

East Asian Disorder

China and the South China Sea Disputes

ABSTRACT

In the South China Sea territorial disputes, China has shifted from a delaying strategy characterized by strategic ambiguity to strategic clarity and an increasingly assertive stance. Yet, this power play, asserting sovereignty over a large portion of the South China Sea, has not prompted a decisive push-back from regional states or major powers, raising the question of what kind of norms China will bring to the regional order and indicating the difficulty of building rules-based order in a region characterized by unbounded power politics in a twenty-first-century Hobbesian struggle.

KEYWORDS: South China Sea, China, maritime territorial disputes, East Asia, regional order, international arbitration, strategic ambiguity, coercive diplomacy

CHINA'S CLAIM OF SOVEREIGNTY over a large portion of the South China Sea, as delimited by a "nine-dashed line," is disputed regionally by Vietnam, the Philippines, Malaysia, Indonesia, Brunei, and Taiwan. Charging that some of its neighbors capitalized on a period of Chinese weakness to take control of the disputed, tiny islands within the sea, a rising China has shifted from a delaying strategy characterized by strategic ambiguity to an increasingly assertive stance with strategic clarity, even at the risk of escalation. Yet, this assertive territorial claim has not prompted a decisive push-back from regional states or major powers. The International Court of Arbitration ruled in 2016 that China had no legal basis for its claim, but China dismissed the verdict as illegitimate. Insisting on bilateral negotiation rather than

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arbitration (or any other multilateral process) to resolve the territorial disputes, Beijing has not only ignored the international ruling but also intensified the reclamation and militarization of islands and reefs in the disputed waters. These actions raise a question about what kind of norms China, as a great power, will bring to the regional order. China's successful power play, imposing its version of an Asian Monroe Doctrine, indicates the difficulty of building rules-based order and the danger of moving toward a regional disorder characterized by unbounded power politics in a twenty-first-century Hobbesian struggle.

FROM STRATEGIC AMBIGUITY TO STRATEGIC CLARITY

Historically, the South China Sea was open water. No country had ever controlled the whole sea or its coastal lands. Control of the South China Sea became a contentious issue in the 1930s when imperial Japan began expanding toward the Pacific and successfully made the South China Sea a Japanese lake, and the watery heart of its vast empire during the Pacific War. After the war, Japan was forced to relinquish all these gains.

Because its defenseless coasts left China vulnerable to foreign invasion, the Chinese Nationalist government sought to control the water off the coast. In one symbolic action, on December 12, 1946, four Nationalist navy ships sailed to the largest island in the South China Sea, Itu Aba. The strategically located island of 110 acres or 45 hectares—smaller than many university campuses—was renamed Taiping (Peace), after a Chinese battleship that had visited there after the war. A stone monument was erected. In 1947, incensed over the WWII-era Japanese maps that showed the entire South China Sea as a Japanese lake, Chinese Nationalists drew a map in which a U-shaped string of 11 dashes circumscribed the ocean, essentially claiming nearly 80% of the South China Sea for China. The southernmost part of this area, the James Shoal, is about 50 miles off the coast of the Malaysian state of Sarawak, and 1,120 miles south of the Chinese mainland.

After the founding of the People's Republic of China in 1949, the communist government inherited this map, which aroused little international attention during the Cold War years because far weightier ways of dividing the world were at play. The eleven-dashed line was understood as referring to a boundary that was indeterminate or undefined, because it was unilateral, without any legal agreements between China and the Southeast Asian

countries. A Chinese scholar commented that “the application of the interrupted lines, rather than uninterrupted lines, makes future adjustments possible.”¹ In the 1950s, Beijing dropped two dashes to give Vietnam the bulk of the Tonkin Gulf, to please the comrades in Vietnam, but without any formal agreement between the two countries.²

The territorial dispute in the South China Sea began to attract more attention in the 1970s, following reports of oil and other mineral resources there. In March 1988, a skirmish between the Vietnamese navy and Chinese landing forces on the unoccupied Johnson South Reef of the Spratly Islands called attention to the problem. By the end of 1988, the Chinese had seized seven islets. In the Spratly Islands, the Vietnamese controlled 29 locations, the Philippines controlled nine, and Malaysia controlled five. In 1994, China took Mischief Reef, which was inside the exclusive economic zone (EEZ) claimed by the Philippines. The Philippines protested, but avoided direct confrontation.³

As tensions increased over the following years, China used a delaying strategy, and showed some flexibility in suggesting “shelving the disputes (of sovereignty) and working for joint development.”⁴ The delaying strategy was strategically ambiguous, in that China avoided officially stating the extent, meaning, nature, or legal basis of its claims, or specifically what the U-shaped line meant, or what its rights were within that boundary. This ambiguity allowed many in China to believe that it was the nation’s maritime boundary. But Beijing did not explicitly say that China demanded economic rights inside that area or that it wanted to control the islands and reefs—rather than the waters, for example. The ambiguity left space for China’s ambitious claims while preventing other countries from making counter-claims and thus starting a process of clarification and negotiation. As one study described it, “Chinese policy is to pursue and prolong their ambiguous stance to the exasperation of the international

1. Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, *Sharing the Resources of the South China Sea* (The Hague: M. Nijhoff, 1997): 25.

2. Mohan Malik, “History the Weak Link in Beijing’s Maritime Claims,” *The Diplomat*, August 30, 2013, <<http://thediplomat.com/2013/08/30/history-the-weak-link-in-beijings-maritime-claims/>>.

3. Joshua Eisenman, “China’s Vietnam War: A Domestic Politics Perspective,” *Journal of Contemporary China* 28:119 (September 2019): 729–45.

4. M. Taylor Fravel, “China’s Strategy in the South China Sea,” *Contemporary Southeast Asia* 33:3 (2011): 297.

maritime community.”⁵ In 2009, in response to repeated calls for China to clarify its claims, Beijing sent the UN Commission on the Limit of the Continental Shelf a map of the South China Sea showing the U-shaped line, but still did not state whether the line demarcated a claim to land features or to both islands and waters.

In the early 2010s, China consolidated its position and strengthened its ability to exercise jurisdiction over the contested waters. Shifting from ambiguity to clarity, Beijing expanded its maritime law enforcement by regularly sending “combat-ready” patrol ships to escort fishing fleets, which from time to time clashed with Vietnamese oil exploration ships and Philippine naval patrol vessels. In June 2012 the State Council announced the establishment of a new city, Sansha, in the South China Sea. It is China’s smallest city in terms of population and land area. Yet its administrative responsibility covers China’s vast claims in the sea and its myriad of mostly uninhabited atolls and reefs. According to the official Xinhua News Agency, “Sansha city administers over 200 islets, sandbanks and reefs in Xisha [Paracels], Zhongsha [Macclesfield Bank] and Nansha [Spratlys] islands, covering 13 square kilometers in island area and 2 million square kilometers of water.”⁶ The city government is based on Yongxing Island (Woody Island), which was taken by China in a naval clash with Vietnam in 1974. A month after the announcement, China’s Central Military Commission approved the establishment of a military garrison responsible for “national defense mobilization . . . guarding the city and supporting local emergency rescue and disaster relief” and “carrying out military missions.”⁷

According to one Chinese account, “The idea of establishing Sansha city emerged as early as in 2007, but was shelved due to protests by Vietnam.”⁸ Now China made the move, which, a Xinhua story stated, “is a strong indication of China’s determination to protect its maritime sovereignty in

5. Theresa Fallon and Graham Ong-Webb, “China’s Zero-Sum Game in the South China Sea Rattles its Neighbors,” *ISN Security Watch*, October 4, 2012, <<http://www.isn.ethz.ch/isn/Security-Watch/Articles/Detail/?lng=en&id=153342>>.

6. “China Focus: China’s Sansha Starts Forming Government,” Xinhua, July 17, 2012, <http://news.xinhuanet.com/english/china/2012-07/17/c_131721193.htm>.

7. “Central Military Commission Approved the Establishment of Shansa Military Garrison,” Xinhua, July 22, 2012, <http://news.mod.gov.cn/headlines/2012-07/23/content_4386455.htm>.

8. Editorial, “Sansha New Step in Managing S. China Sea,” *Global Times*, June 25, 2012, <<http://www.globaltimes.cn/content/716822.shtml>>.

response to provocation from neighboring countries.”⁹ Beijing has engaged its coast guard, paramilitary, and other maritime law enforcement to enforce a “four sha” doctrine, claiming sovereignty over the Zhongsha Islands (Maclesfield Bank), Dongsha (Pratas) Islands, Xisha (Paracel) Islands, and Nansha (Spratly) Islands, along with their internal waters, territorial seas, contiguous zones, EEZs, and continental shelves. Thus has China clarified its position on the nine-dashed line.

Vietnam protested that the designation of Sansha was illegal and overlapped with Vietnam’s territory. The Philippines protested that the creation of Sansha violated “Philippine sovereignty in South China Sea territories clearly belonging to Manila, including several islands, reefs and sandbars in the disputed Spratly Islands, the Scarborough Shoal and the continental shelf and waters off the country’s western coast.”¹⁰

HARDENING ITS POSITION

One of the important policy consequences of China’s shift to strategic clarity is a hardened position in defending its sovereignty claims. This position was contested in a standoff with the Philippines over the disputed waters, triggered by what the Philippines called “a series of provocative Chinese moves.” These included occupation of Scarborough Shoal, known to the Philippines as Panatag and to the Chinese as the Huangyan Islands, about 130 nautical miles west of the Philippines’ main island of Luzon and more than 500 miles from the Chinese mainland.¹¹ China’s action in the Scarborough Shoal started after Manila invited foreign companies to bid for the right to explore for oil and gas in the areas around Reed Bank. China demanded that the Philippines immediately withdraw the offer, and sent law enforcement ships to disrupt the operations of Filipino fishing and survey vessels in the waters of the Scarborough Shoal. On April 8, 2012, two Chinese maritime surveillance ships blocked a Philippine warship from arresting a group of Chinese

9. Zhao Shengnan and Zhang Yunbi, “Pledge to Protect Waters,” Xinhua, June 29, 2012, <<http://www.cdeclips.com/en/nation/fullstory.html?id=74356>>.

10. Alexis Romero, “China Speeds Up Construction of Projects in Sansha,” *Philippine Star*, October 1, 2012, <<http://www.philstar.com/Article.aspx?articleId=854615&publicationSubCategoryId=63>>.

11. Loida Nicolas Lewis, Rodel Rodis, and Walden Bello, “China’s ‘Cabbage Strategy’ in West Ph Sea,” *Philippine Daily Inquirer*, July 27, 2013, <<http://opinion.inquirer.net/57583/chinas-cabbage-strategy-in-west-ph-sea>>.

fishermen, who were accused of harvesting giant clams, live sharks, and coral from the Scarborough Shoal. The Philippines deployed a second vessel to join its warship and assert Philippines sovereignty. But this showing of the Philippine flag was soon overshadowed by the arrival of larger and more advanced Chinese fishery patrol and enforcement ships. As both countries sent ships to the area, Philippine protesters rallied outside the Chinese embassy in Manila demanding that China pull out of the contested area, ratcheting up tensions and leading to a diplomatic row that stoked nationalism on both sides.

In a show of coercive diplomacy, China imposed economic sanctions. Chinese tour agencies canceled group trips to the Philippines. China is the third-largest source of tourists for the Philippines, so this action put great economic pressure on the Philippine government. Chinese quarantine authorities also imposed restrictions on banana imports from the Philippines. Bananas are the Philippines' second-largest agricultural export, with China accounting for about one-quarter of all banana exports. The restrictions were described as "a big disaster" for the growers; as many as 200,000 Philippine banana farmers stood to lose their jobs.¹² China later began slowing inspections of papayas, mangoes, coconuts, and pineapples from the Philippines. The economic stakes of falling afoul of China were huge.

The coercive diplomacy worked. While then-President Benigno Aquino III publicly condemned Chinese aggression, he quietly negotiated an agreement with Beijing for a simultaneous withdrawal from the waters around Scarborough Shoal. Per the agreement, on June 15, with Typhoon Butchoy approaching the area, Aquino ordered the withdrawal of the Philippine vessels. But the Chinese vessels never left. Hong Lei, spokesperson for China's foreign ministry, confirmed that the Chinese government ships and fishing boats had "maintained jurisdiction and vigilance" in the shoal and claimed that tensions there had eased with no Philippine ships in sight to challenge the Chinese vessels.¹³

Beijing's claims have hardened further since President Xi Jinping came to power in late 2012. At the Working Conference on Peripheral Diplomacy in

12. Andrew Higgins, "In Philippines, Banana Growers Feel Effect of South China Sea Dispute," *Washington Post*, June 11, 2012, <http://www.washingtonpost.com/world/asia_pacific/in-philippines-banana-growers-feel-effect-of-south-china-sea-dispute/2012/06/10/gJQA47WVTV_story.html>.

13. Jerry E. Esplanada, "China 'Relaxed' with no PH Ships in Scarborough Shoal," *Philippine Daily Inquirer*, June 29, 2012, <<http://globalnation.inquirer.net/42045/china-relaxed-with-no-ph-ships-in-scarborough-shoal>>.

October 2013, the first high-level conference on “peripheral diplomacy” (that is, diplomacy with neighboring countries) since the founding of the People’s Republic of China, President Xi said that under no circumstances would China sacrifice its core national interests of sovereignty and territorial integrity. Xi took the position of moving toward “bottom line thinking” by drawing a “red line” that other countries could not cross, adding that the periphery policy would safeguard China’s core interests by defending territories that had belonged to China since “ancient times.” China would stick to the path of peaceful development only when other countries did the same.¹⁴ In other words, China’s peaceful development is contingent on other countries’ peaceful policies toward China.¹⁵ While Beijing’s increasingly tough stance generated significant concern outside China, Chinese analysts believed that the growing clarity in the willingness to protect China’s bottom line reduced the strategic uncertainties surrounding the country’s foreign policies, preventing other countries from misjudging China’s intention and resolve to protect its national interests.¹⁶

To reinforce the bottom line, since 2013 Beijing has scaled up land reclamation and construction of facilities on and around the disputed islands, including ports that could accommodate combat ships, runways, aircraft hangars, and radar for military use. This “island building” served first and foremost to facilitate China’s effective control of those features and strengthen its territorial claims. While some Southeast Asian claimant states also engaged in land reclamation, it was on a minuscule scale by comparison. China expanded and strengthened its grip in the South China Sea by constructing much larger landmasses much more quickly, with giant dredging ships turning small islets into man-made islands with military facilities, and oil drilling platforms, in the contested waters.

According to a Chinese scholar, between 2014 and 2017 China reconstructed seven islands and added a total of 29 hectares (72 acres) of new landmass—for comparison, this is less than half the size of the Forbidden City complex in Beijing. Fiery Cross Reef, Subi Reef, and Mischief Reef became the largest

14. “Xi Vows Peaceful Development while Not Waiving Legitimate Rights,” Xinhua, January 29, 2013, <<http://en.people.cn/90785/8113230.html>>.

15. Jianwei Wang, “Xi Jinping’s Major Country Diplomacy: A Paradigm Shift?” *Journal of Contemporary China* 28:115 (January 2019): 25–26.

16. Jian Zhang, “China’s New Foreign Policy under Xi Jinping: Towards ‘Peaceful Rise 2.0?’” *Global Change, Peace & Security* 27:1 (2015), <<http://dx.doi.org/10.1080/14781158.2015.993958>>.

islands in the Spratly chain, and now feature 10,000-foot runways, hangars for fighter planes, ammunition bunkers, barracks, and deep-water piers for ships.¹⁷ Beijing has also built a rugged power projection platform on Yongxing Island, significantly upgraded the installation with an airstrip, and expanded the island's infrastructure; its 2,700-meter-long runway can accommodate most Chinese fighter jets. HQ-9 "Red Banner" long-range surface-to-air missiles, J-10 and J-11 fighter jets, anti-ship cruise missile platforms, and various military transport and patrol aircraft have been deployed on the North, Tree, and Triton Islands in the Paracels. The Red Banner missiles are mounted on and launched from a truck and can target aircraft, drones, and cruise missiles.

Although China has maintained that the island construction is for defensive purposes, along with safety at sea, navigation assistance, search and rescue, fishery protection, and other nonmilitary functions, Beijing could quickly shift the military assets there to control vital trade routes and exclude other parties from disputed areas. The electronic jamming equipment, in particular, is purely for military use.¹⁸ These moves have strengthened China's ability to assert its extensive territorial claims, hinder US military operations, and overwhelm the military forces of any other South China Sea claimant. At the 19th Communist Party Congress in 2017, Xi Jinping praised these achievements as a "highlight of his first five years."

China's assertion of sovereignty over disputed territories is not new. The new development is that these actions are backed by modern maritime enforcement capabilities, demonstrating a more assertive and decidedly nationalistic streak that worries China's neighbors. As the artificial islands were being built, in 2009 China's navy began sailing through the "first island chain," a series of islands stretching from the East China Sea to the South China Sea; the frequency of these trips has increased. The Air Force followed suit, with regular patrols since 2015, which have also become more frequent.

This strategic shift has come with the growth of China's economic and military might.¹⁹ China's strategy regarding maritime interests was long

17. Qi Huaigao, "The Impacts of Sino-US Competition in the West Pacific," *Wuhan University Journal*, no. 3 (2019), <<http://www.iis.fudan.edu.cn/a3/96/c6852a172950/page.htm>>.

18. Michael R. Gordon and Jeremy Page, "China Installed Military Jamming Equipment on Spratly Islands, U.S. Says," *Wall Street Journal*, April 9, 2018, <<https://www.wsj.com/articles/china-installed-military-jamming-equipment-on-spratly-islands-u-s-says-1523266320>>.

19. Zhimin Lin, "Xi Jinping's Major Country Diplomacy: The Impacts of China's Growing Capacity," *Journal of Contemporary China* 28:115 (January 2019): 31–46.

constrained by military forces that were mostly land-based and a naval capacity that could rarely reach beyond its near seas. But with rapid modernization and an emphasis on building naval capacity, the Chinese military has extended its reach to the Pacific and Indian Oceans. China's first aircraft carrier, the *Liaoning*, was commissioned in 2012. A second, the *Shandong*, was commissioned in 2019.

Remote-sensing satellites to cover the region are being prepared for sequential launch. The People's Liberation Army Navy (PLAN) has built the ability to assert exclusive control over the waters along the "first island chain." The proposed construction of floating nuclear plants, the creation of a deep sea surveillance network, and the launch of two new ultra-deep-water offshore exploration platforms, Bluewhale I and II, further illustrate China's upgraded capacity in the South China Sea. In April 2019, the Offshore Oil 981 drilling platform, a sixth-generation ultra-deep-water rig developed by China State Shipbuilding Corp., drilled a well 4,660 meters deep, the deepest China has ever drilled. As a result, China's strategic calculation of its maritime rights and interests now extends beyond its coastline to the resources and sea lanes far from its shores, well into the Pacific Ocean.²⁰

In the meantime, China's economic growth has brought steadily increasing consumption of natural resources, particularly energy, leading to unprecedented resource vulnerability. China is exploring new sources of energy, including offshore sources in the South China Sea, which has oil and gas reserves and rich mineral and fishing resources. The US Energy Information Agency estimates about 190 trillion cubic feet of natural gas and 11 billion barrels of oil in proven and probable reserves. The South China Sea also has some of the world's busiest sea lanes, through which half of the world's commercial shipping and goods pass. It is particularly important for China to secure its position in the 630-mile-long Malacca Strait, used for more than 64% of its maritime trade and 80% of its oil imports. China has thus looked to the ocean for its continued economic development in the twenty-first century, exploiting maritime resources in the South China Sea even in the midst of lingering boundary disputes.

20. Frances Yaping Wang and Brantly Womack, "Jawing through Crises: Chinese and Vietnamese Media Strategies in the South China Sea," *Journal of Contemporary China* 28:119 (September 2019): 712–28.

China's proactive efforts contrast with the United States' and ASEAN's negligence in the South China Sea. The US National Security Strategy of December 2017 identified China as a competitor, and the US National Defense Strategy of January 2018 stressed the importance of cooperation on national defense with other countries in the "free and open Indo-Pacific." But the US maneuvers in the South China Sea have not gone beyond the customary freedom of navigation operations (FONOPs) near China's artificial islands. Although FONOPs could be seen as a way to challenge excessive maritime claims, so far they have only demonstrated a US presence; they have not prevented the construction of artificial islands or raised the confidence of countries in the region. In fact, President Donald Trump's "America First" foreign policy has raised concern in Asia about the reliability of the US in helping stave off pressure from China as it gains even more military and economic strength.

Presenting an iron fist in a velvet glove, China has been able to mollify many ASEAN member states through offers of economic aid and the enticing prospect of infrastructure development through the Belt and Road Initiative, even while threatening the use of force.²¹ In December 2017, Vivian Balakrishnan, minister of foreign affairs of Singapore (the incoming chair of ASEAN for 2018), defied China, stating that the top shared interest of ASEAN members was the right to freedom of navigation and overflight, because all of them depended on trade and therefore on peace and stability. He also said that ASEAN countries wanted a rules-based international order. The ASEAN Foreign Ministers' Meeting in Singapore on February 5–6, 2018 issued a statement expressing concern over China's land reclamation activities in the South China Sea and urging negotiations on a code of conduct. For this independent move, Singapore faced heavy pressure from China. Tensions between the two countries burst into the open in November 2016 when Hong Kong port authorities impounded nine Singaporean armored military vehicles being shipped home from training grounds in Taiwan. Hong Kong released the vehicles in early 2017 amid rare open debates in both Singapore and China about the deteriorating relationship. Worrying that Singapore could use its ASEAN chair in 2018 to "internationalize" the South China Sea issue, a Chinese Foreign Ministry spokesman stated that China supports

21. Chen Shaofeng, "Regional Responses to China's Maritime Silk Road Initiative in Southeast Asia," *Journal of Contemporary China* 27:111, May 2018, pp. 344–361

Singapore's work and "believes Singapore will lead ASEAN to work with China to promote the raising and upgrading of practical cooperation . . . and build an even closer China-ASEAN community of common destiny." This statement implied that "China thinks Singapore, as a Chinese-majority nation, should listen a bit more to Beijing."²²

DEFYING INTERNATIONAL ARBITRATION

Witnessing China's muscular behavior, other claimant states became worried. But none of the Southeast Asian countries can match China's resources and military capabilities.²³ China's former foreign minister, Yang Jiechi, told the ASEAN member states, "China is a big country and other countries are small countries and that is just a fact."²⁴

Thus, other states have opted for multilateral negotiations or worked through international institutions to enhance their power of collective bargaining. ASEAN has encouraged China to negotiate a code of conduct to commit all signatories to peaceful resolution of disputes and construct a rules-based maritime order. China has participated in the multilateral negotiations on the code but also insisted on bilateral negotiation of territorial disputes between the parties directly involved. China is in a much more powerful position when dealing with each of these smaller states.

The Philippines had expected US assistance, based on the Mutual Defense Treaty of the 1950s. But during 2012's tense standoff, when Beijing asserted control of the Scarborough Shoal, Manila found it could not rely on Washington's support. After a mutual withdrawal agreement was brokered by the US, the Philippines departed, but China stayed and retained control, fortifying its position with a growing number of paramilitary and surveillance vessels and effectively establishing a new status quo. At a meeting in April 2012 between US Secretary of State Hillary Clinton and Secretary of Defense Leon Panetta and Philippine Secretary of Foreign Affairs Albert del Rosario and Secretary of National Defense Voltaire Gazmin, and on President

22. "China Leaning on Singapore to Keep ASEAN Calm over South China Sea: Sources," Reuters, August 8, 2017, <<https://www.reuters.com/article/us-asean-china-singapore-analysis/china-leaning-on-singapore-to-keep-asean-calm-over-south-china-sea-sources-idUSKBN1AO17D>>.

23. Suisheng Zhao, Xiong Qi, "Hedging and Geostrategic Balance of East Asian Countries toward China," *Journal of Contemporary China* 25:100 (July 2016): 485–99.

24. "The Dragon's New Teeth: A Rare Look Inside the World's Biggest Military Expansion," *The Economist*, April 7, 2012, <<http://www.economist.com/node/21552193>>.

Aquino's visit to Washington in June, Manila sought clarity on the conditions under which the Mutual Defense Treaty would trigger US military intervention. But now the US studiously preserved its own strategic ambiguity regarding the treaty implications of an outbreak of hostilities in the South China Sea. Beijing thus established the "Scarborough Model," which explored strategies of "extended coercion" through which China could pressure US allies while keeping Washington at bay.²⁵

Because Washington was not reliable, Manila sought assistance from its ASEAN partners. But many of the ASEAN states took China's side, blaming the Philippines for instigating the crisis by using a naval vessel for law enforcement activities. The fracture was apparent at the ASEAN Foreign Minister's Meeting in July 2012. The Philippines wanted to record the discussion of the standoff at the Scarborough Shoal in the final communiqué. But Cambodia, as chair of the meeting, insisted that the dispute was bilateral and the mention would compromise ASEAN neutrality. The Philippine foreign minister blamed the impasse on "pressure, duplicity and intimidation" by China.²⁶ Cambodia insisted that it was not influenced by China but only acted to prevent the Philippines from turning its dispute with China into a dispute between China and ASEAN as a whole.

In January 2013 the Philippines filed a Notification and Statement of Claim with the International Tribunal for the Law of the Sea, seeking determination of whether certain features in the disputed waters were entitled to the legal definition of islands and thus a 200-nautical-mile EEZ for fish and mineral resources. In July 2016 the tribunal finally ruled in favor of the Philippines: China had "no legal basis" for its claim to historic rights in the area within the nine-dashed line, because all the features in the South China Sea are either low-tide elevations or rocks that cannot sustain human habitation or economic life. Accordingly, none of them is capable of generating a 200-mile EEZ, and there are no areas of overlapping EEZ claims between China and the Philippines. The tribunal also ruled that Mischief Reef is a low-tide elevation in the EEZ of the Philippines. Thus, the installations

25. Ely Ratner, "Learning the Lessons of Scarborough Reef," *National Interest*, November 21, 2013, <<http://nationalinterest.org/commentary/learning-the-lessons-scarborough-reef-9442>>.

26. Mark Valencia, "Is ASEAN Becoming a Big-Power Battleground? Yes: Two Giants Fighting for Hearts and Minds of Region," *Straits Times*, July 24, 2012, <http://www.viet-studies.info/kinhtel/SEAN_Battleground_StraitsTimes.htm>.

and structures built by China on Mischief Reef are legally under the jurisdiction of the Philippines.

In the past, China had relied on military force and bilateral negotiations to gain control of the disputed territories in the South China Sea. It now entered uncharted waters of international arbitration. In response to draft rules of procedure sent by the tribunal in July 2013 to request China's participation in the proceedings, China replied in a *note verbale* that it did not accept the legal action and would not participate in the proceedings because it had exempted itself from compulsory arbitration when it ratified the United Nations Convention on the Law of the Sea (UNCLOS) in 2006. China also claimed that UNCLOS had no jurisdiction over the case because sovereignty was involved. When the ruling was imminent in 2016, Beijing launched a diplomatic campaign to convince governments around the world that the tribunal was illegitimate and lacked jurisdiction in the case. Speaking at a Washington think tank, former state councilor Dai Bingguo described the forthcoming verdict as "merely a piece of waste paper."²⁷

After the ruling was announced, the Chinese government issued a white paper, declaring "four noes": non-participation, non-recognition of the arbitration panel's jurisdiction, non-acceptance, and non-enforcement of the award.²⁸ Beijing is a signatory of UNCLOS, which defines the rights and responsibilities of nations with respect to their use of the world's oceans and establishes guidelines for businesses, the environment, and the management of marine natural resources. Yet Chinese Foreign Minister Wang Yi described the tribunal's ruling as "three illegals"—illegal initiation of the arbitration, illegal formation of the arbitration court, and illegal ruling of the arbitration—to claim that the tribunal lacked jurisdiction, was biased, and had no legal basis.²⁹

Thus, although the ruling was regarded by some people as a "game changer," bringing home to all concerned the importance of UNCLOS in establishing a rules-based order for the oceans and seas,³⁰ China has never

27. Suisheng Zhao, "China and the South China Sea Arbitration: Geopolitics versus International Law," *Journal of Contemporary China* 27:109 (January 2018): 1–15.

28. "White Paper on South China Sea," *People's Daily*, July 13, 2016, <http://www.chinadailyasia.com/chinafocus/2016-07/13/content_15462174_10.html>.

29. Wang Yi, "The Political Maneuvers behind the Arbitration Must Be Opposed," *Xinhua*, July 26, 2016, <<http://www.chinanews.com/gn/2016/07-26/7952408.shtml>>.

30. Robert Beckman, "The South China Sea Ruling: Game Changer in the Maritime Disputes," *RSIS Commentary* no. 180, S. Rajaratnam School of International Studies, July 18, 2016, <<http://www.rsis.edu.sg/wp-content/uploads/2016/07/CO16180.pdf>>.

submitted to it. For many Chinese, a great power does not recognize the jurisdiction of others and surrender its territorial claims in response to international pressure. According to Graham Allison, China's noncompliance was normal: "None of the five permanent members of the UN Security Council have ever accepted any international court's ruling when (in their view) it infringed their sovereignty or national security interests. Thus, when China rejects the Court's decision in this case, it will be doing just what the other great powers have repeatedly done for decades."³¹

While the US has emphasized the importance of a rules-based order, this is hypocritical, because the US Congress has not ratified UNCLOS; it does not want to be subject to the system of dispute settlement set out there. Thus, Washington has insisted that others obey treaty rules that the US does not accept. And it does not accept them, precisely so that the US will not end up in the embarrassing situation in which China found itself. China's mistake is not to have defied the tribunal's decision but to have ratified UNCLOS in the first place. "Refusing to recognize the ruling does *not* mean China has rejected international order; it simply indicates China is asserting the same 'great-power privilege' that the United States has long practiced."³²

The forceful rejection of the ruling was, therefore, partially dictated by the need of the Chinese government to defend its legitimacy. The Chinese government had promised that China, as a rising power, could recover all its lost territories and could not be bullied by other powers. To back down would not only lock it out of the resources in the South China Sea but also tarnish its legitimacy in the eyes of the Chinese people, recalling the national humiliation that led to revolution over a century ago. From this perspective, ignoring the ruling indicated China's rise and was an exercise of great-power privilege.

Subscribing to the realist idea that the growth and demonstration of Chinese power would ultimately help resolve the dispute, China announced its intention to conduct previously planned military exercises with Russia in the South China Sea and sent strategic bombers flying over Scarborough Shoal, a show of force meant to discourage the Philippines and other

31. Graham Allison, "Of Course China, Like All Great Powers, Will Ignore an International Legal Verdict," *The Diplomat*, July 11, 2016, <<http://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/>>.

32. Jared McKinney and Nicholas Butts, "3 Myths about China and the South Sea Tribunal Verdict," *National Interest*, July 14, 2016, <<http://nationalinterest.org/feature/3-myths-about-china-the-south-sea-tribunal-verdict-16968>>.

claimants from taking any further action. In a rare disclosure, the newly formed PLA Southern Theatre Command unveiled on national television a series of new weapons for sea and air combat in the South China Sea, showing that the PLA was well prepared for any military confrontation. State television showed footage of troops in the southern theatre handling the DF-16 missile, which could strike US military bases in Okinawa, and the DF-21D, a “carrier killer” anti-ship ballistic missile. New H-6K bombers were also shown being deployed to the southern theatre to patrol the Scarborough Shoal.

China’s propaganda and military muscle-flexing were accompanied by diplomatic maneuvers to tame the verdict and prevent the international community from supporting it. The International Court of Arbitration has no enforcement mechanism other than international pressure. Whether the international community recognized the verdict as legally binding and pressured China to comply would determine its ultimate value. On the eve of the ruling, the Asia Maritime Transparency Initiative scoured publicly available official statements and identified 31 countries voicing support for Beijing’s position, four denying any such support, and 26 that were silent despite China’s claim of support or that had issued statements considerably vaguer than China had suggested. At the time of the ruling, 40 countries said that the award was legally binding and called on both China and the Philippines to respect it. But a month later, the initiative identified only seven countries that had publicly called for the award to be respected, 33 that had issued generally positive statements but stopped short of calling for the parties to abide by the verdict, nine that had made overly vague or neutral statements without addressing the ruling, and six that had publicly rejected it.³³

Most countries stopped short of calling on China to comply with the verdict because they did not see the point. They could not use economic sanctions to compel China, because China, the world’s second-largest economy, could retaliate economically. Nor was military coercion an option; even the US was not ready to take military action, for fear of escalation. Although before the ruling Washington had urged China to honor international law, the Obama administration backed away from its initially strong position. In July 2016, soon after the ruling, President Barack Obama’s national security advisor, Susan Rice, visited Beijing and made no direct mention of the

33. Asia Maritime Transparency Initiative, “Shifting Sands: What Countries Are Taking Sides after the South China Sea Ruling?” August 15, 2016, <<https://amti.csis.org/sides-in-south-china-sea/>>.

arbitration in her opening remarks to President Xi. Instead, China's media reported that President Xi warned her that "China and the US should effectively manage their differences and respect each other's core interests." Fan Changlong, vice chairman of China's Central Military Commission, told Rice that "China will not accept or recognize the so-called arbitration ruling, the Chinese people will never give in to any outside pressure, and the Chinese military will resolutely protect the country's territorial sovereignty and security."³⁴

Also in July 2016, US Secretary of State John Kerry met Chinese Foreign Minister Wang Yi on the sidelines of the Sixth East Asia Summit Foreign Ministers' Meeting in Laos. Apparently concerned more about a loss of face for China than about urging China to comply with the ruling, Secretary Kerry indicated a desire "to move away from public tensions and turn the page and begin to engage in full measure of diplomacy." He told Wang, "The international community needs to be patient and flexible and not put China in a corner, while China must reformulate its policy in line with international law."³⁵ Wang agreed that it was time to return things to the "right track" and to "turn the page" on the ruling.³⁶

As the US kept mum, the 28 members of the European Union also failed to endorse the ruling as legally binding and avoided mentioning China in a statement that had taken three days of protracted negotiations following the ruling. Greece, Hungary, and Croatia in particular opposed any strong language. As a result, the EU statement did not support but merely "acknowledged" the ruling. Taking a neutral position, the EU called on all parties to clarify their claims and pursue them in accordance with international law. Theresa Fallon, director of the Centre for Russia Europe Asia Studies in Brussels, remarked, "The European Union's response to the arbitral tribunal decision was deeply disappointing from an organization that considers itself one of the strongest supporters of international law."³⁷

34. Li Ruohan and Wu Gang, "China, US Should Respect Each Other's Core Interests: Xi," *Global Times*, July 26, 2016, <<http://www.globaltimes.cn/content/996490.shtml>>.

35. Hong Thao Nguyen, "How to Make China Comply with the Tribunal Award," Maritime Awareness Project, <<http://maritimeawarenessproject.org/2016/08/10/how-to-make-china-comply-with-the-tribunal-award/>>.

36. "Wang Yi Meets with Secretary of State John Kerry of the US," Chinese Foreign Ministry, July 26, 2016, <http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1384980.shtml>.

37. Theresa Fallon, "The EU, the South China Sea, and China's Successful Wedge Strategy," Asia Maritime Transparency Initiative, October 13, 2016, <<https://amti.csis.org/eu-south-china-sea-chinas-successful-wedge-strategy/>>.

The South China Sea dispute is a litmus test of ASEAN unity and its ability to maintain its self-assumed role in the driver's seat of regional affairs. But it has failed this test. The ASEAN states went silent after the Philippines filed its case. And the ruling led to further division, with Beijing's successful diplomatic maneuver to prevent the upcoming ASEAN Foreign Ministers' Meeting from supporting the ruling, or even mentioning it. Vietnam and the Philippines pushed to mention it in the joint communiqué, but Laos and Cambodia broke ranks in favor of disregarding it and prevented any reference to it. Following the principle of consensus, ASEAN proceeded to issue a communiqué that made no mention of the ruling.

This was not the first time that China had successfully divided the ASEAN states. Under Beijing's pressure, the association's Phnom Penh ministerial meeting of July 2012 failed for the first time in the organization's history to issue a joint statement; the 3rd ASEAN Defense Ministers Meeting-Plus of November 2015 ended without a joint declaration; and at the 2016 Special ASEAN-China Foreign Ministers Meeting in Kunming, China, a strongly worded statement was released to the media but subsequently retracted. With the ASEAN states bluntly divided and paralyzed by the issues, it was difficult to see how a multilateral approach would have worked in any case.

Beijing was further released after the Philippines' new president, Rodrigo Duterte, made the astonishing gesture of putting it on the back burner to secure much-needed aid from China. In October 2016 Duterte visited Beijing to mend fences and boost trade. President Xi called the visit a "milestone." China and the Philippines were "brothers" who could "appropriately handle disputes." Duterte agreed that relations with China had entered a new "springtime" and the two sides were "to seek settlement on the South China Sea issue through bilateral dialogue," just the stance Beijing had insisted on.³⁸ In response to Duterte's "stunning U-turn,"³⁹ Beijing offered the Philippines US\$ 9 billion in low-interest loans and allowed Filipino fishermen to return to certain disputed waters in the South China Sea.

After the visit, President Duterte not only stopped pressing China to abide by the arbitration but also played down concerns that China was militarizing

38. "Duterte in China: Xi Lauds 'Milestone' Duterte Visit," BBS News, October 26, 2016, <<https://www.bbc.com/news/world-asia-37700409>>.

39. Martin Petty and Neil Jerome Morales, "Philippines Duterte Days No Concern about China's Militarization, Manmade Isles," Reuters, December 29, 2016, <<http://www.reuters.com/article/us-philippines-duterte-southchinasea-idUSKBN14IoJL>>.

the South China Sea. He said that he had “no serious concern” about China’s dredging and military island-building, and that responding to it was a job for the US, not the Philippines.⁴⁰ Underlining his newfound friendship with Beijing, in May 2017 Duterte inspected a Chinese naval ship docked at his hometown, the first visit of its kind to the Philippines in years. Meanwhile, he blocked America’s efforts to site weapons on Philippine bases in accordance with the bilateral Enhanced Defense Cooperation Agreement signed by his predecessor in 2014. This has hampered Washington’s preparations for contingencies in the South China Sea.

Chairing the 2017 ASEAN summit in Manila, Duterte said it was pointless to pressure Beijing over its maritime activities before the leaders had even gathered. An early draft of the summit statement called for a halt to actions “such as land reclamation and militarization that may further complicate the situation” in the South China Sea, but the language was subsequently dropped. Although the ASEAN states had mixed reactions to the document’s litany of anodynes, many expressed approval of its positive tone in the interest of maintaining harmony among the member states. “ASEAN is in a precarious position now with the concessions, accommodation and even appeasement with China,” wrote the *Japan News*, because “it is no longer just Cambodia that is acting as an agent of Chinese influence in ASEAN over the South China Sea dispute.”⁴¹ Making the most of Duterte’s conciliatory stand, Beijing has fortified its physical control of the islands and waters, recognizing that the current calm could be temporary, given the tensions displayed earlier. But thanks to its successful diplomatic maneuvers, China, the elephant in the ASEAN room, has quietly managed to establish primacy in the region.

The muted, almost embarrassed response of the Western countries and the self-calming of the Philippines, previously the most vociferous claimant, showed that Beijing could ignore the international legal system and the verdict of the international arbitration, underscoring its rising power. In the eyes of many Chinese, Beijing’s success in brazening out legal censure, intimidating Southeast Asian states into silence, and leveraging de facto acquiescence by the West confirmed China’s rising-power status, shading

40. Ibid.

41. “Asian Nations Increasingly Falling into China’s Orbit,” *Japan News*, May 3, 2017, <<http://the-japan-news.com/news/article/0003674179>>.

into the nationalist strains of President Xi's requests for China's national rejuvenation.⁴²

CONCLUSION

In these territorial disputes, China has faced a dilemma between the need to maintain the regional stability (*weiwēn*) and forcefully pursue its own interests and rights (*weiqiān*). Although President Xi has called for improving ties with China's neighbors, Beijing has asserted sweeping and unflinching territorial claims, threatening regional stability and a rules-based order. All countries are supposed to comply with international law, and weak states often take refuge there. But China has rejected international arbitration and continued its land reclamation, which has become a bellwether for how a rising China would act, spurring regional disorder, in which Chinese power prevailed over international law.

The contention over rules in these maritime territorial disputes has wider repercussions for China's foreign relations.⁴³ With the rapid rise of China, the international community is anxiously watching to see how this resurgent global power shapes the regional order. For its use of coercive diplomacy and threats of force, China is being criticized as subscribing to the "might makes right" school of international politics, thus undermining its claim to be a responsible power and raising doubts about the reliability of Chinese international legal commitment.⁴⁴ If China's approach remains relatively unchanged, it will have doubled down on a posture that had already spawned charges that Beijing was an international scofflaw and revisionist in its approach to major components of the international legal order. "Rejecting peaceful settlement of maritime as well as territorial disputes through international arbitration, adjudication and other third-party procedures," legal expert Jerome Cohen has charged, "China is plainly out of step with the practices of other Asian countries and the rest of the

42. Weixing Hu, "Xi Jinping's 'Major Country Diplomacy': The Role of Leadership in Foreign Policy Transformation," *Journal of Contemporary China* 28:115 (January 2019): 1–14.

43. Suisheng Zhao, "Engagement on the Defensive: From the Mismatched Grand Bargain to the Emerging US-China Rivalry," *Journal of Contemporary China* 28:118 (July 2019): 501–18.

44. Suisheng Zhao, "A Revisionist Stakeholder: China and the Post-WWII World Order," *Journal of Contemporary China* 27:113 (September 2018): 643–58.

world.”⁴⁵ Even President Duterte has said, “I love China . . . but . . . is it right for a country to claim the whole ocean?”⁴⁶

Neither the US, nor other world powers, nor China’s neighbors would voluntarily accommodate China’s aspirations to make the South China Sea a Chinese lake, but China has pushed forward against their will. The indecision of some members of ASEAN, the reticence of the US and EU, and the passivity of the international community following the ruling of the arbitral tribunal together highlight the difficulty of building a rules-based order. Disregarding international rules and intensifying its reclamation and militarization of disputed marine features in the South China Sea, China’s successful power play has certainly contributed to disorder in East Asia. Singaporean scholar Mushahid Ali observed that, in refusing to subscribe to the established rules of international law, “China displayed the classic behavior of a hegemonic power in securing its interest over the objection of regional states. Chinese leaders talk often about mutual respect, win-win cooperation and equality of states. They do not seem to mean what they utter but expect other countries to follow their wishes.”⁴⁷

45. Jerome A. Cohen, “Mutual Respect for International Laws Can Keep the Peace between China and the US,” *South China Morning Post*, June 20, 2015, <<http://www.scmp.com/comment/insight-opinion/article/1823740/mutual-respect-international-laws-can-keep-peace-between>>.

46. Cliff Venzon, “Duterte Presses Xi to Fast-Track South China Sea Code of Conduct,” *Nikkei Asian Review*, May 31, 2019, <<https://asia.nikkei.com/Spotlight/The-Future-of-Asia-2019/Duterte-presses-Xi-to-fast-track-South-China-Sea-code-of-conduct>>.

47. Mushahid Ali, “China’s Hegemonic Trajectory: Intimidating ASEAN?” *RSIS Summaries*, No. 245, October 4, 2016, <<http://www.rsis.edu.sg/wp-content/uploads/2016/10/COI6245.pdf>>.