

The U.S. Declared China's South China Sea Claims 'Unlawful.' Now What?

The announcement by Secretary of State Mike Pompeo brings the United States in line with international law and opens the door for sanctions and a more unified response to Chinese “bullying” in the key waterway.

By Colm Quinn

On Monday, Secretary of State Mike Pompeo staked out the United States' bluntest position yet on China's illegal land grab in the crucial South China Sea, declaring both Beijing's excessive maritime claims and its browbeating of smaller neighbors to be “unlawful.” It was a departure of sorts from years of cautious diplomatic speak and could open the door to tougher U.S. reprisals against Chinese behavior.

The new position, which takes specific legal issue with a host of over-the-top Chinese claims, is part and parcel of the Trump administration's tougher approach to Beijing's encroachment in the region—and part of a broader, and widening, showdown with China.

Washington is still embroiled in a trade war with China, has sanctioned Chinese officials involved in Xinjiang detention camps, plans to scrap the extradition treaty with Hong Kong over China's imposition of a new national security law, is mulling tougher rules for Chinese firms listing on U.S. stock markets, and is successfully getting Huawei yanked out of telecommunications networks around the world.

In response to the new legal posture, a Chinese Embassy spokesperson called on the United States to “stop its attempts to disrupt and sabotage regional peace and stability.”

In recent years, China has sought to harden its claim to the resource-rich and strategically significant waterway by constructing artificial islands and placing military hardware on disputed shoals and atolls, even while claiming that underwater rocks somehow give Beijing license to exploit the area's oil, gas, and fisheries wealth. In 2016, an international tribunal ruled against China in a case brought by the Philippines, finding its actions in violation of the United Nations Convention on the Law of the Sea. Although the United States has not ratified the convention, Pompeo's statement at last brings U.S. policy formally in line with that ruling.

What exactly does the new U.S. position say?

The new U.S. posture takes direct aim at many of the legally specious claims that Beijing has used for years to attempt to grab ownership of the vast majority of the South China Sea. “We are making clear: Beijing's claims to offshore resources across most of the South China Sea are completely unlawful, as is its campaign of bullying to control them,” Pompeo declared. For most of the past decade, China has used questionable claims to tiny specks of land in the South China Sea to lay claim to offshore fisheries and oil and gas reserves, chasing off ships from nations like the Philippines, Indonesia, and Malaysia that have their own claims to those waters and the resources in them.

The declaration was meant to bring U.S. policy explicitly in line with the landmark 2016 ruling, Pompeo said. That is particularly important for the Philippines, which brought that case and which has been battling China for years over access to fisheries and potential oil riches near little features like Scarborough Shoal, Mischief Reef, and Second Thomas Shoal. Pompeo also took issue with China's illegal efforts to snap up waters off the coasts of Vietnam, Malaysia, Brunei, and Indonesia.

"The world will not allow Beijing to treat the South China Sea as its maritime empire," Pompeo said.

How big a deal is this?

In one way, the new U.S. policy is the first full-throated rejection of China's so-called "nine-dash line" that encompasses most of the sea. "Beijing has offered no coherent legal basis for its 'Nine-Dashed Line' claim in the South China Sea since formally announcing it in 2009," Pompeo noted.

But while the new U.S. policy is a big deal in terms of explicitly siding with existing international law on the disputed maritime claims, "it's not a radical departure" from previous U.S. positions, said Greg Poling, the director of the Asia Maritime Transparency Initiative at the Center for Strategic and International Studies (CSIS). Pompeo, for instance, took pains to describe China's maritime claims as unlawful while still remaining neutral on questions of territory—in line with the 2016 Hague ruling.

"It makes explicit a lot of things that were implicit under the previous administration," Poling said.

David Stillwell, the assistant secretary of state for East Asian and Pacific affairs and the U.S. State Department's top diplomat on the region, played down the significance of the announcement. Speaking on Tuesday at an online event hosted by CSIS, Stillwell said the decision simply recognizes existing maritime law. "This is housekeeping," he said.

But housekeeping can do a lot of good. Pompeo's announcement may have an impact politically, said James Kraska, the chair of the Stockton Center for International Law at the U.S. Naval War College, by securing increased funding from Congress for radar and other monitoring equipment. Internationally, it serves as a signal to other nations that the United States is increasing its engagement on the issue—after smaller Southeast Asian nations have clamored all spring for a more muscular U.S. response to stepped-up Chinese aggression in the region.

Why now? China's been doing this for more than a decade.

Kraska said the move is an acceleration of already established U.S. behavior in the region. He cited the use of freedom of navigation operations—a way of challenging existing claims by sending U.S. vessels or aircraft through disputed areas to demonstrate the right to transit—by the Obama administration that have continued under the Trump administration. The United States has increased its use of the tactic in the Trump administration, conducting four freedom of navigation operations this year alone, including an operation on July 14 that sent a guided-missile destroyer near the Spratly Islands, the day after Pompeo's big statement. The Obama administration conducted just six freedom of navigation operations in eight years.

For Poling, the announcement stems from both a political motivation as part of the Trump administration's ongoing feud with China and a reflection of the rapidly changing strategic

environment. Poling said China's maritime strength—with a big navy and a huge and aggressive coast guard—is making it increasingly difficult for smaller nations to operate.

“We're not that far away from the South China Sea being a Chinese lake,” he said. “So if you don't make your move now, you might as well not make it.”

What happens next?

In the near term, the shift from describing Chinese behavior from merely “destabilizing” to “unlawful” potentially opens the door to sanctions, Poling said, similar to those imposed on Chinese individuals over the treatment of Uighurs in Xinjiang.

When asked about sanctions at the CSIS forum, Stillwell didn't say that route was being considered but said, “Nothing is off the table.”

In China, the nationalist Global Times in a through-the-looking-glass editorial called the Pompeo announcement “despicable” and accused the United States of making the statement as a “prelude to inciting more confrontations.”

“China has sovereignty and jurisdiction over the South China Sea in accordance with international law, including the United Nations Convention on the Law of the Sea, and China also has historical rights in the South China Sea,” the editorial argued. (None of that is true, as the Hague ruling made clear.)

Although increased U.S. patrols in the area raise the risk of a China-U.S. confrontation, that's unlikely, Poling said. More likely, he added, is a clash between Chinese ships and vessels from smaller Asian nations that could trigger U.S. mutual defense treaties—and an unintended great-power showdown. Pompeo last year explicitly included the disputed Scarborough Shoal under the umbrella of the U.S.-Philippine defense treaty, making the rocks a potential tripwire.

“It's a non-zero chance,” Poling said.

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