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The Evolution of U.S. Strategy in the South China Sea

Tacking with Regional Strategic Winds

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Since the end of World War II, U.S. grand strategy toward the People's Republic of China (hereafter China or PRC) has tacked between three central policy themes: **containment, cooperative engagement, and competition**. Additionally, a **fourth unstated strategic theme** undergirds the above: prevailing in conflict, which since 1949 has principally revolved around the threat of forceful reunification of Taiwan but is expanding to include the potential for conflict over disputed sovereignty and maritime claims in the South China Sea.

Before examining the current situation in the South China Sea and U.S. policy and strategy options, it is necessary to briefly review the history of the military aspects of the U.S.-China relationship, as some historical themes continue to shape both U.S. and Chinese strategy today. Additionally, any study of the substrategies in the South China Sea must include the context of the broader political, economic, and military relationship at that time. In the interest of brevity, this review will start with the end of World War II, although earlier themes such as the “Century of Humiliation” in the latter half of the nineteenth and first half of the twentieth century continue to influence Chinese strategic thinking.

One other note: there are many different contextual definitions of the words “policy” and “strategy.” For the purposes of this chapter, I will use the following framework: strategy is defined as “the *ways* in which the available *means* will be employed to achieve the *ends* of *policy*.”

1945–50: CIRCUMSPECT ENGAGEMENT

In the aftermath of the destruction of the war against Japan, Allied powers led the effort to restore the sovereignty of states and territories that were occupied by the Imperial Japanese Army during the war, including the Republic of China (ROC). U.S. strategy during this period is best described as “circumspect” cooperative engagement, due to the fact that many U.S. policymakers and military leaders loathed Chiang Kai Shek’s mismanagement, corruption, and human rights abuses. In light of the billions of dollars in cash and military equipment that the United States granted in aid to the ROC during this period, the defeat of Chiang’s Nationalist Forces during the summer of 1949 by Mao’s People’s Liberation Army (PLA) triggered a vigorous public debate in the United States over “who lost China.”

Hard-liner “China hawks” (mostly Republicans) argued that more ardent support for Nationalist China could have stopped the spread of communism and blamed the Harry S. Truman administration’s “China Hands,” who insisted that the rot of Chiang’s regime was too deep to be salvaged.⁵ While the terms of reference have changed slightly, echoes of this divide persist in U.S. policy and strategy making today. In 2013, Justin Logan wrote that the “optimists (liberal doves)” favor a policy of engagement, while the “pessimists (conservative hawks)” favor a policy of containment. The compromise between the two has resulted in a muddled policy of “conengagement” during the history of the relationship.

Within the broader context of this period, following the surrender of Japan the authority of the South China Sea islands was put under ROC jurisdiction in December 1945, and ROC troops occupied Woody Island in the Paracels.⁷ The Republic of China published a “Map of South China Sea Islands” in 1947 that depicted eleven dashes around the perimeter of the South China Sea, within which China claimed the island features.

1950–72: CONTAINMENT

The defeat of Chiang’s Nationalist forces by the PLA in 1949 and the Chinese intervention in the Korean War in the fall of 1950 triggered a hard shift by the Dwight Eisenhower administration to an explicit strategy of containment. The United States refused to formally recognize Mao’s Communist People’s Republic of China as the legitimate government of China, and Washington intervened with naval forces of the U.S. Seventh Fleet in the Taiwan Straits three times in the 1950s to protect Chiang’s Republic of China (now encamped solely on the island of Taiwan and a few islands in the Taiwan Straits) from PRC aggression. Chinese resentment of this era of containment continues to resonate in today’s U.S.-China strategic relationship, as discussed below.

Against the backdrop of the Communists’ battlefield victories on the mainland, ROC troops retreated from the Paracel Islands to Taiwan on May 8, 1950, out of tactical considerations. However, the Republic of China did not renounce its authority over the Paracel Islands at that time or later. China usurped the Republic of China’s claims to the island features in the South China Sea and published the same map, although two dashes in the Tonkin Gulf were subsequently removed, creating China’s “nine-dash line” claim that is maintained to the present. Additionally, China occupied Woody Island in the Amphitrite Group of the Paracel Islands in 1950—its first territorial expansion in the South China Sea.

1972–86: HOLLOW ENGAGEMENT

President Richard Nixon's historic visit to China in 1972 and resultant policy shift from containment to détente led to the execution of a strategy of cooperative engagement. However, there was practically no Chinese military activity with which to engage, as the PLA had been focusing inward on lingering internal security issues stemming from the Cultural Revolution and a violent border clash with the Soviet Union on the Xinjiang and Manchurian borders in 1969.

U.S. diplomatic recognition of China in 1979 and the Ronald Reagan administration's staunch anti-Soviet stance triggered a series of policy debates about the merits of selling military arms to China to deepen Sino-American cooperation and provide China with the means to serve as a bulwark against the mutual fear of further Soviet expansion in Asia.¹⁶ June Teufel Dreyer, testifying before the Senate Committee on Foreign Relations in 1981, labeled the People's Liberation Army Navy (PLAN) "mainly a coastal defense force" that "rarely venture[s] beyond the PRC's territorial waters." Additionally, she stated that "the PLA Air Force (PLAAF) has been judged relatively weaker during the 1970s than it was in the 1950s." By 1985, the debates over arms sales had matured into the sale and delivery of twenty-four S-70 Sikorsky helicopters and substantive negotiations of Chinese purchases of advanced antitank weapons, surface-to-air missiles, naval sonar systems, and naval ship self-defense systems.

In the South China Sea during this period, there was an armed clash between China and the Republic of Vietnam (South Vietnam) in 1974 over sovereignty of the Crescent Group in the Paracel Islands. The United States, reeling from its strategic defeat in the Vietnam conflict and eager to deepen détente with China, stood by passively while China militarily ejected the Vietnamese and consolidated its control over the Paracels.

1986–2001: ACCELERATING BUT INTERRUPTED ENGAGEMENT

U.S. Secretary of the Navy John Lehman's visit to China in August 1984 paved a path to accelerate naval engagement with China. After two years of internal wrangling within Chinese Communist Party leadership, including recollections of foreign naval domination during the "Century of Humiliation," three U.S. Navy ships pulled into the port of Qingdao on November 5, 1986, the first visit to China by U.S. Navy ships in more than forty years. Secretary Lehman found a willing partner in General Liu Huaqing, who as commander of the PLAN was determined to transform it from a coastal defense force into a blue-water navy.

During this period of increasing cooperative engagement, China had another naval clash with Vietnam over contested land features in the South China Sea in 1988, this time in the Spratly Archipelago. China devised a plan to occupy nine vacant features in the Spratlys in 1987, and after a deadly clash on March 14, 1988, at Johnson South Reef in which seventy-four Vietnamese sailors and marines were killed, China had gained control of six of those features. In the same fashion as the 1974 Sino-Vietnamese clash in the Paracels, the United States did not intervene to prevent the use of force to resolve a sovereignty dispute in the South China Sea.

Arms sales negotiations and senior defense leadership engagements continued at a quickening pace until halting abruptly following the Tiananmen Square massacre in June 1989, when the United States and Europe enacted an arms embargo against China and the United States severed all military contacts. The embargo generated four strategic consequences that linger in the U.S.-China relationship today. The first is a Chinese sense of betrayal by the United States in that a series of good faith negotiations were terminated due to disagreement over an issue that was purely an internal affair of China—in stark violation of China's stated "noninterference" principle of foreign policy. This sense of betrayal was further aggravated by

the U.S. sale of 150 F-16 fighter aircraft to Taiwan in 1992. Second, the Chinese perceived that the United States was officially retrenching to a strategy of containment, a perception inflamed by articles in the Western media such as “Why We Must Contain China.” Third, the Chinese turned back to Russia to procure advanced weaponry. Flush with cash from double-digit gross domestic product growth rates beginning in 1992 but struggling to build a mature technology base, the Chinese proceeded to purchase Russian-built Su-27 and Su-30 fighter–ground attack aircraft, T-72 tanks, S-300 (SA-10 in North Atlantic Treaty Organization terminology) surface-to-air missiles, Il-76 transport aircraft, Kilo-class diesel submarines, and Sovremennyi-class destroyers over the next five years. Additionally, the cash-strapped Russians granted licenses to build Su-27 and Su-30 aircraft in China, which provided manufacturing expertise and multiple technology spinoffs for the Chinese defense industrial base. Finally, the arms embargo accelerated the pace of Chinese “illicit technology acquisition” efforts, principally aimed at the United States. The Chinese effectively used ethnic Chinese targeting, Chinese moles in the U.S. government, false front companies, and transactions with unscrupulous arms dealers to acquire U.S. technologies before discovering the “holy grail” of illicit acquisition: cyber theft. It is no coincidence that the Chinese J-20 and J-31 fifth-generation stealth fighter aircraft strongly resemble Lockheed Martin’s F-22 and F-35 fighters respectively; China reportedly digitally pilfered terabytes of data from Lockheed Martin and six subcontractors.

U.S.-Chinese military cooperation in the 1990s resembled a roller coaster ride. Military dialogue resumed in October 1993 but then halted again during the Taiwan Straits crisis of 1996. Military contacts were revived on the heels of two presidential summits between Bill Clinton and Jiang Zemin in October 1997 but were suspended yet again after the accidental U.S. bombing of the Chinese embassy in Belgrade during Operation Allied Force in May 1999. Military contacts were restarted in May 2000 when Adm. Dennis Blair (commander, U.S. Pacific Command) visited China but were suspended again less than a year later due to the EP-3 incident, a tactical incident that had strategic consequences (discussed below).

On the diplomatic and economic fronts, trade negotiators in the Clinton administration paved the way for China’s entry into the global economy during the 1990s, which was formalized with China’s accession into the World Trade Organization in 2001. U.S. policymakers believed that it was in their nation’s interest to continue the rapid expansion of free trade with the formerly closed economies of the communist bloc; however, this decision would ultimately accelerate the U.S. trade deficit with China and accelerate China’s economic growth.

China’s entry into the Spratlys sparked increased tensions and competition in the South China Sea as various claimant states took measures to stake out and defend their claims. China occupied Mischief Reef in 1994—its seventh occupied feature in the Spratly Archipelago—while the Republic of the Philippines ran a navy ship (BRP *Sierre Madre*) aground on Second Thomas Shoal in 1999 to defend its claim.

2001–PRESENT: “COOPETITION”

The first foreign policy crisis of President George W. Bush’s administration was the EP-3 incident off Hainan Island on April 1, 2001, when a U.S. Navy EP-3 surveillance aircraft conducting a reconnaissance mission in international air space suffered a mid-air collision with a PLAN J-8 fighter jet. The Chinese pilot was killed, and the crew of the EP-3 executed an emergency landing at Lingshui Air Field on Hainan Island. Twenty-four U.S. Navy aircrew

members were detained and interrogated by the Chinese for eleven days before being released into U.S. custody.

China's increasing military capabilities and assertive military operations, many of which were clearly designed to counter U.S. and allied interests in the Asia-Pacific region, were spawning a new era of strategic competition. In recognition of China's growing economic and military might, the Bush administration inferred in its 2001 Quadrennial Defense Review that China was emerging as a competitor: "Although the United States will not face a peer competitor in the near future, the potential exists for regional powers to develop sufficient capabilities to threaten stability in regions critical to U.S. interests. In particular, Asia is gradually emerging as a region susceptible to large-scale military competition. . . . Maintaining a stable balance in Asia will be a complex task. The possibility exists that a military competitor with a formidable resource base will emerge in the region."

The September 11, 2001, attacks and resultant war in Afghanistan, followed by the initiation of the war in Iraq, diverted massive amounts of U.S. military resources from the Asia-Pacific region and reduced the U.S. attention span for managing the military relationship with China. Secretary of Defense Donald Rumsfeld's first visit to China occurred in October 2005, and military ties between senior defense officials subsequently resumed.

The 2006 Quadrennial Defense Review acknowledged this emerging environment of "coopetition" by using the words "compete" and "partner" in the same paragraph: "Of the major and emerging powers, China has the greatest potential to compete militarily with the United States and field disruptive military technologies that could over time offset traditional U.S. military advantages absent U.S. counter strategies. U.S. policy remains focused on encouraging China to play a constructive, peaceful role in the Asia-Pacific region and to serve as a partner in addressing common security challenges, including terrorism, proliferation, narcotics, and piracy."

U.S. leadership expressed similar concerns of growing Chinese competition on the diplomatic and economic fronts; Deputy Secretary of State Robert Zoellick famously urged China to become a "responsible stakeholder" in the international system during a speech in 2005 amidst concerns over China's role in the proliferation of nuclear weapons and missile technology to North Korea, Iran, and Pakistan; intellectual property theft and counterfeiting; and currency manipulation.

Soon after the Barack Obama administration assumed office, Secretary of State Hillary Clinton declared that "the United States is back" in Asia in a number of fora in summer 2009 to signal that the administration believed that the geostrategic center of gravity for the United States lies in the Asia-Pacific region. The Obama administration's 2010 Quadrennial Defense Review continued to echo the cooperative side of the strategy but painted a harsher picture of the increasingly competitive side of the relationship, along with the potential for conflict:

As part of its long-term, comprehensive military modernization, China is developing and fielding large numbers of advanced medium-range ballistic and cruise missiles, new attack submarines equipped with advanced weapons, increasingly capable long-range air defense systems, electronic warfare and computer network attack capabilities, advanced fighter aircraft, and counter-space systems. China has shared only limited information about the pace, scope, and ultimate aims of its military modernization programs, raising a number of legitimate questions regarding its long-term intentions.

China's growing presence and influence in regional and global economic and security affairs is one of the most consequential aspects of the evolving strategic landscape in the Asia-Pacific region and globally. In particular, China's military has begun to develop new roles, missions, and capabilities in support of its growing regional and global interests, which could enable it to play a more substantial and constructive role in international affairs. The United States welcomes a strong, prosperous, and successful China that plays a greater global role. The United States welcomes the positive benefits that can accrue from greater cooperation.

In the fall of 2012, the Obama administration announced in a series of articles and speeches that the United States was strengthening its commitment to Asia, and the 2012 Defense Strategic Guidance formally labeled this policy initiative the "rebalance toward the Asia-Pacific region." The Congressional Research Service summarized the major elements of the rebalance as increasing military presence in the Asia-Pacific region, strengthening security relationships with regional allies, building new security partnerships in the region, and strengthening economic ties by joining the East Asia Summit and negotiating the Trans-Pacific Strategic Economic Partnership.

Predictably, some Chinese media commentators reacted to this U.S. rebalance to Asia as an effort to "restrain" or "contain" China's rise and influence. For example, noted Chinese military expert Liu Jiangping suggested in China's Global Times newspaper that the United States was "tightening up" a "containment circle" along mainland China's periphery. U.S. senior officials attempted to dispel this notion of containment; Secretary of Defense Leon Panetta, speaking at the Engineering Academy of the PLA in September 2012, stated, "Our rebalance to the Asia-Pacific region is not an attempt to contain China. It is an attempt to engage China and expand its role in the Pacific. It's about creating a new model in the relationship of our two Pacific powers. It's about renewing and revitalizing our role in a part of the world that is rapidly becoming more critical to our economic, diplomatic, and security interests. And as I've made clear, essential to all of these goals—essential to these goals is a constructive military-to-military relationship with China."

Despite lingering mistrust based on the tumultuous history of the relationship, military cooperation was deepening on many fronts. With the PLAN eager to demonstrate that it had matured from a regional to a global navy, China has sustained a counterpiracy naval task force in the Horn of Africa region since 2009, and the U.S. and Chinese navies demonstrated tactical cooperation during those counterpiracy operations. Additionally, the PLAN sent four ships to participate in the U.S. Pacific Fleet's crown jewel Rim of the Pacific (RIMPAC) exercise in waters off Hawaii in 2014. As a reflection of the "cooperative" nature of the relationship, the PLAN also sent an uninvited Dongdiao-class auxiliary general intelligence ship that monitored U.S. and allied navy radar, sonar, and radio emissions and tactics during the exercise.⁴⁵ Military contacts also accelerated at the tactical level in 2015 as PLAN ships conducted port visits in Honolulu, Hawaii, San Diego, California, and Mayport, Florida, while twenty-seven officers from the U.S. Navy were afforded the opportunity to tour the PLAN aircraft carrier Liaoning, which had been purchased from Russia in 2002 as the ex-*Varyag*.

RISING TENSIONS IN THE SOUTH CHINA SEA

Ironically, the deepening levels of U.S.-China military cooperation have also been accompanied by deepening levels of competition, particularly in the South China Sea. The 1990s witnessed a race by coastal states to stake out claims in the South China Sea and fortify them where possible.

That situation was temporarily stabilized by the Declaration on the Conduct of Parties in the South China Sea in 2002, whereby the Association of Southeast Asian Nations (ASEAN) and China agreed on a ten-point code that included affirming their commitment to the United Nations Convention on the Law of the Sea (UNCLOS), the peaceful resolution of disputes without resorting to the threat or use of force, and “self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.”

The situation in the South China Sea remained relatively stable until 2009 when the deadline for submitting claims to the United Nations Commission on the Limits of the Continental Shelf (CLCS) arrived. The CLCS prompted the six claimant states (China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei) to file claims and counterclaims that significantly elevated tensions.⁴⁸ In a note verbale in response to Vietnam’s CLCS filing, China reiterated its claim that “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map [of the nine-dash line]).”

China began acting aggressively to defend its claims in the South China Sea, including the dangerous harassment of the USNS *Impeccable* in international waters in 2009; the interdiction and expulsion of 147 foreign fishing boats from disputed waters in 2009; and the severing of towed cables of commercial seismic survey ships that were conducting hydrocarbon surveys within Vietnam’s exclusive economic zone (EEZ) in 2011. The *Global Times* captured the spirit of this more assertive Chinese behavior in a September 29, 2011, op-ed titled “**Time to Teach Those Around the South China Sea a Lesson.**” Tensions reached a new high between China and the Philippines in April 2012 over fishing rights at Scarborough Shoal, which is located 470 nautical miles from the coast of China but only 125 nautical miles from the mainland archipelago of the Philippines—well within the Philippines’ two-hundred-nautical-mile EEZ

After the Philippines dispatched navy and coast guard ships to evict Chinese vessels that were unlawfully fishing within its EEZ, China responded by dispatching two Chinese marine surveillance ships (equivalent to coast guard ships) that interposed themselves between the Philippine ships and Chinese fishing vessels. A negotiated settlement to defuse the crisis was violated by the Chinese in July 2012, and China has maintained a continuous presence of marine surveillance vessels to scare off any non-Chinese fishing vessels ever since—in effect exercising de facto sovereignty through the use of force.

On the heels of the Scarborough Shoal incident, the Philippines initiated arbitral proceedings in the Permanent Court of Arbitration (PCA) of the International Tribunal for the Law of the Sea (ITLOS) at The Hague in January 2013. The Philippines sought three distinct rulings in the case:

1. declaration that the parties’ respective rights in the South China Sea are governed by UNCLOS and that China’s claims based on “historic rights” with the nine-dash line are inconsistent with UNCLOS and therefore invalid

2. determination whether certain maritime features are characterized as islands, rocks, low tide elevations (LTEs), or submerged banks, which will subsequently clarify the maritime entitlements of those features and their impact on proximate features
3. declaration that China has violated UNCLOS by interfering with the exercise of the Philippines' rights and freedoms and through construction and fishing activities that have harmed the marine environment.

In March 2014, tensions were further elevated when Chinese coast guard ships attempted to blockade the resupply of the Philippine marines stationed aboard the BRP Sierra Madre outpost on Second Thomas Shoal. A Philippine supply vessel was ultimately able to sneak past the blockade, and the Filipinos also resorted to resupplying the marines on the outpost via air drops. Additionally, the Chinese response to the filing of the arbitration suit further inflamed tensions when a position paper issued in December 2014 reiterated the Chinese policy position of “three nos” regarding the Philippines’ filing: nonacceptance of the filing, no participation in the proceedings, and no implementation of any findings.

However, the most provocative and threatening Chinese actions in the South China Sea have been the execution of artificial island construction projects on the seven occupied maritime features (Cuarteron, Fiery Cross, Gaven, Hughes, Johnson, Mischief, and Subi Reefs) in the Spratlys beginning in 2014. While other claimant states such as Malaysia, Vietnam, and the Philippines have undertaken island-expansion projects in the South China Sea, they were of a small scale (approximately 115 acres over 45 years) and did not include airfield and port infrastructure for basing military ships and aircraft. In contrast, the Chinese have created more than 3,000 acres of land, which includes airfields capable of basing tactical military aircraft on Fiery Cross, Mischief, and Subi Reefs. Additionally, the Chinese have dredged the harbor and built a pier on Subi Reef that is suitable for the largest PLAN vessels to moor, which enables future naval basing options.

During a news conference in Washington, D.C., in September 2015, Chinese president Xi Jinping 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.” However, the *Washington Post* revealed that China built radar and communications infrastructure on all seven features in the Spratlys, including a possible high-frequency radar on Cuarteron Reef that would extend its maritime surveillance capability deep into the South China Sea.⁶¹ Additionally, the fact that China deployed J-11 fighter jets and two HQ-9 (derivative of Russian S-300) surface-to-air missile batteries on Woody Island in the Paracels as of January 2016 raises doubt that China will refrain from deploying missiles, aircraft, and ships to the newly reclaimed features in the Spratlys.

On March 19, 2016, *Reuters* reported that the U.S. Navy had seen signs of Chinese maritime survey activity at Scarborough Shoal that could be a precursor to starting construction of another artificial island.⁶³ The case of Scarborough Shoal is unique in that no state has built any facilities on the exposed rocks, although the Chinese have exercised de facto maritime jurisdiction in the surrounding waters since 2012. This would be a game-changer in that the Chinese posture would transform from de facto maritime jurisdiction to physical occupation of a feature that lies only 125 nautical miles from the coast of the Philippines.

The election of President Rodrigo Duterte in the Philippines in May 2016 portended a strong shift away from the United States and toward China in Philippine foreign policy. While running

as a candidate, Duterte said in March 2016, “I have a similar position as China’s. I don’t believe in solving the conflict through an international tribunal. China has said it will not abide by whatever that tribunal’s decision will be. That’s the same case with me, especially if the ruling will be against the Philippines.” The PCA issued a unanimous ruling on the Philippines’ suit on July 12, 2016, finding that

1. there was no legal basis for China to claim historic rights to resources within the sea areas falling within the nine-dash line
2. none of the maritime features in the South China Sea meet the UNCLOS definition of an “island” and therefore do not generate EEZs that could infringe upon the two-hundred-nautical-mile EEZs of coastal states
3. China had violated the Philippines’ sovereign rights in its exclusive economic zone by (a) interfering with Philippine fishing and petroleum exploration, (b) constructing artificial islands, and (c) failing to prevent Chinese fishermen from fishing in the zone
4. China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species
5. China’s recent large-scale land reclamation and construction of artificial islands were incompatible with the obligations on a state during dispute resolution proceedings, insofar as China has inflicted irreparable harm to the marine environment, built a large artificial island in the Philippines’ exclusive economic zone, and destroyed evidence of the natural condition of features in the South China Sea that formed part of the parties’ dispute.

The PCA ruling could not have been more favorable for both the Philippines and the broader principle of the rule of law; however, the Philippine, Chinese, and American responses completely undermined the ruling’s effects. Philippine foreign minister Perfecto Yasay Jr. “welcomed the issuance” but then went on to remind Filipinos “to exercise restraint and sobriety.” Duterte further undermined the ruling in December 2016 when he stated at a news conference, “In the play of politics, now, I will set aside the arbitral ruling. I will not impose anything on China.” The Chinese foreign ministry released a statement saying that “China’s territorial sovereignty and maritime rights and interests in the South China Sea shall under no circumstances be affected by those awards. China opposes and will never accept any claim or action based on those awards.” Additionally, China violated President Xi’s pledge to not militarize the islands by building anti-aircraft radar and gun facilities on each of the seven maritime features. Finally, the U.S. State Department released a statement saying that the United States “strongly supports the rule of law,” “supports the peaceful resolution of disputes,” “expresses its hope and expectation that both parties will comply with their obligations,” and “urge[s] all claimants to avoid provocative statements or actions.” This timid diplomatic statement by the Obama administration and subsequent lack of any tangible economic or military actions to support the ruling imposed no costs on China and ultimately legitimized its rejection of the tribunal process and its findings.

ASSESSING U.S. STRATEGY IN THE SOUTH CHINA SEA

The U.S. response to Chinese expansion in the Spratly Islands and its rejection of the findings of the PCA can be characterized by the word “restraint,” and the results of that restraint have been

mixed. On the heels of the Mischief Reef seizure in 1994, the U.S. State Department pronounced in 1995 that the United States

strongly opposes the use or threat of force to resolve competing claims and urges all claimants to exercise restraint and to avoid destabilizing actions. . . . has an abiding interest in the maintenance of peace and stability in the South China Sea. . . . has a fundamental interest in maintaining freedom of navigation in the South China Sea. . . . takes no position on the legal merits of the competing claims to sovereignty over the various islands, reefs, atolls, and cays in the South China Sea; and . . . would view with serious concern any maritime claim or restriction on maritime activity in the South China Sea that was not consistent with international law, including the 1982 United Nations Convention on the Law of the Sea.

The United States has maintained this policy for the past twenty years.

Any assessment of U.S. policy and strategy in the South China Sea must begin with an understanding of the ends. In a speech in July 2015, a senior U.S. State Department official summarized U.S. objectives in the South China Sea as

- protecting unimpeded freedom of navigation and overflight and other lawful uses of the sea by all, not just the U.S. Navy •
- honoring our alliance and security commitments and retaining the full confidence of our partners and the region in the United States
- aiding the development of effective regional institutions, including a unified ASEAN
- promoting responsible marine environmental practices
- fostering China’s peaceful rise in a manner that promotes economic growth and regional stability, including through consistency with international law and standards
- more generally, an international order based on compliance with international law and the peaceful resolution of disputes without the threat or use of force.

The U.S. record of achievement of those objectives has been mixed.

Freedom of Navigation and Overflight

Achievement of this objective has been mixed. While the Chinese have not restricted the freedom of navigation and overflight of commercial vessels and aircraft transiting the South China Sea, they have warned light civil aircraft transiting to and from the Philippine territory of Pagasa Island in the Spratlys. Additional examples of how the Chinese have denied other claimant states their rights to the lawful use of international waters in the South China Sea have already been highlighted in this chapter.

The U.S. Navy has executed four maritime Freedom of Navigation Operations (FONOPs) and countless aerial missions in the South China Sea. In May 2015, a U.S. Navy P-8A Poseidon maritime patrol aircraft with a CNN television crew embarked was aggressively challenged eight times by “the Chinese Navy” to “go away” and “leave immediately to avoid misunderstanding” while conducting a surveillance mission in the vicinity of reclaimed features in the Spratlys but clearly from the sanctuary of international airspace outside of twelve nautical miles of any territorial claims.

The **first maritime FONOP** in the vicinity of Subi Reef in the Spratlys on October 27, 2015, was heavily criticized for not being clear in its intent and prompted Senator John McCain to

write a letter to Secretary of Defense Ashton Carter asking to clarify the purpose of the FONOP. In his response issued fifty-six days after the operation, Carter clarified that this FONOP “challenged attempts by claimants to restrict navigation rights and freedoms around features they claim, including policies by some claimants requiring prior permission or notification of transits within territorial seas.” The **second maritime FONOP** was executed on January 30, 2016, in the vicinity of Triton Island within the Paracels and accompanied by a Department of Defense press release that clearly stated its intent: “This **operation challenged attempts by the three claimants, China, Taiwan, and Vietnam**, to restrict navigation rights and freedoms around the features they claim by policies that require prior permission or notification of transit within territorial seas. The excessive claims regarding Triton Island are inconsistent with international law as reflected in the Law of the Sea Convention.” A **third maritime FONOP** was executed near Fiery Cross Reef on May 10, 2016.

In essence, all three of these FONOPS challenged the Chinese, Vietnamese, and Taiwanese demands for prior notification of entry of military ships into their EEZ and territorial waters, which is in contravention of UNCLOS. Julian Ku pointed out that the **second FONOP in the vicinity of Triton Island received tacit support from Taiwan and Vietnam** when each country released statements that did not condemn the United States for failing to provide prior notification, thereby **isolating China as the only state to issue a condemnation**. A **fourth maritime FONOP** was executed on October 21, 2016, in the vicinity of Triton and Woody Islands within the Paracel Island group. In this FONOP, the USS *Decatur* executed a high seas freedom passage to challenge the straight baselines drawn by the Chinese in the Paracels. However, it is important to note that the *Decatur* did not pass within twelve nautical miles of those islands.

Executing FONOPs to challenge prior notification requirements and excessive straight baselines does not address the root tensions in the South China Sea, which are the excessive Chinese maritime claims and the UNCLOS legal status of the seven reclaimed features and their associated maritime entitlements in the sea. Gregory Poling suggested that **an innocent passage to challenge the prior notification requirement was “low-hanging fruit”** and that executing a **high seas transit regime within twelve nautical miles of a reclaimed feature that was formerly a low tide elevation—for example, Mischief Reef—would get at the heart of the matter, which is excessive Chinese maritime claims**.

The **United States could increase the impact of FONOPs by modifying two current practices**. **The first** is the “pre-announcement” of intent to conduct FONOPs; this has been done ostensibly to forewarn the Chinese and reduce the risk of escalation but has insidiously reduced the assertive effect of the freedom to “fly, sail and operate wherever international law allows,” Secretary Carter had proclaimed in numerous public fora. The **second** is preserving some **strategic ambiguity** in its post-execution press releases. If the United States were to be ambiguous as to the purpose of the FONOP, the Chinese would have to guess which claims were being challenged and would be forced to clarify the nature of their claims.

Honoring Alliances and Security Commitments

The United States has succeeded in strengthening its alliances and partnerships in the South China Sea region. It has recently negotiated an Expanded Defense Cooperation Agreement with the Philippines that will enable further security cooperation assistance and basing rights, although the Duterte administration’s position on this agreement is unclear.⁸¹ The United States has also announced a Comprehensive Partnership with Vietnam (2013) and Malaysia (2014), a

Joint Statement on Comprehensive Defense Cooperation Agreement with Indonesia, and an enhanced basing agreement with Singapore, and it has continued to sell arms to Taiwan in accordance with the provisions of the Taiwan Relations Act of 1979.

The United States has also succeeded in strengthening its relationships with regional institutions such as ASEAN, including hosting the annual U.S.-ASEAN summit in the United States for the first time in February 2016.

Promotion of Responsible Marine Environmental Practices

The United States has clearly failed to achieve this objective. The construction of the seven features in the Spratlys has been labeled “the quickest rate of permanent loss of coral reef area in human history,” with a claim that “a substantial amount of this damage is irrecoverable and irreplaceable.” It will take some time for marine biologists to assess the damage to the regional marine ecosystem due to the loss of coral and shallow water habitat.

Compliance with International Law and the Peaceful Resolution of Disputes

The United States has also failed to bring Chinese behavior into accord with UNCLOS. The majority of legal scholars seem to have concluded that China’s maritime claims do not conform to UNCLOS.⁸³ Additionally, the Chinese denial of claimant rights to the lawful use of the sea and their refusal to submit to arbitration of their territorial disputes are also in contravention of UNCLOS. Finally, while the Chinese have not used lethal military force in the enforcement of their claims, vessels from the China marine surveillance and China coast guard have used a variety of coercive, nonlethal techniques such as water cannons, shouldering, and ramming.⁸⁴ The ruling of the PCA presented the United States and regional allies and partners with an opportunity to strengthen the principle of adherence to the rule of international law, but the feckless response to enforce the outcomes of the ruling had the opposite effect in that it undermined the principle of adherence to the rule of international law.

U.S. POLICY AND STRATEGY OPTIONS FOR THE FUTURE

The United States has essentially three broad policy options for the South China Sea: continued concession to Chinese sovereignty claims and further expansion in the South China Sea in an effort to preserve Chinese cooperation on broader regional and global issues; freezing the status quo; or rolling back Chinese expansion and excessive sovereignty claims.

Option 1: Continued Concession

This policy option can be described as a continuance of the policy of the Obama administration, which argued that the South China Sea is not the central issue in the U.S.-Chinese relationship and that the benefits of curtailing Chinese expansion in the sea were not worth the costs of losing Chinese cooperation on other U.S. interests, including the Iran nuclear deal, the denuclearization of North Korea, global nuclear nonproliferation, climate change, cyber security and theft, intellectual property rights, fair trade, equitable monetary policy, and peaceful relations with Taiwan. Advocates of this policy option also point out that the domestic credibility of Chinese president Xi Jinping and his Communist Party leaders has been strained as economic growth slows and the stock market plummets; therefore, provoking a confrontation in the South China Sea that sparks an ultra-nationalist outburst from China would not be prudent. From a military perspective, the militarization of the seven features in the South China Sea does not fundamentally alter China’s anti-access/area denial strategy, because in the event of armed

conflict between the United States and China, the islands are indefensible and could be neutralized quickly.

The U.S. strategy for achieving this policy could consist of the following diplomatic and military ways and means. In the diplomatic arena, the United States could

- continue to warn against further militarization of the reclaimed features in the Spratlys
- make relatively weak diplomatic statements against the Chinese rejection of any results of the PCA
- encourage bilateral negotiations to resolve the disputes over maritime and sovereignty claims
- continue to invest in multilateral institutions and relationships—and include China in their design
- emphasize the benefits of continued Chinese cooperation on broader issues in the U.S.-China relationship.

In the military sphere, the United States could

- continue maritime and aerial FONOPs that challenge the requirement for prior notification of entry into territorial seas and EEZs, but not challenge excessive Chinese maritime claims. Take no risk of actual confrontation; back off if it appears that the Chinese are willing to risk escalation
- continue to execute multilateral security cooperation exercises and encourage Chinese participation (for example, invite the Chinese to RIMPAC 2018)
- continue to provide security cooperation assistance to treaty allies to maintain the status quo.

The downside of this policy option is that it will continue to deliver mixed results on the U.S. stated policy objectives for the South China Sea. It will also continue to weaken the time-honored U.S. principle of adherence to the rule of law. Any bilateral negotiations will start with the Chinese in a position of strength and will only reinforce the realist notion that “might makes right” in international relations. They will not compel China to curtail its claims and activities that are in contravention of UNCLOS. Additionally, bilateral negotiations would not reassure jittery allies and partners in the region that their interests are protected against further Chinese expansion. Claimant states will be left to ponder, “Where next?” Dredging sand and coral to stake out a claim and militarize Scarborough Shoal? Seizing Second Thomas Shoal from the squad of Philippine marines guarding the claim? Evicting the Taiwanese from Itu Aba? Annexing and beginning artificial island construction activities on Malaysia’s Swallow Reef or James Shoal to extend China’s operational reach farther south? While the notion of each of those Chinese actions may seem far-fetched, nobody anticipated in 2012 that the Chinese would execute a massive artificial island construction operation that would generate more than three thousand square kilometers in the Spratlys by the end of 2015.

Option 2: Freezing the Status Quo

This policy option is best described as an “all stop” order that could colloquially be described as “possession is nine-tenths of the law,” or “if you occupy it today, you own it.” This option acknowledges that the Chinese have presented the region with a fait accompli for the seven reclaimed features in the Spratlys and that the best-case outcome is to freeze it through balancing.

Under this policy, for example, China would retain possession of the seven features it has reclaimed in the Spratlys and all of the Paracels; the Philippines would be granted sovereignty over Pagasa, Lawak, Parola, Likas, and Patag Reefs; Taiwan would be granted sovereignty over Itu Aba; and Vietnam would be granted Great Discovery, London, Pearson, and Pigeon Reefs. This policy would accept the transgressions of the past but would attempt, with a show of credible military power, to strengthen and preserve the rules-based order going forward. The diplomatic elements of achieving this policy could include

- continuing to warn against further militarization of any features in the South China Sea
- emphasizing the “win-win” nature of this policy in that all claimant states retain their current possessions
- threatening to curtail cooperation on regional issues and impose economic sanctions in the event of any Chinese attempts to change the status quo
- declaring unequivocally that any Philippine military personnel are covered under Article V of the Philippines Mutual Defense Treaty, including personnel stationed on any feature in the South China Sea.

Military elements of the strategy would include

- continuing maritime and aerial FONOPs that challenge the requirement for prior notification and assert freedom of navigation outside of twelve nautical miles of any maritime feature that is deemed to be an island or a rock under UNCLOS
- encouraging multilateral nonclaimant state participation in FONOPs, including the Japanese, South Koreans, and Australians, to emphasize regional commitment to stability and the peaceful resolution of disputes
- threatening to curtail Chinese participation in multilateral security cooperation exercises in the event of any further Chinese expansion •increasing security cooperation assistance to treaty allies and partner claimant states, particularly to their naval and coast guard forces through foreign military sales and training
- discouraging all claimant states from deploying military forces on any maritime feature
- defending against any attacks or aggression by the Chinese with gradual escalation of the use of force.

The downside of this policy option is that it would be difficult to execute without triggering another frenzy of artificial island construction and occupation prior to its implementation date. It would require negotiation between China and other claimant states, and China has demonstrated a propensity to use prolonged negotiations as a cover for achieving its desired policy objectives while the negotiations are taking place. This option also leaves open the question of those features that are disputed but not occupied, such as Scarborough Shoal. Even if successfully implemented, as Greg Poling opined, “The status quo is now inherently unstable. A new round of escalation is always just over the horizon.”

Option 3: Rolling Back

U.S. secretary of state Rex Tillerson publicly hinted at this policy option during his confirmation hearing in January 2017 when he stated, “We’re going to have to send China a clear signal that, first, the island-building stops. And second, your access to those islands also is not going to be allowed.” Chinese state-run media predictably howled with indignation; for example, the *Global Times* editorialized, “Unless Washington plans to wage a large-scale war in the South China Sea,

any other approaches to prevent Chinese access to the islands will be foolish.” However, numerous observers have subsequently outlined policy options to roll back excessive Chinese claims without resorting to the use of military force. James Kraska invoked President Ronald Reagan’s 1983 “Oceans Policy,” which stated, “In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in UNCLOS, so long as the rights and freedoms of the United States and others are recognized by such coastal states.” In other words, the United States would withdraw recognition of China’s lawful rights under UNCLOS as a lawful countermeasure until China came into compliance with its obligations under UNCLOS. Alexander Vuving suggested targeted economic sanctions against state-owned Chinese companies that support the reclaimed features in the Spratlys, such as China Southern and Hainan airlines, which provide commercial air transport; China Mobile, China Telecom, and China United Telecom, which provide communications services; or the China Communications Construction Company, which performed the dredging of the islands.

In reality, there is a broad range of statecraft options that could roll back excessive Chinese maritime claims and prevent further territorial expansion with acceptable levels of risk. Since the PCA ruled that the nine-dash-line claim is void, the United States and other regional partners could exercise the full range of high seas freedoms in waters that lie beyond twelve nautical miles from any feature and outside of the two-hundred-nautical-mile EEZ of any of the coastal states, including military operations, fishing, and seabed exploration. Additionally, the United States and other regional partners could conduct high seas freedoms within twelve nautical miles of those features that the PCA ruled as LTEs.

The diplomatic elements of a strategy for achieving this policy could include:

- affirming the PCA’s jurisdiction and the obligations of all parties to implement its rulings
- building international diplomatic consensus to compel China into accepting the implementation of the PCA rulings
- curtailing cooperation with China on regional issues
- continuing to denounce the militarization of any maritime features in the South China Sea
- making the case that Scarborough Shoal is “different” and making it clear that the United States will not accept Chinese construction of an artificial island on the shoal
- acknowledging the fact that this option will induce “moderate friction” in the broader U.S.-China relationship.

Military elements to support the strategy would include:

- executing maritime and aerial FONOPs that affirm the PCA rulings, including high seas transit within twelve nautical miles of any maritime feature that was ruled to be an LTE, regardless of sovereignty claims
- encouraging multilateral participation in FONOPs, including by the Japanese, South Koreans, and Australians
- terminating Chinese participation in multilateral security cooperation exercises, including RIMPAC 2018
- utilizing U.S. and regional coast guard vessels to guarantee the free exercise of Philippine “historic fishing rights” at Scarborough Shoal in accordance with the PCA ruling
- increasing security cooperation assistance to treaty allies and claimant state partners, particularly by bolstering their naval and coast guard forces with foreign military sales and training.

In the economic realm, targeted economic sanctions could be imposed on companies and personnel that support Chinese operations in contravention of the PCA ruling.

The downside of this policy option is that it would elevate the strategic risk in the U.S.-Chinese relationship; the Chinese have invested significant resources and national pride in reclaiming those seven features. The United States and its allies and partners would have to closely monitor Chinese reactions to each of the ways and means listed above to avoid sparking a broader conflict. However, failing to fully implement the rulings of the PCA will undermine the credibility of ITLOS and UNCLOS and of the broader principle of applying international law to peacefully resolve disputes.

SUMMARY

The Chinese campaign to construct seven artificial islands in the Spratly Island chain in the South China Sea has inexorably changed “the facts on the ground” in the region in the span of just three years. The PCA ruling negated the excessive Chinese maritime claims in the South China Sea, including those claims derived from the newly reclaimed islands. The United States and its regional allies and partners will face a series of difficult policy and strategy choices in the face of the Chinese refusal to implement the arbitral rulings. While the Donald Trump administration has not issued any clear statements of South China Sea policy to date, which of the three broad policy options the administration chooses (continued concession, status quo, or roll back) will become apparent by key observables in its behavior.

The key observables in the U.S. diplomatic realm will be the degree of inclusion or isolation of China in regional institutions and consultations and the threat of using military and nonmilitary tools of statecraft (such as economic sanctions) to attempt to compel the Chinese to adhere to international law and the principle of the peaceful resolution of disputes. The key observables in the military realm will be the continued inclusion of China in multilateral security exercises such as RIMPAC, and whether or not U.S. and allied military operations challenge excessive Chinese maritime claims such as the twelve-nautical-mile territorial sea claims around maritime features that were formerly LTEs.

These three policy options have been presented in order of ascending strategic risk of conflict with China, and also of ascending degree of compliance with the principle of adherence to international law. The Trump administration will have to decide how much risk it is willing to accept in the South China Sea to achieve broader regional and global U.S. strategic interests, which include not only its relationship with China but also the foundational principle of adherence to the rule of law upon which the post–World War II international system is built.