi, 'What's in a Name?: The China-US Interaction over the "New Type of Major Country Relationship"', in Council for Security Cooperation in Asia and the Pacific, *Regional Security Outlook 2016* (Canberra: Paragon Printers Australasia, 2016), 34.

¹¹ Takagi, 'What's in a Name?: The China-US Interaction over the "New Type of Major Country Relationship"', 34.

cooperation.¹² China and the United States soon found a number of global issues on which they could cooperate.¹³

However, as early as September 2014, according to Glaser and Douglas, ‘there has been a significant rollback in US official discourse’ on China’s ‘new model of major power relations’ as a result of ‘irreconcilable differences of interpretation’ over key terms and issues.¹⁴ At least five bundles of issues may be identified that illustrated U.S. reservations:

First, almost as soon as China and the United States began to discuss how to manage their relations, U.S. allies expressed concern over the prospect of power sharing between Beijing and Washington at their expense captured in the term G2 (Group of 2). In other words, the Chinese formulation ‘new model of major power relations’ was perceived as excluding other powers from the ‘new model’.

Second, the Obama Administration became increasingly frustrated by ‘Chinese constant efforts to persuade the US to publicly reaffirm support for the NTGPR [New Type of Great Power Relations] label’ and by reports in the Chinese media that implied U.S. acceptance of Chinese views and Chinese efforts to misrepresent U.S. policy to ASEAN countries.¹⁵

Third, the United States objected to China’s unilateral actions in defining the new power relations framework to include an expanding list of core interests – sovereignty and territorial integrity (Xinjiang, the South China Sea and the Senkaku/Diaoyu islands)¹⁶ -

¹² Neelam D. Sabharwal and Hemant K. Singh, ‘China Concept for a New Type of Great Power Relations: An Indian Perspective’, in Council for Security Cooperation in Asia and the Pacific, *Regional Security Outlook 2016* (Canberra: Paragon Printers Australasia, 2016), 32; Glaser and Douglas, ‘The Ascent and Demise of “New Type of Great Power Relations” Between the US and China’, 29 and Takagi, ‘What’s in a Name?: The China-US Interaction over the “New Type of Major Country Relationship”’, 35.

¹³ In January 2016, Secretary Kerry, speaking in Beijing before his meeting with Foreign Minister Wang Yi, mentioned the following areas of U.S.-China cooperation: Iran nuclear agreement, counterterrorism, climate change, Afghanistan and Ebola. See: Department of State, East Asia and the Pacific, ‘Remarks With Chinese Foreign Minister Wang Yi Before Their Meeting’, Ministry of Foreign Affairs, Beijing, 27 January 2016.

¹⁴ Glaser and Douglas, ‘The Ascent and Demise of “New Type of Great Power Relations” Between the US and China’, 29 and Takagi, ‘What’s in a Name?: The China-US Interaction over the “New Type of Major Country Relationship”’, 35.

¹⁵ Glaser and Douglas, ‘The Ascent and Demise of “New Type of Great Power Relations” Between the US and China’, 30.

¹⁶ Takagi, ‘What’s in a Name?: The China-US Interaction over the “New Type of Major Country Relationship”’, 35 notes that China officially defined its core interests in 2011: ‘national sovereignty, national security, territorial integrity, national unity, stability of its political system and sustainable development’.

and Xi Jinping's May 2014 advocacy of 'Asia for the Asians' security concept aimed at undermining the U.S. alliance system and excluding the U.S. from the western Pacific.¹⁷

Fourth, strategic trust between Washington and Beijing was severely undermined by allegations of Chinese state involvement in increasing cyber-espionage directed not only against the U.S. defence-security community but also the U.S. business community and its commercial secrets and intellectual property.

Fifth, China's aggressive program of building artificial islands in the South China Sea and militarizing the infrastructure on them emerged as the major point of contention between Beijing and Washington. The Obama Administration viewed China's actions as a threat to freedom of navigation and over-flight.

Rebalance or Containment? On 17 November 2011, President Obama gave an historic address to a joint sitting of the Australian Parliament in which he revealed that his Administration had inaugurated a review to identify the United States' most important strategic interests to guide defence policy and spending in the next decade. According to President Obama:

As President, I've therefore made a deliberate and strategic decision – as a Pacific nation, the United States will play a larger and long term role in shaping this region and its future, by upholding core principles and in close partnership with allies and friends...

As we end today's wars, I have directed my national security team to make our presence and mission in the Asia Pacific a top priority. As a result of, reduction in U.S. defence spending will not – I repeat, will not – come at the expense of the Asia-Pacific.¹⁸

The word 'rebalance' was not used in Obama's address. However, in January 2012, the U.S. Department of Defense issued new strategic guidance that formally identified rebalancing as a key U.S. priority. According to *Sustaining U.S. Global Leadership: Priorities for the 21st Century*:

U.S. economic and security interests are inextricably linked to developments in the arc extending from the Western Pacific and East Asia into the Indian Ocean region and South Asia, creating a mix of evolving challenges and opportunities. Accordingly, while the U.S. military will continue to contribute to security globally, *we will of necessity rebalance toward the Asia-Pacific region*. Our relationships with Asian allies and key partners are critical to the future stability and growth of the region. We will emphasize our existing alliances, which provide a vital foundation for Asia-Pacific security. We will also expand our networks of cooperation with emerging partners throughout the Asia-Pacific to ensure collective capability and capacity for securing common interests.¹⁹

Although China and the United States sparred over maritime security in the South China Sea since Secretary Clinton's 2010 statement, no one development sparked such a

¹⁷ Glaser and Douglas, 'The Ascent and Demise of "New Type of Great Power Relations" Between the US and China', 29.

¹⁸ 'Remarks By President Obama to the Australian Parliament, Canberra, Australia, November 17, 2011', The White House, Office of the Press Secretary.

¹⁹ U.S. Department of Defense, *Sustaining U.S. Global Leadership: Priorities for 21st Century Defense*, Washington, D.C., January 2012.

heated exchange as China's transformation of seven rocks and low tide elevations into artificial islands in 2014-15. China's actions led Admiral Harry Harris, Commander of the U.S. Pacific Command, to declare in March 2015 that China was 'creating a great wall of sand'.²⁰ Two months later Secretary of Defense Ashton Carter addressed the Shangri-La Dialogue in Singapore where he outlined U.S. concerns over China's so-called 'land reclamation'.²¹ Carter stated:

The United States is deeply concerned about the pace and scope of land reclamation in the South China Sea, the prospect of further militarization, as well as the potential for these activities to increase the risk of miscalculation or conflict among claimant states.²²

Secretary Carter's use of the term 'militarization' set off an escalating heated exchange of words between China and the United States that continues to the present. Both China and the United States accuse each other of militarizing the South China Sea.

China: Militarization of the South China Sea. From the late 1980s to the mid-1990s, China occupied seven features in the Spratly Islands: Fiery Cross Reef, South Johnston Reef, Cuarteron Reef, Subi Reef, Mischief Reef, Gaven Reef, and Hughes Reef. The latter four are low-tide elevations and according to international law are 'not subject of appropriation'.

China has chosen to advance its claims to 'indisputable sovereignty' over the Spratlys by encouraging its fishing fleet (including armed maritime militia) to fish in disputed waters. China's fishing fleet totals around 430,000 vessels including 1,570 trawlers, 68,000 medium sized boats and 360,000 small craft. China also has a sizeable Distant Water Fleet of 154 trawlers that are active in Southeast Asian waters.

The state provides subsidies to fishing vessels depending on the size of their engines, the larger the engine capacity the more the subsidy. These vessels are encouraged to travel south into waters claimed by Malaysia and Indonesia. All fishing vessels are equipped with the Beidou satellite communications system so they can report their presence and call for support from ever-present China Coast Guard ships. Xi Jinping: has encouraged China's maritime militia to extend their responsibilities, 'not only lead fishing activities, but also collect oceanic information and support the construction of islands and reefs [in the Spratly islands]'.²³

In 2014 China began to implement a master plan to expand and consolidate its presence

²⁰ Associated Press, 'US Admiral: China "Creating a Great Wall of Sand" in Sea', *Voice of America*, 31 March 2015.

²¹ 'Land reclamation' is not an accurate term, China is not recovering land that has been eroded by wind and sea. See Carl Thayer, 'No, China is Not Reclaiming Land in the South China Sea', *The Diplomat*, 7 June 2015.

²² Dr. Ashton Carter, United States Secretary of Defense, 'The United States and Challenges to Asia-Pacific Security', IISS-Shangri-La Dialogue First Plenary Section, 14th Asia Security Summit, Singapore, 30 May 2015.

²³ Quoted in An Baijie, 'President pays visit to Hainan fishermen', *The China Daily*, 11 April 2013.

by transforming the rocks and low-tide elevations that it occupied into artificial islands. In the space of eighteen months, Chinese vessels dredged and pumped sand from the seabed and ripped coral out of nearby reefs until these features encompassed an area of 1,214 hectares (12 square kilometres or 3,000 acres). In 2015, the pace and scope of China's reclamation activities accelerated markedly and China began to construct infrastructure, including three airfields and multi-level buildings.

In the space of eight months during 2015, China transformed Fiery Cross Reef (Yongshu) into a 2.65 sq. km artificial island that is now the largest feature in the Spratly Islands. The infrastructure on this reef includes sea walls, concrete roads, military barracks, a multi-level tower, helipads, a harbour, an airfield, and an early warning radar. The harbour could potentially accommodate the People's Liberation Army Navy's (PLAN)'s (PLAN) larger warships, such as Type-071 LPDs. The reef's 3 km-long airfield became operational in January 2016 when Chinese civilian aircraft made maiden flights. On 18 April 2016, China landed a Y-8 military patrol aircraft on Fiery Cross Reef to evacuate three injured workers.

China erected a structure on Subi Reef, northeast of Fiery Cross, in the 1990s and added improvements and other structures in subsequent years. By 1997, Subi hosted satellite communications and a helipad, and a radome was identified in 2011. In 2014 China transformed Subi Reef into an artificial island. In October 2015 China began construction of a 55 metre tall lighthouse that became operational in April 2016. Later in the year China completed construction of its second three kilometre long airfield in the Spratlys.

Beijing took possession of Mischief Reef, southeast of Subi and 15 km from Vietnamese occupied Thitu Island, in 1995 and promptly built a small covered platform on stilts. In October 1998, it added three octagon-shaped structures and two two-level concrete towers with satellite communications arrays and high-frequency antennae. The towers reportedly house electronic intelligence equipment and radar. China later built two piers, a helipad, and installed navigational radar and anti-aircraft guns. In September 2015, China began construction of its third three-km long airfield in the Spratlys. On 12 July 2016 the airfields on Subi and Mischief reefs became operational when China landed civilian aircraft on them.

Other Chinese-occupied reefs in the Spratlys – Cuarteron, Gaven, Hughes and Johnson South – have also been transformed into artificial islands on which Beijing has constructed reinforced sea walls, gun emplacements, docks, helipads, radomes, towers and multi-level buildings. In 2015, satellite imagery of Johnson South revealed the presence of two PLAN frigates in nearby waters. In October 2015 China began constructing lighthouses on Cuarteron and Johnson South reefs. Cuarteron hosts long-range radar, while a radar monitoring station operates on Johnson South.

According to The Pentagon, between 2014 and 2015 China paved the roads on most of its features, installed a solar array on one, built a large port facility on another, constructed buildings and piers on four outposts, further developed the 3km runway on Fiery Cross Reef, and established intelligence, surveillance and reconnaissance infrastructure on most of its outposts.

President Xi Jinping made an official visit to the United States in September 2015. On 25 September, at a joint press conference with President Obama, Xi stated: 'Relevant construction activities that China is undertaking in the Nansha [Spratly] islands do not target or impact any country and China does not intend to pursue militarization.'²⁴

Nonetheless, despite Xi's pledge, China's consolidation of its presence on its artificial islands tells a different story. In September 2016, China took its most audacious step in militarizing its occupied features in the South China Sea by constructing reinforced hangars next to the airfields on Fiery Cross, Subi and Mischief reefs. Each airfield will have space for 24 planes such as J-11 and Su-30 jet fighters and 3-4 larger planes including H-6 bombers; H6-U and Il-78 refueling tankers, Y-8, Y-20 and Il-76 transport aircraft; and KJ200 Airborne Warning and Control (AWACS) surveillance aircraft. In sum, in the short-term China will be the only regional state able to operate long-range bombers from its airfields on features in the Spratly Islands. Later in 2016 China also built hexagonal structures on each of these features and by December China has installed Close In Weapon Support and anti-aircraft guns on seven of its artificial islands.

Chinese Military Exercises. Since 2013 the PLAN has stepped up its annual military exercises in the South China Sea. According to a report by the Center for the Study of Chinese Military Affairs, the PLAN's North Sea Fleet conducted two exercises between 2007-09; the PLAN's North and South Sea Fleets conducted one operation each between 2010-12 and eight operations between 2013-14.²⁵ In late 2015, China conducted large-scale naval exercises that included war games that simulated long-distance assaults and landing operations. Other war games included live fire drills by surface ships simulating attacks on submarines.²⁶

In the months preceding the anticipated ruling by the Artificial Tribunal hearing Philippine claims against China, the PLAN conducted three naval exercises in the South China Sea. The first was conducted in April and involved AWAC aircraft and surface combatants in exercises involving warfare in an electromagnetic environment and simulated attack drills in disputed waters.

The second PLAN exercise took place on 10 May involving a combined exercise of surface warships, submarines, aircraft and garrison troops from Chinese-occupied

²⁴ 'Remarks by President Obama and President Xi of the People's Republic of China in Joint Press Conference', Office of the Press Secretary, The White House, 25 September 2015. <https://obamawhitehouse.archives.gov/the-press-office/2015/09/25/remarks-president-obama-and-president-xi-peoples-republic-china-joint> .

²⁵ Christopher H. Sharman, 'China Moves Out: Stepping Stones Toward a New Maritime Strategy', *China Strategic Perspectives* (Washington, D.C.: Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, National Defense University, 2015).

²⁶ 'Disagreements over the South China Sea worsen as China digs in', *The Economist*, 26 November 2015 and Bill Geertz. 'War of words over South China Sea militarization heats up', *Asia Times*, 30 November 2015.

features in the Spratlys. After the conclusion of the exercise, China announced that in future it would deploy nuclear attack submarines (SSNs) to the South China Sea.

The third exercises was timed to coincide with the release of the Award by the Arbitral Tribunal hearing the Philippines claims against China set for 12 July. This exercise was carried out in the waters between the southeast coast of Hainan Island and the Paracels from 5-11 July. PLAN guided missile destroyer *Shenyang* from the North Sea Fleet joined up with the guided missile destroyer *Ningbo* and missile frigate *Chaozhou* from the East Sea fleet. China also announced the regular commencement of military air patrols over the Spratlys, including bombers. Also in July China announced that it would conduct joint military exercises with Russia in the South China Sea in September.²⁷

Two month after the July ruling, in late September, the PLAN, China Coast Guard and Chinese fishing fleet held exercises in waters near the Gulf of Tonkin. The following month the PLAN conducted live fire drills in disputed waters in response to a FONOP by the *USS Decatur*.

Air Patrols. In addition to naval surface exercises, China regularly conducts air patrols by military aircraft to bolster its claim to “indisputable sovereignty” over the South China Sea and to illustrate that China has the capacity to enforce an Air Defence Identification Zone (ADIZ) over the South China Sea should it choose to do so. In late May 2016, for example, China’s Defense Ministry announced that the declaration of an ADIZ was dependent on the level of threat that China faced.

On 18 July 2016, China aired a video showing two J-11 PLAN fighters and an H-6K bomber flying over Scarborough Shoal. Around 6 August, China announced that H-6K bombers and Su-30 fighters would conduct combat air patrols near Scarborough Shoal accompanied by refueling tankers and AWACS aircraft. And in September H6-K bombers, air tankers, and Su-30s from People’s Liberation Army Air force (PLAAF) conducted a combat training exercise over the Bashi Channel to the north of the Philippines.

On 8 December, in response to President-elect Trump’s telephone conversation with the President of the Republic of China on Taiwan, China pointedly sent a Xian H-6 nuclear bomber to patrol around nine dotted line embracing China’s claims to the South China Sea. Satellite imagery was released at this time indicating that China was about to ship large numbers of surface-to-air missiles to its artificial islands in the Spratlys.

United States: Militarization of the South China Sea. The United States has maintained a constant naval and air presence in the South China Sea, as indeed throughout the waters of East Asia, since the end of the Second World War. In 1951 the United States and the Philippines became allies under a Mutual Defence Treaty. In 1991-92 the Philippines terminated the leases on all U.S. bases in the country and the United States withdrew all its armed forces.

²⁷ In August 2016, China sent five naval ships, including a guided missile destroyer and a frigate, totaling 1,200 personnel, to participate in the annual U.S. RIMPAC exercise in Hawaii.

When Chinese officials accuse the U.S. of militarizing the South China Sea they point to at least three types of activities:

- (1) The Obama Administration's policy of rebalancing to the Asia-Pacific including maritime security assistance, naval "presence" patrols, port visits by U.S. nuclear attack submarines, the rotation of U.S. military personnel, aircraft, and warships in the Philippines (before and after the Enhanced Defense Cooperation Agreement was ruled constitutional by the Philippines' Supreme Court in January 2016), and basing of U.S. Littoral Combat Ships in Singapore and temporary deployment of U.S. Navy P-8A *Poseidon* maritime-patrol aircraft to Singapore, the Philippines and Malaysia.
- (2) U.S. Freedom of Navigation Operational Patrols; and
- (3) Close-in aerial surveillance by U.S. aircraft near Chinese military installations on Hainan Island and over flights of PLA "military alert zones" in the Spratly Islands.

Rebalancing. The U.S. Congress approved \$425 million for the Defense Department's Southeast Asia Maritime Security Initiative over a five-year period to be allocated to five countries - Indonesia, Malaysia, the Philippines, Thailand and Vietnam. Congress approved \$49.72 million for disbursement in FY2016. Follow on disbursements total \$75 million for fiscal year 2017; and \$100 million each of fiscal years 2018, 2019 and 2020.

The U.S. Navy constantly conducts so-called "presence" patrols in the South China Sea. U.S. Navy warships spent more than 700 days patrolling in the South China Sea in 2015 and are estimated to have spent around 1,000 days patrolling in 2016.

In March 2016, for example, the *USS Chancellorsville* (CG-62), a Ticonderoga-class guided-missile cruiser, patrolled waters near Mischief Reef while the *USS John C. Stennis* Strike Group spent three months of its seven-month deployment to the Western Pacific in the South China Sea during the first half of 2016. In mid-April, U.S. Defence Secretary Ash Carter flew out to the *USS Stennis* accompanied by Voltaire Gazmin, the Philippines Defense Secretary. Carter used this platform to announce that the United States and the Philippines had begun joint naval patrols with joint air patrols to follow. On average, the U.S. Navy has two or more ships patrolling the South China Sea on any given day.

Freedom of Navigation. The United States has conducted four FONOPs in the South China Sea from 2015-16:

The first FONOP was conducted on 26 October 2015 by the *USS Lassen* (DDG-82), an Arleigh Burke-class guided missile destroyer. The *USS Lassen* sailed within 12 nautical miles (nm) of five features claimed by China in the Spratlys: Subi Reef, Northeast Cay, Southeast Cay, South Reef and Sandy Cay, without prior notification. The *USS Lassen* was shadowed for ten days by a PLAN guided-missile destroyer and a naval patrol ship. The Chinese repeatedly broadcast, 'Hey, you are in Chinese waters. What is your

intention?’²⁸

The second FONOP was conducted on 30 January 2016 by the *USS Curtis Wilbur* (DDG-54), an Arleigh Burke-class guided missile destroyer. It sailed by Triton Island in the Paracels.

The third FONOP took place on 10 May when the *USS William P. Lawrence* (DDG-110), an Arleigh Burke-class guided missile destroyer, transited near Fiery Cross Reef (shortly after the visit of General Fan Changlong, the Deputy Chairman of the PLA’s Central Military Committee).²⁹

The fourth FONOP took place around 23 October 2016 when the *USS Decatur* (DDG-73), an Arleigh Burke-class guided missile destroyer, passed through waters near Triton and Woody Island.

Aerial Surveillance. China has long listed three obstacles to improved military-to-military relations with the United States, including close-in surveillance. In the most notable incident, in April 2001 the pilot of a Chinese jet harassed a U.S. Navy EP-3 maritime surveillance aircraft. The pilot miscalculated and crashed into the EP-3. His plane went down at sea and the pilot was killed. The EP-3 for forced to make an emergency landing on Hainan Island.

In December 2015, a U.S. Air Force B-52 bomber flew over the South China Sea within two nm of China’s artificial islands. In mid-July of the following year, a Poseidon P-8A carrying the Commander of the U.S. Pacific Fleet Admiral Scott Swift, flew over Fiery Cross, Subi and Mischief reefs.

Scarborough Shoal: Detering Provocative and Decisive Action. In March 2016, Admiral John Richardson U.S. Chief of Naval Operations revealed that Chinese survey ships at Scarborough Shoal suggested new phase of construction. That same month, a Chinese military website posted a purported detailed dredging plan for Scarborough Shoal including a runway, power systems, residences and harbor to take military vessels. U.S. and Australian intelligence and analytical agencies later warned that China was poised to take “decisive and provocative action” such as dynamiting the coral to construct a fourth airfield.³⁰ President Obama reportedly raised this issue in a candid exchange with President Xi on the sidelines of the nuclear security summit in Washington in March.

As noted by Admiral Richardson a Chinese airfield on Scarborough Shoal would

²⁸ Yeganeh Torbati, “‘Hope to see you again’: China warship to U.S. destroyer after South China Sea patrol,” Reuters, 5 November 2015.

²⁹ In early April 2016, the media reported that a third FNOP was planned. These reports came a day after Presidents Barack Xi Jinping met at the nuclear summit in Washington where Obama raised China’s actions in South China Sea. Later in April the third FNOP cancelled.

³⁰ Carl Thayer, ‘Australian Intelligence: China Poised to Take “Decisive and Provocative” Action in the South China Sea’, *The Diplomat*, 15 April 2016.

complete the triangle linking Woody island in the Paracels with occupied features in the Spratlys and give China the ability to monitor virtually all aircraft and surface ships passing over or through the South China Sea, especially near the Philippines naval base at Subic Bay.

Between 19-21 April, the U.S. conducted at least three aerial patrols around Scarborough Shoal by A-10 Thunderbolt ground attack aircraft and HH-60 Pave Hawk helicopters retained in the Philippines after the annual Filipino-U.S. military exercise. The *USS John C. Stennis* aircraft carrier strike group returned to the South China Sea and the United States and the Philippines announced the commencement of joint naval patrols.

In June, the *USS Ronald Reagan* aircraft carrier replaced the *Stennis* on patrol duties and the U.S. deployed four EA-18 Growlers, the world's most advanced electronic warfare aircraft, to the Philippines. During the summer three U.S. destroyers, *USS Stethem*, *USS Spruance* and *USS Momsen*, conducted independent patrols in the waters around the Scarborough Shoal and the Spratly Islands. The two carrier strike groups, *Stennis* and *Reagan* joined six warships to conduct a large-scale exercise off the east coast of the Philippines.

It seems reasonable to conclude that the United States successfully deterred China from taking 'provocative and decisive action'.

China's Response to U.S. Militarization. China argues that the Obama Administration's strategic policy of rebalancing is the root cause of current tensions in the South China Sea. This is an ahistorical argument as Chinese militarization began long before the policy of rebalancing was adopted. China responded to U.S rebalancing in three major ways (in addition to the militarization of artificial islands and maritime military exercises described above).

First, PLAN warships and aircraft regularly shadow U.S. warships and planes operating on the high seas and international airspace above the South China Sea. For example, in early March 2016 the *USS John C. Stennis* Strike Group was continually followed and monitored by PLAN ships for six days as it transited the South China Sea. At the end of March, as the *USS Chancellorsville* passed by Mischief Reef, it was followed by a PLAN frigate that launched a helicopter. A PLAN destroyer later replaced the frigate.

On 10 May, as the *USS William P. Lawrence* conducted a FONOP near Fiery Cross Reef it was tracked by two PLAAF J-11s, and three PLAN warships and warned to leave the area. In October 2016, as the *USS Decatur* passed by Triton island it was shadowed by the PLAF destroyer *Guangzhou*.

U.S. military ships and aircraft are regularly contacted by the PLAN over radio and requested to disclose their missions. On other occasions U.S. aircraft are warned they are endangering the safety of PLAN ships and are asked to leave China's 'military alert zone'. One notable example took place in May 2015 when CNN recorded an exchange between Chinese military personnel on Fiery Cross Reef and a U.S. Navy Poseidon P8-A

maritime reconnaissance aircraft patrolling overhead. The Poseidon was challenged eight times by the PLAN with this message, “Foreign military aircraft. This is Chinese navy. You are approaching our military alert zone. Leave immediately.”³¹

Second, China occasionally stages confrontations at sea on in the air to express its disapproval of lawful U.S. military activities on and over the South China Sea.

The most notable incident involved PLAN harassment of the *USNS Impeccable* (T-AGOS-23), a civilian crewed ocean surveillance ship operating in the high seas off Hainan Island over a three-day period in March 2009. A PLAN frigate twice crossed the *Impeccable’s* bow at close quarters (90 metres on the first run), while a PLAAF Y-12 aircraft conducted eleven flyovers at low altitude and within 30-90 metres of the ship. A PLA intelligence ship contacted the *Impeccable* by bridge-to-bridge radio and ordered it to leave the area or ‘suffer the consequences’. On the final day, five Chinese ships came on station near the *Impeccable* and ordered it to leave the area. After the *Impeccable* radioed its intention to leave the area and requested safe passage, two Chinese flagged trawlers drew up at close range (15 m), dropped wood in the water and then stopped dead. The *Impeccable* was forced to execute an emergency full stop to avoid a collision.

Another incident occurred In November 2013 during the first deployment by China’s aircraft carrier the *Liaoning* to the South China Sea. The *Liaoning* was closely monitored by the *USS Cowpens* (CG-63), a *Ticonderoga*-class guided missile cruiser. On 5 December, a PLAN warship made radio contact with the *USS Cowpens* and asked it to leave the area. The *USS Cowpens* replied that it was in international waters and declined to change course. The *Cowpens* was then shouldered by a PLAN Amphibious Dock Ship that suddenly crossed its bow at a distance of less than 500 meters and then stopped in the water. The *USS Cowpens* was forced to take evasive action to avoid a collision. The two ships made bridge-to-bridge contact to ensure safety of navigation and there were no further incidents.

A report in the *Global Times* embellished the incident charging that the *USS Cowpens*, after tailing and harassing the *Liaoning* formation, entered within a forty-five kilometer inner defense layer and took offensive actions on the day of the confrontation.

Other Chinese-instigated incidents include:

- (1) In August 2014, a PLAAF J-11 fighter jet flew within 6 metres of a U.S. P-8 Poseidon aircraft and then performed a ‘barrel roll’ over the top of the Poseidon. The Poseidon was flying near Hainan Island. The U.S. charged the Chinese pilot with flying in a threatening, dangerous and unprofessional manner.
- (2) In May 2016, a U.S. Navy EP-3E Aries flying five hundred kilometres from Hainan Island was intercepted in an unsafe manner by two PLAAF J-11s. One of the J-11s flew within 15 metres of the Aries.
- (3) On 8 June, a U.S. Air Force RC-135 maritime reconnaissance aircraft was intercepted by two J-11s.

³¹ Jim Sciutto, ‘Exclusive: China warns U.S. surveillance plane’, CNN, 20 May 2015.

- (4) On 17 June, U.S. defence officials reported that China was using electronic counter-measures against U.S. drones operating in international air space over the South China Sea.
- (5) On 15 December 2016, a PLAN warship seized a U.S. unmanned underwater vehicle (UUV or drone) launched by the *USNS Bowditch*, a civilian-crewed oceanographic surveillance ship operating in waters off the west coast of the Philippines. After protests by the United States China returned the UUV.

Third, China uses U.S military activities as a pretext to militarize further its occupied features in the South China Sea.

For example, in mid-February 2016, after the *USS Curtis Wilbur* conducted a FONOP near Triton Island in the Paracels, China deployed two batteries of the Hongai-9 (HQ-9) surface-to-air missile (with a 200 km range) and radar system on Woody Island. Later, Beijing deployed ten Shenyang J-11 and Xian JH-7 fighters to the island. In March, the PLAN conducted a series of military exercises on and around the Paracel Islands including the deployment of the YJ-62 anti-ship missile system. On 7 April, satellite imagery revealed that China installed a fire-control radar system and deployed two more J-11s to Woody Island.

Part 3. China, the United States and the Region

China and Southeast Asia

ASEAN. In 1996 China became an official ASEAN dialogue partner. As a dialogue partner, China regularly participates in the annual ASEAN Post-Ministerial Conference consultation process. This takes the form of a meeting between ASEAN and its ten dialogue partners (ASEAN 10 Plus 10), and a separate meeting between ASEAN members and each of its dialogue partners (ASEAN 10 Plus 1). China is a member of the ASEAN Regional Forum. Also, as a dialogue partner, China became an inaugural member of the East Asia Summit and ASEAN Defence Ministers Meeting-Plus in 2005 and 2010, respectively. ASEAN and commenced annual summit meetings in 1997.

China and ASEAN signed a Free Trade Agreement in November 2002. In 2003 China signed on to the ASEAN Treaty of Amity and Cooperation.

South China Sea. Territorial disputes in the South China Sea first arose as an issue between ASEAN and China in 1992 when China adopted the Law on Territorial Sea and Contiguous Zone. China's Law on Territorial Sea raised alarm bells among ASEAN members that viewed China's actions a claim to the entire South China Sea. ASEAN concerns were heightened by the U.S military withdrawal from the Philippines at this time.

In 1992, ASEAN responded to rising tensions between China and Vietnam by issuing a Declaration of Concern urging unnamed parties to resolve the matter peacefully. Southeast Asian anxieties about Chinese assertiveness were aroused again in 1995 when China occupied Mischief Reef claimed by the Philippines. ASEAN issued its second public

declaration calling for restraint and the peaceful settlement of disputes. ASEAN has refrained from mentioning China by name in its statements on the South China Sea.

Declaration on Conduct of Parties. In an attempt to resolve this matter ASEAN and China embarked on seven years of fruitless negotiations to secure a legally binding Code of Conduct in the South China Sea (COC). In November 2002 when matters reached an impasse, ASEAN members and China agreed to a non-binding political statement known as the Declaration on Conduct of Parties in the South China Sea (DOC). The DOC laid out a series of cooperative activities and confidence building measures. It was not until December 2004, however, that China and ASEAN agreed on the terms of reference for a Joint Working Group to implement the DOC. Another seven years passed before the Guidelines to Implement the DOC were finally adopted in July 2011.

Territorial and sovereignty disputes in the South China Sea exposed rifts in ASEAN. The most notable example was Cambodia's action as ASEAN Chair in 2012 to block all mention of these disputes in the customary joint communiqué; consequently for the first time since ASEAN was founded no joint communiqué was issued.³²

In January 2013, the Philippines responded to China's investment of Scarborough Shoal and diplomatic stonewalling by lodging a claim against China under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). The Philippines took this action without prior consultations with its fellow ASEAN members. Consequently, China has waged a fierce international propaganda campaign attacking the Philippines (and its supporters) for internationalizing their dispute and disparaging the compulsory arbitration process under UNCLOS.

Since the adoption of the Guidelines to Implement the DOC, ASEAN leaders have pressed their Chinese counterparts to fully and effectively implement the DOC. It was only in 2013 that China announced it was willing to enter into consultations with ASEAN members on the COC, but only under the framework of the Joint Working Group to Implement the DOC and on the basis of consensus. On 13 September 2013, China and ASEAN held their first consultations on the COC at a meeting of senior officials in Suzhou, China. These consultations are continuing at present.

While China's direct role in the 2012 fiasco in Phnom Penh may be debated, this was not the case at the China-ASEAN Foreign Ministers Special Meeting held in Kunming in June 2016, co-chaired by China and Singapore as ASEAN's country coordinator for China.³³

Prior to the meeting ASEAN ministers signed off on an agreed press statement. However, at the special meeting China successfully put pressure on Cambodia to withdraw its support. After scuttling the ASEAN press statement, a deputy Chinese foreign minister

³² Carlyle A. Thayer, 'ASEAN'S Code of Conduct in the South China Sea: A Litmus Test for Community-Building?', *The Asia-Pacific Journal*, 10(34), No. 4, August 20, 2012, 1-23.

³³ This account is based on Carl Thayer, 'The ASEAN-China Special Meeting Mystery: Bureaucratic Snafu or Chinese Heavy-Handedness?', *The Diplomat*, June 17, 2016 and Carl Thayer, 'Revealed: The Truth Behind ASEAN's Retracted Kunming Statement', *The Diplomat*, 19 June 2016.

applied heavy pressure on ASEAN ministers to agree to a Chinese draft joint statement to be issued at a media conference after the special meeting concluded. Some ASEAN ministers were outraged that they learned of their lack of consensus from China and not Laos, ASEAN Chair.

China's actions created disarray in ASEAN ranks. ASEAN ministers could not reach consensus to post their draft press statement on the ASEAN website but did agree that each country could issue its own statement. Malaysia posted the press statement and then retracted it, while both the Philippines and Vietnam released the text of press statement. Singapore's foreign minister departed early in order to avoid a public confrontation with his Chinese co-host. Singapore has since come under public Chinese criticism for its handling of the South China Sea within ASEAN.

On 12 July the Arbitral Tribunal hearing the claims brought by the Philippines against China issued a unanimous Award that found against China on all but one matter.³⁴ Chinese propaganda then went into high gear to attack the probity of the judges and the legal basis of their Award. With the initial exception of the Philippines and Vietnam, ASEAN member states have avoided specific mention the Arbitral Tribunal award.³⁵

On 30 June 2016, Rodrigo Duterte became president of the Philippines. Duterte has pursued a policy of placating if not ingratiating himself to China. The Arbitral Tribunal Award is now in legal limbo while Manila and Beijing prepare to hold discussions on their territorial disputes.

United States and Southeast Asia. United States relations with ASEAN, which date back to its founding in 1967, were substantially upgraded by the Obama Administration. The United States appointed a permanent Ambassador to the ASEAN Secretariat in Jakarta, signed the protocol of accession to the ASEAN Treaty of Amity and Cooperation, initiated a U.S.-ASEAN leaders' meeting, and became a member of the East Asia Summit. Under Obama's rebalancing policy the Secretary of State regularly attended the ASEAN Plus 10 and ASEAN Plus 1 ministerial meetings and well as annual meetings of the ASEAN Regional Forum. President Obama attended all but one East Asia Summits.

The United States has a long-standing policy of not taking sides on the merits of conflicting territorial claims in the South China Sea. The United States, however, advocates the peaceful settlement of disputes on the basis of international law, including UNCLOS. In 2010 Secretary of State Hillary Clinton altered this policy by declaring at a meeting of the ASEAN Regional Forum in Hanoi that the U.S. has a national interest in the South China Sea.

³⁴ Carl Thayer, 'After the Ruling: Lawfare in the South China Sea,' *The Diplomat Magazine*, no. 21, August 2016, 1-18.

³⁵ Carlyle A. Thayer, 'The Southeast Asia Claimant States, ASEAN, and the South China Sea Dispute', in *The South China Sea in the Broader Maritime Security of the Indo-Pacific Region*, NASSP Issue Brief Series, National Asian Security Studies Program Issue Brief No. 6.1, December 2016, 1-9. <https://www.unsw.adfa.edu.au/scs-publications>.

During the two terms of the Obama Administration, the United States and ASEAN have held two formal summits: the ASEAN and the United States 3rd Summit (21 November 2015) and the ASEAN-United States Special Leaders' Summit at Sunnylands (15-16 February 2016). The chairman's statements issued following ASEAN's summit with the United States all agreed on: the importance of peace, security and stability of the region; freedom of navigation and over flight; implementation of the DOC and early conclusion of a Code of Conduct; self-restraint; non threat or use of force; peaceful resolution of disputes; and international law, including UNCLOS.

Of significance, however, was the wording of the joint statement following the Sunnylands Summit. This documents included six issues not mentioned in any previous ASEAN ministerial statements or statements issued after separate ASEAN summit meetings with China and the United States. These issues included: maritime security and safety; full respect for legal and diplomatic processes; other lawful uses of the sea; unimpeded lawful maritime commerce; non-militarization; and agreement to address common challenges in the maritime domain.³⁶ Since the Sunnylands Summit, ASEAN has incorporated reference to 'full respect for legal and diplomatic processes' (an oblique reference to the Arbitral Tribunal) and non-militarization in all statements issued after relevant ministerial and summit meetings.

China, the United States and ASEAN. Strategic rivalry and competition between China and the United States have put under stress ASEAN's centrality and quest to be in the 'driver's seat' in order to preserve regional autonomy. For example, at the 3rd ASEAN Defence Ministers' Meeting Plus held in Kuala Lumpur on 4 November 2016, China lodged strong objections to any references to the South China Sea in a draft Joint Declaration. The United States responded by refusing to support a Joint Declaration that omitted any reference to the South China Sea. Consequently, no Joint Declaration was issued. Malaysia's Defence Minister Hishammuddin, the host, issued a Chairman's Statement that elided the entire controversy in its brief mention of the South China Sea, while the Minister's press statement made no mention of the South China Sea at all.³⁷

ASEAN does not want to take sides, yet it has limited means to constrain either China or the United States from further militarizing the South China Sea other than political and diplomatic dialogue.

Kavi Chongkittavorn has made a persuasive argument that 'ASEAN's overall position on the South China Sea has been strengthened' following the Award by the Arbitral Tribunal. Kavi's argument is based on an exegesis of four documents adopted by ASEAN ministers at meetings in Vientiane twelve days after the Award:

³⁶ 'Joint Statement of the U.S.-ASEAN Special Leaders' Summit: Sunnylands Declaration, 15-16 February 2016', Office of the Press Secretary, The White House.

³⁷ 'Chairman's Statement of the 3rd ASEAN Defence Ministers' Meeting-Plus (3rd ADMM-Plus), Kuala Lumpur, 4 November 2015' and YB Dato' Seri Hishammuddin Tun Hussein, Minister of Defence. 'Third ASEAN Defence Ministers' Meeting Plus (3rd ADMM-Plus), Press Statement, Kuala Lumpur, 4 November 2015.

- ASEAN Foreign Minister's Statement on the Occasion of the 40th Anniversary of the Treaty of Amity and Cooperation in Southeast Asia (TAC);
- Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting, Vientiane, 24 July 2016;
- Joint Statement of the Foreign Ministers of ASEAN Member States and China on the Full and Effective Implementation of the Declaration on the Conduct of Parties in the South China Sea (25 July 2016); and
- Joint Statement of the Foreign Ministers of ASEAN Members States on the Maintenance of Peace, Security and Stability in the Region.³⁸

Kavi concluded that ASEAN has now reached a new consensus position on the South China Sea and this 'unexpectedly generates a win-win situation for concerned parties' and that with the Philippines' return to the fold ASEAN's bargaining power has increased and 'renewed the process of mending ASEAN-China relations...'³⁹

The ASEAN foreign ministers' 'new consensus' was endorsed by the 28th and 29th combined ASEAN Summits held in Vientiane from 6-7 September. Paragraph 5 of chair's statement replicated Point 2 in the 49th AMM Joint Communiqué that reaffirmed 'full respect for legal and diplomatic processes'.⁴⁰ The section on the South China Sea contained eight paragraphs, the first seven of which were word for word a carbon copy those in the 49th AMM Joint Communiqué. The eighth paragraph welcomed the adoption of the ASEAN-China Joint Statement on the DOC.

ASEAN and China are currently working on the text of a framework agreement for the COC by the first half of 2017.

Part 4. The Trump Administration and China

The election of Donald Trump as 45th U.S. President has raised the level of strategic uncertainty between China and the United States. During the presidential election campaign Trump repeatedly called Beijing a currency manipulator and threatened to slap higher tariffs on goods imported from China. If Trump follows through a trade war could erupt. Trump also tweeted criticism of China's island building in the South China Sea.

On 2 December 2016, after winning election, President-elect Trump took a telephone call from Tsai Ing-wen, the President of the Republic of China on Taiwan. Trump's action was unprecedented and marked the first time in thirty-six years that a U.S. president or president-elect had spoken to the government leader of Taiwan.

³⁸ Kavi Chongkittavorn, 'ASEAN's Strategies After the PCA Decision', Presentation to International Workshop on The Legal Status of Islands and Rocks in International Law and Practice in the East Sea, co-hosted by Pham Van Dong University and Nha Trang University, Nha Trang, August 18, 2016.

³⁹ Chongkittavorn, 'ASEAN's Strategies After the PCA Decision'.

⁴⁰ 'Chairman's Statement of the 28th and 29th ASEAN Summits, Vientiane, 6-7 September 2016'. <http://asean.org/storage/2016/08/Final-Chairmans-Statement-of-the-28th-and-29th-ASEAN-Summits-rev-fin.pdf>.

After China critically commented on the President-elect's actions, Trump tweeted, 'Did China ask us if it was OK... to build a massive military complex in the middle of the South China Sea? I don't think so!'.⁴¹ China responded on 8 December by dispatching its only aircraft carrier, the *Liaoning*, to sail in the waters off Taiwan in a pointed response to Trump's telephone call with President Tsai. China also deployed a Xian H-6 nuclear capable bomber on a patrol around China's nine-dotted line claim to the South China Sea. In an interview with *The Wall Street Journal* a month later, Trump was asked whether he supported the One China policy, Trump replied, 'Everything is under negotiation including one China'.⁴²

While Trump's tweets and comments raised the temperature in Beijing-Washington relations, they paled by comparison to the furore that followed comments by Rex Tillerson, Trump's then nominee for Secretary of State, at his confirmation hearing before the Senate Foreign Relations Committee on 11 January.

During his testimony Tillerson compared China's construction and militarization of artificial islands in the South China Sea as 'akin to Russia's taking Crimea' from the Ukraine. When Tillerson was asked whether he supported a more aggressive posture against China, he responded, 'We're going to have to send China a clear signal that, first, the island-building [in the South China Sea] stops and, second, your [China's] access to those islands also is not going to be allowed'.

Tillerson also characterized China's construction of artificial islands in the South China Sea as 'extremely worrisome' because if China were able to dictate access to the South China Sea it would threaten the 'entire global economy'. Tillerson branded as 'illegal actions' China's island building in the South China Sea and declaration of an Air Defense Identification Zone in the East China Sea. 'The way we've got to deal with this', he concluded, 'is we've got to show back up in the region with our traditional allies in Southeast Asia'

In sum, Tillerson's comments added another pressure point to strained Sino-American relations. This was immediately evident when the hawkish *Global Times* shot back, 'Tillerson had better bone up on nuclear power strategies if he wants to force a big nuclear power to withdraw from its own territories... If Trump's diplomatic team shapes future Sino-US ties as it is doing now, the two sides had better prepare for a military clash'.

On 12 January, Trump's nominee for Secretary of Defense General James Mattis testified at his confirmation hearing before the Senate Armed Services Committee. In response to a question from Senator John McCain about threats to the United States, Mattis replied, 'I think [the world order is] under the biggest attack since World War II ... from Russia, from terrorist groups and with what China is doing in the South China Sea'.

⁴¹ Mark Abadi, 'Trump lashes out at China after getting criticism over phone call with Taiwan', *Business Insider Australia*, 5 December 2016.

⁴² Peter Nicholas, Paul Beckett and Gerald F. Seib, 'Trump Open to Shift on Russia Sanctions, "One China" Policy', *The Wall Street Journal*, 13 January 2017.

Mattis called for boosting U.S. military readiness and America's alliances.

On the South China Sea, Mattis responded to a question if he agreed with Chinese officials saying that they're not militarizing the South China Sea. 'No, I do not'. General Mattis later observed, 'While our efforts in the Pacific to keep positive relations with China are well and good, these efforts must be paralleled by a policy to build the counterbalance if China continues to expand its bullying role in the South China Sea and elsewhere' Mattis concluded that China must be denied a 'veto power over territorial claims' and that 'deterrence is critical'.

Did the testimony offered by Tillerson and Mattis reflect Donald Trump's views? On 20 January, White House spokesperson Sean Spicer was asked at a press conference whether President Trump agreed with Tillerson's comments. Spicer replied, 'I think the U.S. is going to make sure that we protect our interests there [in the South China Sea]. It's a question of if those islands are in fact in international waters and not part of China proper, then yeah, we're going to make sure that we defend international territories from being taken over by one country'.⁴³

China's state media immediately retorted that the United States would need to 'wage war' to stop China from accessing its sovereign territory.

Since Spicer's comments, Tillerson, Mattis and Trump have all clarified their views and by so doing have dialed down their bellicose rhetoric substantially.

Tillerson responded to a written question on the South China Sea from Senator Ben Cardin, the ranking Democrat on the Senate Committee on Foreign Relations, with these words:

To expand on the discussion of U.S. policy options in the South China Sea, the United States seeks peaceful resolution of disputes and does not take a position on overlapping sovereignty claims, but the United States also does not recognize China's excessive claims to the waters and airspace of the South China Sea. China cannot be allowed to use its artificial islands to coerce its neighbors or limit freedom of navigation or overflight in the South China Sea. The United States will uphold freedom of navigation and overflight by continuing to fly, sail, and operate wherever international law allows. If a contingency occurs, the United States and its allies and partners must be capable of limiting China's access to and use of its artificial islands to pose a threat to the United States or its allies and partners. The United States must be willing to accept risk if it is to deter further destabilizing actions and reassure allies and partners that the United States will stand with them in upholding international rules and norms. If confirmed, I would look forward to working with interagency partners to develop a whole-of-government approach to deter further Chinese coercion and land reclamation as well as challenges to freedom of navigation or overflight in the South China Sea.⁴⁴

In sum, Tillerson backed off from his earlier comments that the U.S. should block China's

⁴³ Quoted in Simon Denyer, 'Is Trump ready for war in the South China Sea, or is his team just not being clear?', *The Washington Post*, 24 January 2017.

⁴⁴ Rex Tillerson's written responses to questions from 'Senator Ben Cardin, Ranking Member', undated, <https://www.desmogblog.com/sites/beta.desmogblog.com/files/Ben%20Cardin%20Questions%20Tillerson.pdf>

access to its artificial islands.⁴⁵ He added this important clarification, ‘If a contingency occurs, the United States and its allies and partners must be capable of *limiting China's access to and use of its artificial islands to pose a threat to the United States or its allies and partners* (emphasis added)’.

On 4 February, James Mattis, speaking in Tokyo at the conclusion of his first overseas visit as Defense Secretary, stated, ‘What we have to do is exhaust all efforts, diplomatic efforts, to try and resolve this [South China Sea dispute] properly. Our military stance should be one that reinforces our diplomats... At this time we do not see any need for dramatic military moves at all’.⁴⁶

On 9 February, Presidents Trump and Xi held a pre-arranged telephone conversation. According to a statement issued by The White House, ‘President Trump agreed, at the request of President Xi, to honor our One China policy’.⁴⁷

The new Trump Administration has created strategic uncertainty among U.S. allies and rivals over its foreign policy priorities in general and United States policy towards Asia and the Pacific and China in particular. At the time of this writing the U.S. Congress has not yet approved all of Trump’s nominees for Cabinet posts, nor have key high-level positions in the departments of state and defense been filled. The lines of authority remain unclear between Trump’s inner circle (including Steven Bannon and Jared Kushner) and members of the Principals Committee of the National Security Council.⁴⁸

⁴⁵ Lisa Murray, ‘US tones down bellicose talk on South China Sea’, *The Australian Financial Review*, 8 February 2017. In writing

⁴⁶ Reuters, ‘Mattis says no need for dramatic U.S. military moves in South China Sea’, 3 February 2017. This report is dated U.S. time.

⁴⁷ Quoted in Mark Landler and Michael Forsyth, ‘Trump Tells Xi Jinping U.S. Will Honor “One China” Policy’, *The New York Times*, 9 February 2017.

⁴⁸ David E. Sanger, Eric Schmitt and Peter Baker, ‘Turmoil at the National Security Council, From the Top Down’, *The New York Times*, 12 February 2017; John Hudson and Paul McLeary, ‘Who Can Right Flynn’s Dysfunctional National Security Council?’, *Foreign Policy*, 14 February 2017; Paul Waldman, ‘The most dysfunctional White House in memory’. *The Week*, 14, February 2017; and Michael C. Bender and Rebecca Ballhaus, ‘White House bogged down in “absolute dysfunction”’, *The Wall Street Journal* reprinted in *The Australian*, 16 February 2017.