

# The South China Sea Conundrum

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After a decade in the international spotlight, is the South China Sea now fading back into obscurity, as an issue “better left untouched” according to Philippines President Rodrigo Duterte?<sup>1</sup> The fundamental security problem has not gone away. The South China Sea is not nearing resolution, nor has it been “lost”. Instead, the “conundrum” is moving into a different and more difficult phase. Although things appear calmer on the surface, the pace of strategic change is accelerating in an unfavourable direction for Southeast Asia, with negative implications for the sovereign equality of small states rubbing up against the national interests of great powers, for adherence to international law and resistance to coercion.

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China’s politics are trending in a more hard-line and uncompromising direction, including on questions of territorial sovereignty. Meanwhile, the US continues to engage in Asia but on a narrower policy gauge. This threatens to relegate the South China Sea to a lesser priority concern subordinate to the nuclear challenge posed by North Korea and the US President’s apparent belief in a personalised, transactional brand of Sino-US entente. Southeast Asian countries appear resigned to handling the resulting deterioration in

their security situation as best they can, by hedging, while continuing to make piecemeal improvements in their maritime security cooperation.

While hardly invisible, the South China Sea occupied a noticeably low profile at the recent multilateral and bilateral round of summits in Vietnam and the Philippines, in November 2017, yielding none of the diplomatic fireworks or sea-level incidents that headline writers have grown accustomed to in recent years.

The South China Sea was directly mentioned in ASEAN's most recent summit joint statement. It was also hinted in President Trump's APEC address.<sup>2</sup> Along with freedom of navigation and overflight and "unimpeded lawful commerce", it featured in the Vietnam-US bilateral communiqué, albeit buried in paragraph thirteen.<sup>3</sup> Considering this visit was supposed to clarify the Trump administration's Asia policy, including presidential time invested in Southeast Asia's two frontline South China Sea claimant states Vietnam and the Philippines, the South China Sea was remarkably understated as an agenda item, compared with North Korea and terrorism.<sup>4</sup> Japan also resiled from its customary efforts to raise the South China Sea at the East Asia Summit, in Manila. As a result, China was free to present a largely uncontested narrative, including the announcement of a finalised "framework" and the commencement of Code of Conduct negotiations with ASEAN.<sup>5</sup> It is far from clear what this commits Beijing to, in practical terms, or when.

If the South China Sea is receiving less attention as a function of reduced frictions this is not all bad. For the best part of a decade, several ASEAN member governments have sought to reduce tensions, diplomatically and at sea level, as a priority. But internal divisions have inhibited ASEAN's collective traction on the South China Sea, fraying the organisation's unity with one public fall-out after another. This same motivation to ease tensions helps to explain the Duterte administration's deferential behaviour towards China. Just as the Aquino administration's decision to seek compulsory

arbitration was made without consulting ASEAN partners, so Duterte has opted for the opposite unilateral tack, by downplaying the Philippines' legal victory at The Hague and seeking a bilateral accommodation with Beijing. According to Duterte, the South China Sea is better left untouched because "nobody can afford to go to war."<sup>6</sup> Duterte's Foreign Minister and potential successor, Alan Cayetano, appears similarly committed to downplaying the ASEAN-China Code of Conduct as a non-binding "gentlemen's agreement."<sup>7</sup> Whatever criticism the Duterte administration's tilt towards China has attracted, including from within the Philippines armed forces, the basic logic appears clear: the preservation of peace at all costs. At worst, this resembles appeasement.

Such flamboyant volte-faces are not in Vietnam's more cautious and consistent character as a diplomatic actor. There are some indications that Hanoi has recalibrated its South China Sea policy, with greater emphasis on directly engaging China, tilting the fulcrum of the relationship towards cooperation, and further from conflict.<sup>8</sup> Nonetheless, Vietnam is pursuing cooperation with the US, its partners and allies, including a new strategic partnership with Australia, which was formally concluded in March 2018, during the visit of Prime Minister Nguyen Xuan Phuc to Sydney.<sup>9</sup> The first visit of a US aircraft carrier to Da Nang since the Vietnam War, in March 2018, was an "unambiguous signal of deterrence to China".<sup>10</sup> Hanoi is likely to maintain its own "red lines" in the South China Sea, but on the basis of diminished support from within ASEAN.

None of this means that the South China Sea has "gone quiet" in the sense of presaging a diplomatic resolution to territorial disputes, or any fundamental change of heart on China's part. High-profile incidents at sea, and in the air above the South China Sea, have dropped off, but lower-level harassment continues. So, does the ongoing and increasingly open militarisation of occupied features, by China especially.<sup>11</sup> The new and

unaccustomed “problem” is a deficit of strategic attention to the South China Sea in Washington.

Before considering current events in more detail, let us step back to reflect on whether the “South China Sea conundrum” is, in fact, an appropriate frame of reference.

The South China Sea has always featured near the top of Asia’s “wicked problems” in maritime security.<sup>12</sup> Yet despite the fiendish complexity of territorial and jurisdictional claims, the basic security mechanics are simple. China aims to dominate as far as possible, claiming even submerged features within its spurious dashed-line claim, while demanding a share of marine resources even where these fall squarely within the sovereign jurisdiction of others under international law. Beijing’s expansionist imperative therefore clashes not only with the interests of Southeast Asian competing claimants in the South China Sea, but a larger group of “rules-based” stakeholder maritime states and commercial entities. The South China Sea matters, even for far-off countries like Australia, because they have their own stake in maintaining physical access to the South China Sea, as well as general interests in upholding international law and regional peace and security.<sup>13</sup>

The sea’s location at the heart of maritime Southeast Asia, and for that matter the Indo-Pacific macro-region (now officially endorsed in the Trump Administration’s new National Security Strategy<sup>14</sup>) gives it special strategic salience, as a junction between two oceans and the world’s most populous countries and hubs of maritime commerce. This prominence goes beyond the aggregate US\$3 trillion value of trade flowing through the South China Sea – a misleading statistic when cited in isolation.<sup>15</sup> The South China Sea’s value is primarily geostrategic, and partly symbolic, in nature.

The South China Sea is not about to be closed off to maritime trade, on which China so critically depends. But Beijing is nonetheless engaged in a concerted effort to extend its military, paramilitary and extractive footprint to

the sea's furthest reaches. China has changed the strategic seascape of the South China Sea beyond recognition compared with the status quo just six or seven years ago. A more assertive Chinese posture in the South China Sea dates back to 2008-09. China's interests there have always had an important military-strategic dimension.<sup>16</sup> But Beijing's South China Sea focus has intensified since Xi Jinping became President in 2013, as part of a broader policy emphasis on championing China's sovereignty claims and the rejuvenation of Chinese power.<sup>17</sup> Military infrastructure on the seven artificial islands that Beijing has constructed since 2013 continues to fill out, in conjunction with the thickening of Chinese maritime assets in the Paracels and Hainan.<sup>18</sup> Regardless of whether Beijing declares an Air Defence Identification Zone (ADIZ) over the South China Sea, to match its ADIZ in the East China Sea, there can be little doubt remaining about Beijing's ambition to roll out a concentric air defence network, pushing China's southern defence perimeter virtually to the shores of Borneo and Palawan. Further construction at Scarborough Shoal, which Chinese sources have repeatedly hinted at, would extend that perimeter to Luzon.<sup>19</sup>

The US Navy will still be able to operate in the South China Sea for the foreseeable future, but in an increasingly challenging kinetic and electronic warfare environment, trailed constantly by Chinese naval escorts. Without a US presence over the horizon, smaller regional navies would be more easily swayed by displays of intimidation from China. Their governments may rationally conclude that, regardless of their navigational rights under international law, military assets can only operate at acceptable risk in the South China Sea with prior notification or even consent from Beijing. Once China becomes militarily dominant, its forward bases in the Spratlys would be free to serve not only as a means of extending the military surveillance and targeting envelope, but to project naval and air power as far as Australia's northern approaches and into the eastern Indian Ocean. That future is not

pre-ordained, and there are still significant gaps in China's naval and air capabilities. But this course looks increasingly likely.

The South China Sea receives attention from afar also because of its significance, in precedent terms, for China's external behaviour writ large: psychologically, politically and legally. Beijing's uncompromising stance in the South China Sea has a wider "conditioning value" for Beijing's treatment of Southeast Asia as a sub-region. If Southeast Asia, a diverse region of 600 million people, can be coerced or charmed into accepting China's claims, the impact will register across the broader Indo-Pacific region, as countries adjust their policies accordingly. Southeast Asia features prominently in China's Maritime Silk Road initiative, ensuring that the region has positive economic incentives to cooperate with China, not simply coercion.<sup>20</sup> This "precedent value" is the bigger reason why Australia watches the South China Sea so closely, and continues to raise it on the multilateral stage.

Turning back to recent events, it has been a challenging time for South China Sea watchers since the Arbitral Tribunal award was handed down in the Philippines' favour, in July 2016. It is misleading to talk in terms of the South China Sea being "lost". But 2017 was unarguably a period of sustained gains for China.<sup>21</sup> It would be incorrect to ascribe this entirely to China's strategic acumen. Luck has also gone Beijing's way, from the election of Rodrigo Duterte in the Philippines, to Donald Trump's unlikely path to the White House. For a brief period, in the wake of tribunal decision, things looked different, as China experienced its first serious reversal in the South China Sea in several years. For a while, Beijing's attempts to mobilise international support in favour of its position and against The Hague ruling, appeared clumsy and unconvincing. The memory of that period now appears distant, but the influence of international law can only be judged properly in the long term. It is premature to dismiss the Philippines' legal gambit as an empty provocation, especially given the limited alternatives then at Manila's disposal,

and ASEAN's ambivalence in the wake of the 2012 Scarborough Shoal episode.

<sup>22</sup> Other states still have the ability to keep the award in play.

There is some evidence that Beijing has marginally adjusted its behaviour in conformity with the award, although this appears primarily tactical in nature.<sup>23</sup> The fortuitous slide of events in the past year has afforded Beijing the luxury of a largely passive approach to the South China Sea, based on physically consolidating its existing holdings, while pursuing bilateral engagement with Southeast Asian claimants and at least giving the appearance of engagement on a Code of Conduct with ASEAN, not forgetting that Beijing insists it engages the ten Southeast Asian countries on a bilateral basis.

Even with a friendly administration in the Philippines, Beijing has sent vessels to Benham Rise, well inside Manila's Exclusive Economic Zone (EEZ) in the Philippine Sea, where China has no jurisdictional claims of any description. China has hinted at using force against the Philippines in the South China Sea, according to Duterte's own account.<sup>24</sup> In August, China sent a mixed flotilla of fishing vessels, civilian patrol vessels and warships off Thitu Island, to deter Manila from erecting shelters on nearby Sandy Cay.<sup>25</sup>

China has reportedly threatened force against Vietnam, too, in response to offshore drilling within Vietnam's EEZ. Beijing maintained an unyielding line on sovereignty in the lead-up to the 19<sup>th</sup> Party Congress.<sup>26</sup> This affirmed even to Chinese analysts that the Chinese Communist Party will continue to pursue a zero-compromise policy on its self-identified "core concerns", including the South China Sea: "In short, China could be soft in words, but tough in action."<sup>27</sup>

Against such a background, seasoned observers harbour no illusions that the Code of Conduct negotiations augur substantive concessions on China's part. Southeast Asian governments are nonetheless resigned to moving ahead with the process, and perhaps even consenting to dubious bilateral "joint venture" co-development with China in the South China Sea, on

the basis that any confidence building measure with Beijing is preferable to none. According to one Philippines observer, “ASEAN claimant states have little choice but to place their faith in dialogue and negotiations.”<sup>28</sup> What they fear most is a vacuum of antagonistic ties leading to unilateral action on China’s part, for example by dredging at Scarborough Shoal.

If Beijing’s strategic direction is abundantly clear, the most mercurial factor in the South China Sea conundrum currently is the Trump administration’s Asian policy. Washington’s unmitigated focus on the North Korean nuclear threat appears to be relegating the South China Sea to a secondary or tertiary security concern. President Trump’s personalised emphasis on courting China’s leadership to exert pressure on North Korea has fanned Southeast Asian maritime states’ concerns that Washington could *actively* neglect the South China Sea, as a trade-off for cooperation in other policy areas.

The resumption of regular freedom of navigation operations (FONOPs) by the US Navy, after a hiatus of several months, has eased some of those concerns. The role of Pacific Command as a source of ballast in US policy and engagement on the South China Sea should not be overlooked.<sup>29</sup> Yet the bilateral component of Trump’s visit to Vietnam contained little original content on the South China Sea, apart from some anodyne language on international law.

The US President’s apparently off-the-cuff offer, to his Vietnamese counterpart, to “mediate or arbitrate” was the most direct indication of executive interest in the South China Sea issue during the recent visit to Da Nang and Hanoi.<sup>30</sup> The offer is unlikely to be taken up for several reasons. First, Trump’s initial statements lionizing the US-China relationship and close personal identification with Xi Jinping fanned fears among Washington’s allies and partners in Southeast Asia that their interests would be overlooked.<sup>31</sup> The Trump Administration has since cleaved to a much tougher

economic and security policy line on China, describing China as a “revisionist power” in the 2017 US National Security Strategy”.<sup>32</sup> Either way, there are serious questions about whether Washington could adopt a position of neutrality in the South China Sea. Second, even assuming US neutrality was accepted in good faith, Southeast Asian claimant states could ultimately be left to manage a more antagonistic China relationship without US support. Here the Philippines’ recent experience is instructive, as Manila emerged victorious in 2016, but without any binding mechanism for implementation or enforcement. Third, it is far from clear that China would accept US neutrality at face value, given its longstanding efforts to de-legitimise Washington’s involvement in the South China Sea.<sup>33</sup> Beijing insists there should be “no major outside interference” in the South China Sea, by which it means to exclude a say for non-littoral states.<sup>34</sup>

Not surprisingly, uncertainty about the level of US policy commitment to the South China Sea has meant Asian countries have become less vocal. Even Japan, which normally can be depended upon to raise the South China Sea at multilateral gatherings, has adopted a more muted approach.<sup>35</sup> Still, Japan and the US continue to pursue maritime capacity programs with Southeast Asian littoral states in the South China Sea that are collectively budgeted to deliver assistance worth almost \$1bn by 2020.<sup>36</sup> Furthermore, Southeast Asian governments are cooperating on other maritime security issues, such as the recent three-way patrol agreement among Malaysia, Indonesia and the Philippines in the Sulu Sea.<sup>37</sup>

US Asia policy is still evolving under the Trump administration. On the positive side, President Trump endorsed America’s Pacific allies on his recent visit, and the broad vision of a “free and open” Indo-Pacific. A harder line towards China now appears to be emanating out of Washington, as reflected in the new National Security Strategy and National Defense Strategy. This may reassure regional countries that the US is not bent on accommodating Beijing, or on a neo-isolationist course. But the administration has yet to resolve basic

problems of internal inconsistency and incoherence. The most pertinent risk is that for a US President dedicated to an “America-first” agenda, the South China Sea holds little instinctive appeal because it concerns the defence of abstract norms and systemic stability.

Another recent positive development is the revival of the US-Japan-India-Australia quadrilateral. The low-key senior officials meeting convened on the margins of the East Asia Summit in Manila clearly has a long way to progress, and may ruffle feathers within ASEAN for not including any Southeast Asia country. But, after a decade-long hiatus, it was at least a “re-start” for an active consultative forum among like-minded maritime democracies in the Indo-Pacific. One important function of the revived “Quad” should be to de-conflict Southeast Asian maritime capacity building efforts among these four Indo-Pacific powers, as well as to further encourage intra-ASEAN cooperation and coordination.<sup>38</sup> However, even if the Quad progresses to a more strategic compact, its operational focus is more likely to be in the eastern Indian Ocean than the South China Sea.

## Notes

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<sup>3</sup> The White House, *Joint Statement between the United States of America and the Socialist Republic of Vietnam* (Washington, DC, November 12, 2017), <https://www.whitehouse.gov/the-press-office/2017/11/12/joint-statement-between-united-states-america-and-socialist-republic>.

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<sup>5</sup> Zhang Yue, “ASEAN to negotiate South China Sea code of conduct,” *China Daily*, November 14, 2017, [http://www.chinadaily.com.cn/china/2017-11/14/content\\_34504339.htm](http://www.chinadaily.com.cn/china/2017-11/14/content_34504339.htm).

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