

Thayer Consultancy
ABN # 65 648 097 123



Background Briefing:

South China Sea: Flights to Fiery Cross Reef the New Normal

Carlyle A. Thayer

January 8, 2016

[client name deleted]

We request your assessment of the following issues:

Q1. What do you conclude about China's latest move of conducting more flights of aircraft to Fiery Cross Reef?

ANSWER: China is now consolidating its civilian presence on its artificial islands to demonstrate its "indisputable sovereignty" over them. China always uses civilian means to advance its territorial claims. We can expect to see regular flights from China Southern Airlines operating from Hainan Island. This will become the "new normal" in the South China Sea.

The Chinese military lurks in the background ready to intervene if the civil authorities cannot handle a confrontation with a claimant state.

Q2. How does this new development complicate the situation in the South China Sea?

ANSWER: Beijing is advancing "international law with Chinese characteristics." In other words, China does what it wants to advance its interests and defends its actions by interpreting international law unilaterally. Under international law the construction of an artificial island does not change the original character of the feature. For example, if Fiery Cross Reef is considered a low tide elevation, it is not entitled to any 12 nautical mile territorial sea or airspace. Now that Fiery Cross Reef is an artificial island it still cannot claim a 12 nautical mile territorial sea or airspace yet China will continue to warn foreign aircraft and ships to stay out of this area. An artificial island is entitled to a 500 meter safety zone and not any airspace. When the Arbitral Tribunal makes its final determination on the claims brought by the Philippines, China will just ignore the decision and continue with the "new normal." Beijing actions raise the question whether any Code of Conduct will make a difference to China's behaviour.

To be clear, China has not promulgated baselines around its artificial islands. Baselines are essential to determining maritime zones such as the 12 nm territorial sea and the 200 nm Exclusive Economic Zone. What China is doing is declaring control over undefined maritime and air spaces. China prefers ambiguity to clarify; this is another example of "international law with Chinese characteristics."

Q3. What will happen if China continues to fly an Airbus to the Fiery Cross Reef airstrip?

ANSWER: Claimant states will protest, some major powers will also criticize China's move, but none of this will alter China's behaviour. ASEAN will only continue to note that "some members express concern at the erosion of trust" but ASEAN will do nothing more than continue to consult with China. China will wait until regional states have adjusted to the "new normal" and then China will carry out more activities to consolidate its claims and to advance its ability to control the Spratly islands.

Suggested citation: Carlyle A. Thayer, "South China Sea: Flights to Fiery Cross Reef the New Normal," *Thayer Consultancy Background Brief*, January 8, 2016. All background briefs are posted on Scribd.com (search for Thayer). To remove yourself from the mailing list type UNSUBSCRIBE in the Subject heading and hit the Reply key.

Thayer Consultancy provides political analysis of current regional security issues and other research support to selected clients. Thayer Consultancy was officially registered as a small business in Australia in 2002.