

US Navy operations send muddled message to China

By Demetri Sevastopulo and Geoff Dyer

When a US warship recently sailed near a Chinese-controlled artificial island in the South China Sea, it signalled the White House was finally taking a tougher stance on Chinese behaviour in the waters.

Beijing described the move as an illegal incursion into the waters around Subi Reef, which is also claimed by Taiwan, the Philippines and Vietnam. Washington labelled it a freedom of navigation exercise that was aimed at demonstrating that the US does not recognise Chinese claims in the area. But following months of debate inside the Obama administration, the White House had actually chosen the option that involved the least provocative actions by the US Navy, partly to avoid antagonising China too much ahead of a climate change conference in Paris where Chinese co-operation will be crucial.

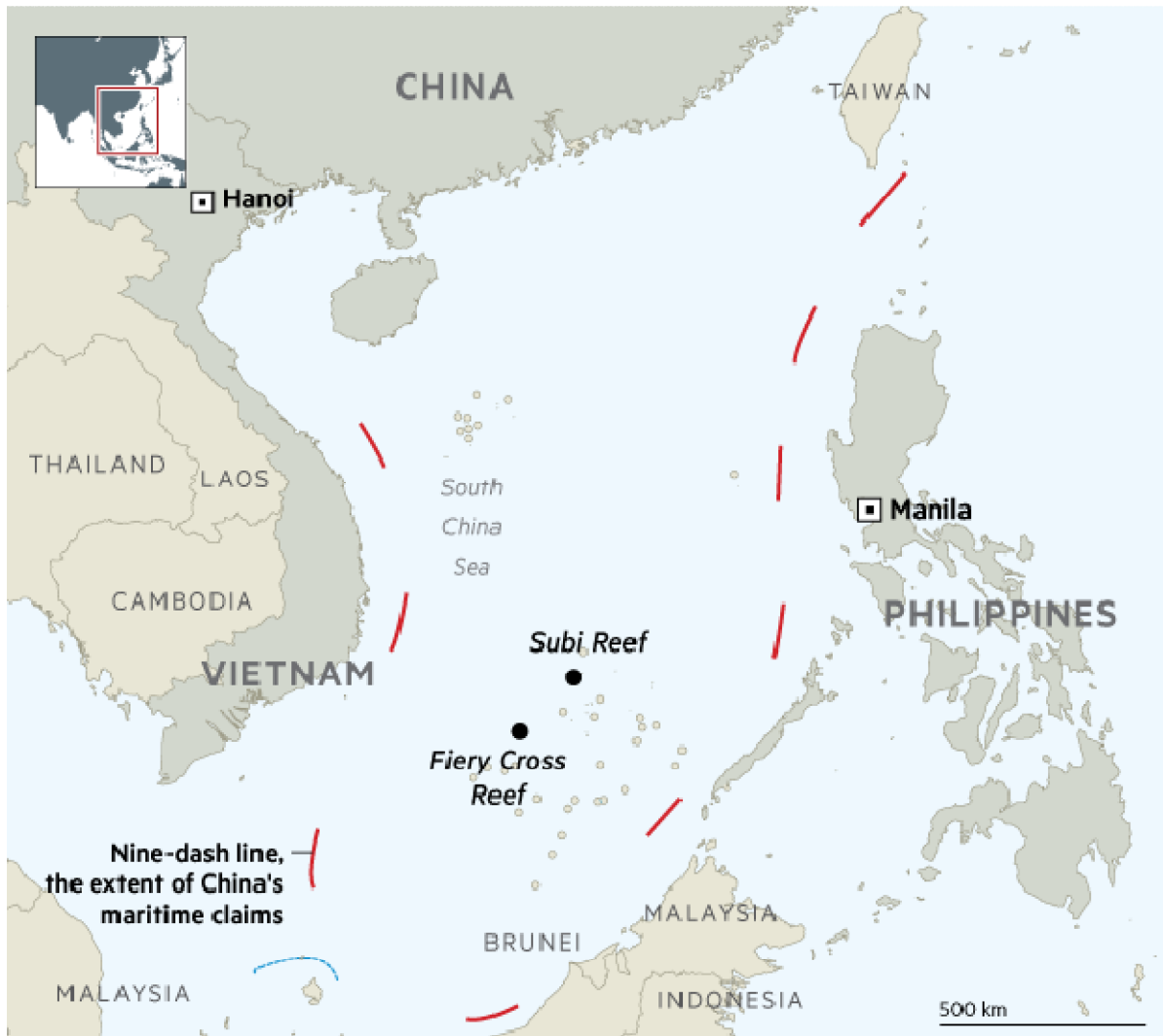
According to five people familiar with the operation, the USS Lassen conducted what is known under international law as innocent passage when it sailed within 12 nautical miles of Subi Reef, which could leave the legal significance of the US manoeuvre open to different interpretations.

One option presented by the Pentagon, for the destroyer to sail near to Mischief Reef, another artificial island, has not been approved by the White House. The legal differences stemming from the geography meant it would have required more provocative action by the ship to demonstrate the same point of principle. "We conducted a freedom of navigation operation challenging excessive maritime claims in accordance with international law," said a US defence official.

US officials say the navy will conduct further such freedom-of-navigation operations in the region, probably around two a quarter. They also argue that the decision for Ashton Carter, defence secretary, to visit on the USS Theodore Roosevelt in the middle of the South China Sea this week, shows that the Obama administration is not soft-peddalling on the point it is trying to make to the Chinese.

While China and its neighbours have fought over the South China Sea for decades, Beijing has become increasingly assertive in recent years. Aside from boosting maritime patrols, China has built five man-made islands and has constructed air strips that are capable of handling military jets.

The UN Law of the Sea lets nations claim 12 nautical miles of territorial waters around natural islands, but does not convey the same rights to submerged features — such as Subi and Mischief — that have been raised above sea level through human activity. While the US does not take a position on the sovereignty of disputed islands in the South China Sea, it wanted to demonstrate that it does not accept that any nation has a claim to territorial waters around what were once submerged features.



Commander Robert Francis, captain of the USS Lassen, said his ship got within 6-7 nautical miles of the artificial island at Subi reef and gave the Chinese no advance warning. The surveillance plane accompanying the operation did not go within the 12 miles around the land feature and the ship did not fly any helicopters, but its radars were operating during the operation.

Cmdr Francis said the Lassen was tailed by a Chinese destroyer for around ten days, including during the day of the Subi reef operation. On entering the waters around reef, the Chinese told the Lassen: "You are in Chinese waters. What is your intention?" He responded that the Lassen was "operating in accordance with international law".

The people familiar with US debate said the White House had ultimately decided that the operation should be conducted in a low-key way that would make the point to the Chinese without sparking too much friction. But that decision angered many Pentagon and Navy officials who think the US should adopt a more forceful stance.

"It makes the [Obama] administration look weak externally and internally divided," said Euan Graham, director of the international security programme at the Lowy Institute in Australia. "Is

the US serious about this, or is it doing it in such a cautious way that it is going through the motions.ö

Some critics suggested that the US operation was no different from when several Chinese warships recently made an innocent passage through waters surrounding the Aleutian Islands off the Alaska coast

Mr Graham said that while most countries in the region were relieved when the US conducted the Subi operation, a ösense of anticlimaxö emerged amid the signals that the freedom of navigation exercise was less assertive than advertised. He contrasted the response with Vietnam, which announced that it would allow a Japanese warship to visit Cam Ranh Bay just as Chinese president Xi Jinping was finishing a visit to the nation. öIf you are going to send a signal, that is how to send it.ö

The Subi operation marked the latest example of the Obama administration debating how hard to push back against China over everything from cyber attacks to maritime tensions. While the Pentagon has been pushing for tougher action, Susan Rice, national security adviser, has taken a more cautious stance that has frustrated some officials who believe the US seems like a paper tiger.

Chris Johnson, a former China analyst at the Central Intelligence Agency now at CSIS, said the move was consistent with the restrained stance the White House has taken on China and was evident in the way officials were urged not to discuss the freedom of navigation operations after the event.

Hugh White, a China and security expert at Australian National University, said there was a real muddle over what the USS Lassen had done, with conflicting messages from the US government.

öFirst, it shows the US as being unprofessional in the presentation of its legal case,ö said Mr White. öBut second, more importantly, it shows that the legal issues were never more than a pretext for a gesture which was always intended primarily to make a strategic point. That was that the US is determined to push back [against] China's increasingly assertive maritime posture in the western pacific, and reaffirm its own position as the preponderant maritime power.ö

Mr White said the move had been strategically ineffective as China had ignored it. öRather than displaying US strength and resolve, the transit ends up revealing US uncertainty and weakness.ö

Some legal experts suggested that the Lassen transit could be considered under international law to be both innocent passage and a freedom of navigation operation that challenged Chinese maritime claims. For instance, the fact that it did not give the Chinese warning was an effective challenge to Chinese insistence that warships give notice when entering Chinese territorial waters.

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What are freedom of navigation operations and innocent passage?

What are freedom of navigation operations (Fonops)?

Nations conduct Fonops in international waters to challenge excessive maritime claims. This is often done by sailing ships through waters and turning on various

military equipment. According to the Asia Maritime Transparency Initiative at CSIS, a Washington think-tank, the US has conducted such operations since 1979, including in 19 countries last year.

Some people have mentioned “innocent passage”. What is that?

Ships can pass through the territorial waters of other nations under innocent passage if they are trying to get from A to B. During passage, they cannot turn on certain military equipment. Earlier this year, five Chinese warships sailed through US waters near the Aleutian Islands off Alaska.

Why did the US choose Subi Reef?

Subi Reef was originally a submerged feature so it does not convey any territorial rights under the United Nations Convention on the Law of the Sea (Unclos). That means the waters around the reef are considered international waters and so the US should be able to conduct freedom of navigation operations and reject any Chinese territorial claim.

That seems simple. So what was the hitch?

Unless warships perform certain military operations - such as turning on their weapons or radars - their manoeuvres are not considered as freedom of operations exercises. But the White House decided that such actions would be too provocative, so they looked for a less aggressive approach.

So how did they resolve the problem?

Administration lawyers concluded that the fact that there was another non-submerged feature within 12 nautical miles of Subi meant the reef was entitled to a 12-nautical mile territorial zone under Unclos. That created a legally ambiguous situation that allowed the US Navy to conduct what, on the one hand, could be viewed as innocent passage through territorial waters and, on the other hand, a FONOPs manoeuvre on the high seas.

The US Navy was planning to sail near Mischief Reef. What did it change its mind?

Since there is no other feature within 12-nautical miles of Mischief, the legal logic above does not apply, and the feature is not entitled to any territorial waters. That means the USS Lassen would have had to do something such as turn on military radars to perform a freedom of navigation operation. Again, this would have been more provocative vis-à-vis the Chinese than what actually happened,

So was it a freedom of navigation operation or innocent passage?

The White House appears to be playing games. It says it conducted FONOPs, but has given little detail to validate the claim. On the other hand, since the USS Lassen sailed through a 12-nautical mile territorial zone (thanks to the lawyers) that sounds like innocent passage. Discussions with press officials in various government agencies elicited answers that were completely contradictory, suggesting that the administration is reluctant, for some reason, to explain what actually happened.

How tense was the situation at sea?

The captain of the USS Lassen said the Chinese sailors behaved in a professional manner and that they would occasionally have lighter communications. “We picked up the phone and just talked to him about what are you guys doing this Saturday? We got pizza and wings. What are you guys eating? We’re planning for Halloween,” he said. “Just normal discussions to show we are sailors just like them, we have families just like them.”

What should I make of all this?

The Obama administration has not been very clear in explaining what happened. That could be a strategic move to deliberately create ambiguity, or it could just represent bureaucratic infighting. If the US Navy proceeds with its plan to perform more operations, we should get a better answer.
