

The South China Sea: Current Flashpoints and Future Prospects for Resolution

Lindsey W. Ford, Director for Political-Security Affairs
Asia Society Policy Institute

Over the past decade, the South China Sea has emerged as one of the Asia-Pacific region's most troublesome flashpoints. While territorial and maritime disputes in the South China Sea are not new—disputes over the Paracel and Spratly Islands have been present for decades—there has been a qualitative shift in the complexity of these disputes over the past several years.⁹⁰ Claimant states⁹¹ are now engaging in a much more aggressive race to claim control over disputed waters and land features. China's widespread modernization of its military and maritime law enforcement capabilities has led to a dramatic uptick in patrols of contested South China Sea waters, and in turn, increased efforts by other claimant states to assert their territorial claims.⁹² Claimant states have also escalated efforts to assert sovereignty over contested land features. Most notably, China has established vast new outposts on the features it controls in the Spratly Islands, including building new infrastructure and deploying military assets.⁹³ Other claimants appear to be following suit with further upgrades to their outposts as well.⁹⁴ As tensions over the South China Sea disputes have increased, they have spilled over into the broader geopolitical domain in recent years, adding to the friction between China and ASEAN member states, as well as between ASEAN states themselves, on a variety of issues.

Current context

In contrast to the steady escalation of tensions seen in the South China Sea over the past several years, there had been a relative lull in major incidents over the past twelve months, suggesting Beijing had made a decision to “turn down the temperature” and avoid unnecessary disputes.⁹⁵ The adverse ruling of the Permanent Court of Arbitration in July 2016 certainly helped shape Beijing's decision to pursue a more conciliatory approach. Beijing appears to have calculated that making tactical concessions to ASEAN claimants,

⁹⁰ Sean Mirski, “The South China Sea Dispute: A Brief History,” *Lawfare* (8 June 2015), <https://www.lawfareblog.com/south-china-sea-dispute-brief-history>. Accessed 11 August 2017.

⁹¹ These include Brunei, Malaysia, The Philippines, Vietnam, China and the Republic of China (Taiwan).

⁹² “Asia-Pacific Maritime Security Strategy: Achieving U.S. National Security Objectives in a Changing Environment,” Department of Defense, https://www.defense.gov/Portals/1/Documents/pubs/NDAA%20A-P_Maritime_Security_Strategy-08142015-1300-FINALFORMAT.PDF. Accessed 11 August 2017.

⁹³ “Country: China,” *Asia Maritime Transparency Initiative* (2017), amti.csis.org/island-tracker/chinese-occupied-features/. Accessed 25 May 2017.

⁹⁴ Ankit Panda, “South China Sea: What's Taiwan Building on Itu Aba?” *The Diplomat* (21 September 2016), <http://www.thediplomat.com/2016/09/south-china-sea-whats-taiwan-building-on-itu-aba/>. Accessed 11 August 2017.

⁹⁵ Michael Vatikiotis, “Calming the waters in the South China Sea: a win-win for China,” *The Strategist*, <http://www.aspistrategist.org.au/calming-waters-south-china-sea-win-win-china/>. Accessed 11 August 2017.

such as allowing Philippine fisherman to fish around Scarborough Shoal and moving forward on negotiations for a Code of Conduct, might allow it to change the prevailing narrative and avoid the risk of a diplomatic push to enforce the PCA's rulings. Beijing's effort to reduce tensions was also facilitated to a large degree by the timely election of Rodrigo Duterte. Duterte's decision to shelve discussion of the PCA ruling smoothed the path for a China-Philippines détente that has facilitated a broader reduction in tensions and renewed diplomatic dialogue between claimants. Of particular note, China and ASEAN announced on May 18, 2017 that they had reached agreement on a framework for a Code of Conduct, which was endorsed by the ASEAN-China ministerial meeting on August 6.⁹⁶

In this environment, one could easily be persuaded that the risk of crisis and conflict in the South China Sea is receding. However, renewed tensions between Vietnam and China in recent months highlight that the fundamental concerns driving instability in the South China Sea remain unchanged.⁹⁷ These underlying problems will continue to spark tension for the foreseeable future.

- *Militarization of Land Features* – Ongoing militarization of disputed outposts shows no signs of abating. China in particular has continued to fortify and deploy additional military capabilities to its South China Sea outposts.⁹⁸ In turn, other claimants such as Taiwan, Vietnam, and the Philippines have followed suit, with reported plans to expand existing runways, build infrastructure, and deploy new defensive systems.⁹⁹ Over the long-term, this

⁹⁶ “China, ASEAN agree on framework for South China Sea code of conduct,” *Reuters* (18 May 2017), <http://www.reuters.com/article/us-southchinasea-china-philippines-idUSKCN18E1FS>. Accessed 11 August 2017.

⁹⁷ “China Vietnam Maritime Tensions Flare Foreign Ministers,” *South China Morning Post* (28 August 2015), <http://www.scmp.com/news/china/diplomacy-defence/article/2105828/china-vietnam-maritime-tensions-flare-foreign-ministers>. Accessed 11 August 2017.

⁹⁸ See, Sam LaGrone, “U.S. Intelligence Assessment Disputes Chinese Claims of Limited Militarization, Ceased Land Reclamation in South China Sea,” *USNI News* (8 March 2016), news.usni.org/2016/03/08/u-s-intelligence-assessment-disputes-chinese-claims-of-limited-militarization-ceased-land-reclamation-in-south-china-sea; and www.nytimes.com/2016/12/15/world/asia/china-sprately-islands.html?_r=0. Recent reports also suggest China has reinforced surface-to-air missile sites on Woody Island, Mischief Reef, Fiery Cross Reef, and Subi Reef, and deployed new “anti-frogman” rocket launchers to Fiery Cross Reef. See, Thomas Gibbons-Neff, “New satellite images show reinforced Chinese surface-to-air missile sites near disputed islands,” *Washington Post* (23 February 2017), www.washingtonpost.com/news/checkpoint/wp/2017/02/23/new-satellite-images-show-reinforced-chinese-surface-to-air-missile-sites-near-disputed-islands/?utm_term=.730d1ad2d44c; and Jesse Johnson, “China deploys anti-diver rocket launchers to man-made island in South China Sea: report,” *Japan Times* (17 May 2017), www.japantimes.co.jp/news/2017/05/17/asia-pacific/china-deploys-anti-diver-rocket-launchers-man-made-island-south-china-sea-report/#.WScD9GjyuUk.

⁹⁹ Manuel Mogato, “Philippines to Strengthen Military Facilities in South China Sea,” *U.S. News* (17 Mar. 2017), www.usnews.com/news/world/articles/2017-03-17/philippine-military-says-halts-lawmakers-trip-to-south-china-sea-island. Accessed 25 May 2017; and Demetri Sevastopulo, “Vietnam Extends Runway for Spy Flights on SCS Outpost,” *Financial Times* (17 Nov. 2016), http://www.realcleardefense.com/2016/11/17/vietnam_extends_runway_for_spy_flights_on_scs_outpost_287698.html. Accessed 25 May 2017; and Ankit Panda, “South China Sea: What’s Taiwan Building on Itu Aba?” *The Diplomat* (21 Sept. 2016), www.thediplomat.com/2016/09/south-china-sea-whats-taiwan-building-on-itu-aba/. Accessed 25 May 2017.

trend has the potential to substantially shift the baseline level of militarization in the South China Sea and escalate the risk of dangerous incidents.

- *A Fragile Détente* – While the détente between China and the Philippines has helped reduce tensions at present, this uncomfortable truce is unlikely to be enduring. President Duterte’s South China Sea policy remains unclear and inconsistent. It reflects the difficult tightrope he is walking with his embrace of Beijing, which has at times put him at odds with the Philippine Armed Forces (PAF), his own cabinet, and domestic sentiment.¹⁰⁰ China’s continued patrols and exploration of areas near Philippine territory, such as its recent activities around Benham Rise and Sandy Cay, will likely put additional pressure on Duterte’s accommodating stance, further increasing the risk that the present day détente may fray at the seams.
- *Pursuit of Administrative Control* – Claimants continue to expand their efforts to demonstrate sovereignty and administrative control in the South China Sea through a variety of means, including domestic legislation and administrative regulations, the establishment of villages and outposts on disputed features, sovereignty patrols, and nationalist propaganda.¹⁰¹ These efforts will only serve to further harden disputes over time, making diplomatic compromises and the ultimate resolution of disputes increasingly difficult.
- *Escalation of Civilian Incidents* – The growing involvement of non-military vessels—maritime militia, fishing fleets, or maritime law enforcement vessels—in South China Sea incidents creates a complex problem for regional policymakers.¹⁰² Of note, of 46 major incidents in the South China Sea from 2010-2016, 72% involved at least one Chinese maritime law enforcement vessel.¹⁰³ While some claimants have proposed the expansion of regional

¹⁰⁰ Richard Javad Heydarian, “Duterte Faces Domestic Resistance,” *Asia Maritime Transparency Initiative* (13 April 2017), amti.csis.org/duterte-faces-domestic-resistance/. Accessed 25 May 2017.

¹⁰¹ Loi Huynh and Sayuri Umeda, “Vietnam: New National Law Intensifies International Dispute,” United States Library of Congress (19 Jul. 2012), www.loc.gov/law/foreign-news/article/vietnam-new-national-law-intensifies-international-dispute/. Accessed 25 May 2017; and Shinji Yamaguchi, “Creating Facts on the Sea: China’s Plan to Establish Sansha City,” *Asia Maritime Transparency Initiative* (17 April 2017), amti.csis.org/chinas-plan-establish-sansha-city/. Accessed 25 May 2017; and Stuart Leavenworth, “China’s Times Square Propaganda Video Accused of Skewing Views of British MP,” *The Guardian* (31 Jul. 2016), www.theguardian.com/world/2016/jul/31/chinas-times-square-propaganda-video-accused-of-skewing-views-of-british-mp. Accessed 25 May 2017.

¹⁰² For a good discussion of the expanded role of law enforcement vessels in regional sovereignty operations, see: Lyle Morris, “Blunt Defenders of Sovereignty: The Rise of Coast Guards in East and Southeast Asia,” *Naval War College Review* 70,2 (2017), www.usnwc.edu/getattachment/ea0678e-83a0-4c67-8aab-0f829d7a2b27/Blunt-Defenders-of-Sovereignty---The-Rise-of-Coast.aspx. Accessed 11 August 2017. Additionally, a comparison of incidents in the South China Sea, a study by the National Defense University notes China’s growing reliance on paramilitary forces during the 2012 Scarborough Shoal incidents as opposed to the 1995 Mischief Reef incident. See inss.ndu.edu/Portals/68/Documents/stratforum/SF-289.pdf.

¹⁰³ “Are Maritime Law Enforcement Forces Destabilizing Asia?,” *ChinaPower Project*, Center for Strategic and International Studies (2016), chinapower.csis.org/maritime-forces-destabilizing-asia/. Accessed 25 May 2017.

maritime agreements such as the Code for Unplanned Encounters at Sea (CUES) to include Coast Guard and maritime law enforcement vessels, to date, there are no uniform rules governing the behavior of such vessels or domestic fishing fleets. The absence of clear rules of the road regarding the appropriate activities of maritime law enforcement vessels and maritime militias has become a frequent and growing source of friction between claimants.

Managing disputes and the way ahead

Given the significant risk of potential conflict, the most immediate priority for claimant states should be to develop clear and binding rules of the road to govern behavior in the South China Sea. At first glance, China and ASEAN's recent agreement on a framework for a Code of Conduct implies that such an outcome may be close at hand. However, initial reports on the newly concluded framework for the Code of Conduct have not been promising, suggesting that claimants may still remain worlds apart in reaching a consensus around contentious issues.¹⁰⁴

The conclusion of a substantive and binding Code of Conduct remains the most direct step claimant states could take toward reducing tensions in the South China Sea. As the aftermath of the July 2016 PCA ruling has reaffirmed, any diplomatic solutions need the endorsement of all claimant states, and especially China, to place any types of meaningful restraints on state behavior. Otherwise, states will simply proceed apace with their existing activities, as they have for the past year, and the cycle of tensions will continue. Ultimately, the real question is the appetite of claimants to move beyond the status quo and negotiate a comprehensive, binding, and substantive agreement. There are certainly compelling incentives in some places to avoid such an outcome, especially for China, which might prefer to drag out negotiations and continue to consolidate de facto control of the South China Sea. But on balance, there is much to lose on all sides by perpetuating instability and uncertainty that prevents meaningful economic cooperation and risks broader conflict.

Thus as states move forward on negotiations over the coming months, it is worth considering what a substantive and comprehensive Code of Conduct that could bring about a meaningful reduction in tensions would entail. The following section outlines six key issues that claimant states would need to address in order to develop such an agreement:

1. It Must Be Binding. The rationale behind the development of a Code of Conduct was that claimants would commit to a binding set of principles and rules governing their behavior in the South China Sea. Ostensibly, these principles would also align with international law, including the UN Convention on the Law of the Sea (UNCLOS). Unfortunately, recent indications suggest some claimants may be walking away from that commitment, arguing instead for

¹⁰⁴ Prashanth Parameswaran, "Will a China-ASEAN South China Sea Code of Conduct Really Matter?" *The Diplomat* (5 August 2017), <http://thediplomat.com/2017/08/will-a-china-asean-south-china-sea-code-of-conduct-really-matter/>. Accessed 11 August 2017.

an unenforceable “gentlemen’s agreement,” which in practice would be little different than the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC).¹⁰⁵ Unless states can commit to meaningful restraints on their behavior that align with international law, the Code of Conduct will have little value as a conflict management mechanism.¹⁰⁶ Moreover, unless there are agreed upon enforcement mechanisms that provide states with recourse should one or more parties break the terms of the agreement, it will be difficult to see how the Code of Conduct becomes any more effective than the 2002 DOC.

2. It Should Encompass the Entirety of the South China Sea. In order to be effective in preventing crises and incidents, a Code of Conduct must cover the full geographic domain of the South China Sea. Given that China’s ambiguous “Nine-Dash Line” covers approximately 90% of the waters within the South China Sea, and multiple claimants have conflicting claims over issues such as overlapping Exclusive Economic Zones (EEZs) and continental shelves, a more limited agreement would have little effect on regulating maritime behavior. Recent incidents in areas as varied as the Luconia Shoals, Benham Rise, and the Natuna Islands have demonstrated the need for rules of the road that mitigate tensions across the broader region.

3. It Should Tackle the Militarization Issue. The construction of extensive infrastructure on disputed features, and the possible deployment of wide-ranging military assets to these outposts, have the potential to seriously destabilize the South China Sea. Claimant states, and China in particular, have largely avoided substantive discussions about militarization of outposts by couching all of these developments in terms of self-defence as well as search and rescue. However, lack of clarity about the potential uses of these new outposts is sparking deeper distrust among claimants. Claimants could help build mutual trust by agreeing to greater transparency about the types of capabilities they are deploying on disputed features and setting appropriate limitations on how these capabilities might be employed. Claimants should also discuss how to minimize militarization of disputed features and commit to refrain from deploying certain capabilities that might be viewed as destabilizing.

4. It Should Address Both Military and Civilian Rules of Behavior. In order to be effective, a Code of Conduct must establish clear rules of the road governing the behavior of non-military vessels (including law

¹⁰⁵ Martin Petty and Manuel Mogato, “Philippines Calls for ‘Gentlemen’s Agreement’ Between ASEAN, China on Sea Code,” *Reuters* (19 May 2017), www.businessinsider.com/r-philippines-calls-for-gentlemen-agreement-between-asean-china-on-sea-code-2017-5. Accessed 25 May 2017.

¹⁰⁶ The key issue here, of course, will be the question of enforceability. China has repeatedly made clear its unwillingness to submit to third-party dispute resolution, and thus, agreement on this issue will be an uphill battle. However, claimants could seek creative options, such as establishing a new claimant state dispute resolution mechanism, or they could simply table the issue, recognizing that, under UNCLOS, claimants still have the right to unilaterally bring their disputes forward via international venues like the Permanent Court of Arbitration (PCA).

enforcement, maritime militia, and fishing vessels) in the South China Sea. In particular, it should address the appropriate and inappropriate roles for these assets in sovereignty enforcement operations. One of the challenges of better addressing this issue is that while countries in the region have relatively robust Navy-Navy dialogue mechanisms, there are not yet similar forums for civilian-military dialogues, nor is there a Southeast Asian venue for Coast Guard dialogues. A Code of Conduct could lay the foundation for addressing this gap by establishing new confidence-building mechanisms, exercises, and dialogues to bridge the civil-military divide.

5. It Should Include Affirmative Confidence-Building Initiatives. A Code of Conduct need not, and should not, simply be a list of rules of “thou shalt nots” for the South China Sea. To establish a more positive baseline of behavior among claimant states, it should also include affirmative initiatives that build trust, cooperation, and confidence between claimants. Various nations have already tabled a range of proposals, including hotlines and info-sharing agreements, joint air or naval patrols, ship rider agreements, or the expansion of existing confidence-building measures such as CUES.¹⁰⁷ All of these initiatives could be valuable. In short, the precise nature of the initiative is less important than the commitment of participants to actually proceed with implementation and adhere to the provisions of the agreement.

6. It Should Address Resource Sharing. The issue of joint development and resource sharing will undoubtedly be one of the most contentious issues claimants will need to negotiate in a Code of Conduct. However, given the degree to which competition for these resources drives friction and instability, this conversation should not be avoided. The biggest point of contention for any discussion will be identifying the precise areas subject to joint cooperation. China would likely push for a maximalist approach, while ASEAN claimants would certainly object to any attempt to encompass their EEZs and continental shelf claims within the negotiations. Given that the true resolution of this debate will be dependent upon more binding maritime delimitation and dispute resolution talks, the best approach for the near-term might be to take a minimalist approach and seek a limited joint development zone. This can perhaps start with areas beyond any nations’ EEZ, where countries could establish an initial resource sharing agreement. In tandem, claimants could also establish a roadmap toward maritime delimitation negotiations that would pave the way for broader joint development agreements further down the road.

¹⁰⁷ Prashanth Parameswaran, “ASEAN Joint Patrols in the South China Sea?,” *The Diplomat* (12 May 2015), thediplomat.com/2015/05/asean-joint-patrols-in-the-south-china-sea/. Accessed 25 May 2017; and Ben Otto and Chun Han Wong, “ASEAN, China Plan Hotline to Avoid South China Sea Clashes,” *The Wall Street Journal* (7 Sep. 2016), www.wsj.com/articles/asean-china-plan-hotline-to-avoid-south-china-sea-clashes-1473260735. Accessed 25 May 2017; and Sam Bateman, “CUES and Coast Guards,” *East Asia Forum* (7 Oct. 2016), www.eastasiaforum.org/2016/10/07/cues-and-coast-guards/. Accessed 25 May 2017.

Implications for Canada

It has taken fifteen years for China and ASEAN claimants to move forward on Code of Conduct negotiations, so it is important to be realistic about the challenges that lay ahead in turning a “framework” into a substantive and binding document. Regardless of the pace and ultimate conclusion of Code of Conduct negotiations, however, regional partners such as Canada can still play an important role in conflict management in the South China Sea.

First, Canada could help promote and enforce a rule-based approach to conflict management and dispute resolution among claimant states. Canada, alongside other like-minded regional partners, should continue to publicly articulate the need for any Code of Conduct negotiations to be binding and to adhere to the rule of law, which must include making the July 2016 ruling by the Permanent Court of Arbitration the baseline for future negotiations. Regardless of President Duterte’s apparent decision to downplay the PCA’s ruling, it would send a terrible signal to other claimants should the international community overlook the importance of the court’s findings.

Second, Canada should consider expanding its efforts to encourage greater professionalization of regional maritime law enforcement through training and assistance, multilateral exercises and port calls, and other such activities. In particular, Canada should consider establishing a Coast Guard training program through the Canadian Coast Guard focused on training and assistance for ASEAN maritime law enforcement agencies. In addition to providing unilateral training for ASEAN partners, Canada could also leverage its role in the North Pacific Coast Guard Agencies Forum (NPCGF) to discuss opportunities to coordinate and collaborate on training activities with nations such as Japan and the United States.

Finally, Canada and other regional partners should remind claimants that further progress need not wait on the conclusion of Code of Conduct negotiations. While claimants may differ in their priorities and ultimate objectives for a Code of Conduct, they can nonetheless continue to develop and implement regional confidence-building initiatives even as negotiations are ongoing. Indeed, establishment of such initiatives could prove valuable in generating greater momentum toward an eventual Code of Conduct. Here, Canada could play a particularly valuable role by offering to sponsor unofficial dialogues between claimants to develop practical initiatives and steps to stabilize tensions and promote common interests. Canada is particularly well-positioned to play this role, given its positive reputation for having facilitated the 1990s South China Sea dialogues that helped lead to the establishment of the Declaration on the Conduct of Parties in the South China Sea in 2002.

Conclusion

Although South China Sea disputes may not be new, the management and resolution of these disputes have taken on an increasing urgency in recent years as parties escalate efforts to unilaterally reinforce their claims in the absence of binding rules of the road. More broadly, tensions in the South China Sea reflect deep unease within the region over China’s

growing power and how it may choose to wield it in relations with regional neighbours. While it is unlikely that any permanent resolution of disputes is at hand for the foreseeable future, claimants have every interest in taking steps to prevent conflict and crisis. Agreeing to a binding and substantive Code of Conduct that prevents further unilateral actions remains the most direct way to achieve this goal. Whether or not claimants choose to seize this opportunity remains to be seen.