China tightens its grip over the South China Sea

Of all the disputed areas claimed by China, the South China Sea (SCS) has been the most prominent in recent years, since it involves the largest number of actors with overlapping claims to maritime features and waters, as well as non-claimant countries, owing to its strategic importance as one of the world’s busiest shipping lanes. In 2020, China stepped up its salami-slicing tactics to assert its sweeping 'historic' rights, while Malaysia, Indonesia, the Philippines, and Vietnam dismissed them in an alignment of positions supported by a 2016 landmark arbitration award under the United Nations Convention on the Law of the Sea (UNCLOS). In 2020, the United States’ previous neutral position on China’s maritime claims shifted to dismissing them as unlawful. The EU remained attached to its position of not taking sides with either party’s claims. Some EU Member States have become more vocal in dismissing China’s ‘historic’ rights and have increased their presence in the SCS.

China's increasing power projection capabilities

In 2020, China pursued its two-pronged hybrid warfare strategy of deterring United States (US) presence in the SCS and of coercing competing claimants into abandoning their claims. The People’s Liberation Army Navy (PLAN) conducted military exercises and assumed an important signalling role. By contrast, the China Coast Guard (CCG), that blurs the lines between civil law enforcement and national defence, and the maritime militia, a state-funded armed fishing fleet, were deployed to coerce and intimidate coastal states in what is typically referred to as low-intensity 'gray-zone operations'. In an effort to subdue the enemy without fighting, in line with Chinese military strategist Sun Tzu, these operations remain below the threshold of military action and seek to secure strategic gains without prompting military responses. They aim at buttressing China's maritime claims by incrementally changing the status quo with salami-slicing tactics.

In 2019-2020, China's intimidation, harassment and coercion of other claimants in disputed waters continued, thereby preventing them from exploiting natural resources. Chinese steel-hulled militia trawlers repeatedly rammed and sank fishing boats of competing claimants, undermining lawful fishing. China tightened its grip over the disputed Paracel and Spratly Islands (see map) by creating new administrative units, protested by Vietnam and the Philippines. It continued to build infrastructure on smaller maritime features, adding to bigger artificial islands already transformed into military outposts. Ship-tracking data show that commercial ships tend to avoid China's military outposts, and that shipping traffic has become more concentrated on a small number of increasingly busy routes. China also conducted sea trials of a new amphibious assault ship (Type 075) that raises China’s ability to transport, land, and support ground forces outside the Chinese mainland.

China expanded its 'law fare' strategy by adopting a new CCG law that positions China as a major maritime law enforcement power in the SCS. It allows the CCG to use weapons under certain circumstances within China’s 'jurisdictional waters', a vague term which is not defined in the law but is likely to be interpreted expansively by China as applying to large parts of the SCS that it claims. It reflects China's growing assertiveness, and creates the risk of sparking violent incidents between Chinese naval forces and military forces or commercial vessels from other claimants or non-claimants. China's potential declaration of an Air Defence Identification Zone over parts of the SCS would be a further escalation. At the same time, the long-wavering negotiations between China and the ten members of the Association of Southeast Asian Nations (ASEAN) on a code of conduct for the SCS seem to be helping China gain time and thus to create facts on
the ground. A large gap appears to exist between ASEAN’s expectation of the code as a binding dispute-resolution mechanism and China’s interest in devising a non-binding trust-building instrument. China’s claim to absolute control over large swaths of the SCS and its growing military capabilities underpinned by military outposts serving as platforms for anti-ship missiles, surface-to-air missile systems and surveillance technologies, are part of China’s anti-access/area denial strategy, which may enable it to disrupt freedom of navigation operations and to thwart US deterrence of a potential invasion of Taiwan.

China’s claims versus counter-claims under the rules-based international order

In 2020, the Philippines under President Duarte reversed its past low-key stance in respect of the enforcement of the 2016 Permanent Court of Arbitration award in its favour, declaring China’s claims to ‘historic rights’ in the SCS inconsistent with UNCLOS. While the Philippines had long prioritised prospects of Chinese support for large infrastructure projects and joint resource exploitation, in 2020 it submitted a note verbale to the UN reiterating that the arbitration ruling ‘conclusively settled the issue of historic rights and maritime entitlements’ in the SCS. President Duarte, in a speech at the UN, declared the award as ‘beyond compromise’. Vietnam followed suit with a similar note that objects to China’s ‘historic rights’, tacitly supporting the 2016 ruling. Malaysia issued a similar note dismissing China’s claims to ‘historic rights’. Indonesia likewise handed in a note endorsing the arbitration ruling and rejecting China’s arguments. Brunei, by contrast, published a statement that does not refer to the award but instead advocates bilateral solutions and negotiation of a code of conduct. Taiwan protested against unilateral actions and reiterated, inter alia, that ‘any claim inconsistent with international law should not be accepted’.

Moving from rhetoric on the rules-based order to action with like-minded partners?

In 2020, the United States reasserted the alignment of US policy with the 2016 Permanent Court of Arbitration award. It protested China’s unlawful maritime claims at the UN. The US continued to criticise China for violating its own commitments under the 2002 Declaration on the Conduct of Parties in the SCS, for militarising its outposts in the SCS contrary to President Xi Jinping’s pledges made in 2015 to former President Barack Obama, and for using these outposts as ‘platforms of coercion’. The US Navy continued its presence in the SCS by conducting freedom of navigation operations and naval exercises with allies and partners. The US Air Force stepped up military surveillance flights. The US has added 77 Chinese construction, energy and shipbuilding firms involved in the SCS to its Entity List, preventing US firms from exporting to them without a government licence. Australia issued a diplomatic note explicitly affirming the 2016 ruling and rejecting China’s claims to ‘historic rights’ in the SCS. However, Australia’s position went beyond the US position, by also dismissing other ‘spurious legal justifications’ for Chinese claims. India voiced tacit support for the US position by reiterating that the Indian government supports freedom of navigation and overflight in the SCS, and by labelling it ‘the global commons’, where all disputes should be settled in accordance with international law. After clashes with Chinese troops in the Galwan Valley in the Himalayas, the Indian Navy deployed a warship to the SCS. Japan committed to enhancing security relations with Indo-Pacific countries and to beef up their maritime security capabilities by exporting Japanese defence equipment and technology to them to counter China’s maritime advances. Japan performed anti-submarine drills in the SCS in 2020.

EU and European involvement

In its declaration on the 2016 award, the EU reaffirmed that it ‘does not take a position on sovereignty aspects relating to claims’. Although it emphasised the vital role of UNCLOS to uphold the international order based on the rule of law, it refrained from urging China to comply with the award that declares China’s claims as inconsistent with UNCLOS. In a 2020 resolution the European Parliament calls in respect of the East and South China Seas and the Taiwan Strait ‘for all parties involved to respect the freedom of navigation, to solve differences through peaceful means and to refrain from taking unilateral actions to change the status quo’.

In 2020, France, Germany and the United Kingdom issued joint diplomatic notes to the UN rejecting China’s claims to ‘historic rights’ in the SCS as inconsistent with international law, while stepping up their presence there. In its 2020 strategy for the Indo-Pacific region, the Netherlands calls on the EU to speak out more often and more strongly on violations of UNCLOS in the SCS and seek cooperation with countries in the region for free passage and maritime safety. Maritime security is one of the priorities of the Portuguese Presidency of the Council of the EU in 2021.

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