

China's ambition in the South China Sea: is a legitimate maritime order possible?

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The crowded seas and strategic waterways of east Asia are centrally important to global maritime order. This region is now at the vanguard of advances in naval modernization, seaborne trade and resource extraction. Across diverse military, economic, environmental and scientific realms the demands for strengthening international rules and institutions have never been greater. Yet in the South China Sea, the complex interplay between maritime nationalism and geostrategic rivalry is seriously undermining the potential to reinforce a collective framework for safeguarding the oceans and seas. Most critically, political mechanisms for enhancing maritime security lag far behind complex realities on account of a strategic culture of distrust.

From a historical perspective, maritime competition has turned full circle. Four hundred years ago, seaborne trade was at its height in the South China Sea, representing a new frontier for European naval powers.¹ To safeguard equal rights to participate in the East Indies spice trade, the Dutch legal scholar Hugo Grotius codified into international law the common right (*res communis*) of all nations to use the seas for the purposes of navigation and trade. Writing in 1609, Grotius argued that the Portuguese monopoly based upon claims to ownership by title of prescription or custom could be considered 'worthless' when viewed in the context of historic trade relations between the Arabs and the Chinese.²

Two centuries earlier, China had experienced a brief golden age of sea exploration. Admiral Zheng He and his vast treasure fleets undertook seven voyages between 1405 and 1433 that established trade links across the Indian Ocean and the Arabian Sea, reaching as far as Aden in east Africa.³ This represented the only large-scale quest to become a leading naval power in Chinese history. When the Qing came to power in 1644 they banned all seaborne activities in response to attempts by the East India Company to open trade relations.

* This article draws upon my forthcoming book, *China re-orientes the world* (Oxford: Oxford University Press), esp. ch. 6, 'Controlling or safeguarding the maritime commons'.

¹ Geoffrey C. Gunn, *History without borders: the making of an Asian world region, 1000–1800* (Hong Kong: Hong Kong University Press, 2011).

² Hugo Grotius, *Mare liberum sive de jure quod Batavis competit ad Indiana commercia dissertatio* [The freedom of the seas or the right which belongs to the Dutch to take part in the East India trade, a dissertation] (Leiden: Elzevir, 1609).

³ Yang Jinlin and Fan Zhongyi, *Zhongguo haifang shi* [A history of Chinese coastal defence] (Beijing: Ocean Press, 2005).

Today, maritime east Asia is once again at the frontier of intense geopolitical and trade competition. Patterns of domination have changed over time, the leading players shifting from the Arabs and Chinese to the Portuguese, Dutch, British and Americans. Under the leadership of Xi Jinping, China is now undergoing a maritime renaissance to secure its destiny as a great maritime nation, raising unsettling questions about the epicentre of geopolitical power in the contemporary era. The Grotian doctrine prevails under the auspices of the Law of the Sea Convention that underpins the rules-based maritime order, but the struggle to redefine the maritime commons on the basis of collective rights continues.

What is different about the twenty-first century is that the maritime crisis in the South China Sea is taking place within the context of broader shifts in the nature and scope of maritime order: power is now more diffuse; security and economic interests increasingly overlap; and global challenges intersect with national prerogatives, adding multiple layers of complexity to the fundamental task of safeguarding the oceans and seas.

This juxtaposition between historic struggles over maritime rights and the shifting boundaries of maritime order means that the prospects for regional stability now hang in the balance. China's quest to become a global maritime power is the crucial link between the past and the future that could tip the balance of state interests in either a positive or a negative direction. Narrowly defined, the relationship between China's rise and maritime order is generally understood in fairly stark terms. An underlying assumption in much of the literature is that China is now moving inexorably in the direction of imperial expansion, conditioned primarily by *realpolitik* concerns.⁴ Deeper investigations into the key domestic drivers behind Chinese foreign policy tend to be more nuanced, but equally confirm an upward trend in assertive action (to varying degrees) in the maritime arena.⁵

A dominant narrative of Chinese expansionism now prevails that assumes the Chinese leadership is predominantly concerned with achieving hegemony in the South China Sea at any cost.⁶ In combination, a hardening stance over maritime claims, large-scale island reclamation, a refusal to participate in third-party adjudication and a strengthening resolve to secure strategic space to counterbalance US power in the region suggest a shifting pattern of behaviour that is seemingly at odds with a rules-based maritime order.

A significant shortcoming in the current debate is the tendency to examine China's rising ambition in relation to a fixed conception of maritime order. All too

⁴ See Toshi Yoshihara and James R. Holmes, *Red star over the Pacific: China's rise and the challenge to US maritime strategy* (Annapolis, MD: Naval Institute Press, 2010); Robert D. Kaplan, 'The South China Sea is the future of conflict', *Foreign Policy*, no. 188, Sept.–Oct. 2011, pp. 76–85; Leszek Buszynski, 'The South China Sea: oil, maritime claims, and US–China strategic rivalry', *Washington Quarterly* 35: 2, 2012, pp. 139–56. For a more recent study, see Robert D. Kaplan, *Asia's cauldron: the South China Sea and the end of stable peace* (New York: Penguin Random House, 2014).

⁵ See Michael D. Swaine and M. Taylor Fravel, 'China's assertive behavior, part two: the maritime periphery', *China Leadership Monitor*, no. 35, Summer 2011, pp. 1–29; Alastair Iain Johnston, 'How new and assertive is China's new assertiveness?', *International Security* 37: 4, 2013, pp. 7–48.

⁶ For an extreme version of this position in relation to the military balance of power in the region, see Andrew F. Krepinevich Jr, 'How to deter China: the case for archipelagic defense', *Foreign Affairs*, March–April 2015, pp. 78–86.

often, social hierarchy is identified as the central organizing principle for regional stability, discounting the relevance of social consent as the primary means of legitimating changing power dynamics as well as responses to maritime security challenges. Adopting a socially dynamic conception of maritime order highlights the potential to bring about a more legitimate framework for stabilizing maritime relations. In the case of China, moreover, it brings to the surface the complex political calculations involved in the pursuit of maritime power, especially under conditions of heightened uncertainty.

The South China Sea is now the most contested maritime space in the world. Disentangling the political and legal complexities of the maritime disputes is itself a challenging task. Any scholar or policy analyst seeking to conduct a deeper investigation into Chinese motivations is further confronted with the problem of how to fully capture preferences in a highly volatile context, or gauge the extent to which external constraints can moderate behaviour over time. The approach taken in this article is to systematically examine three key dimensions of China's maritime ambition: its current stance in the maritime disputes over territorial sovereignty and maritime jurisdiction; US–China strategic competition; and the new strategy defining China's role as a maritime power.

In seeking to gain fresh insights into China's expanding maritime presence in the South China Sea, the analysis takes into consideration both Chinese motivations and the broader regional social dynamics. Particular attention is given to the growing hostility in China's relations with the United States, Vietnam and the Philippines, and the wider implications for building a more legitimate maritime order.

The argument presented in this article is that China's ambition in the South China Sea is primarily driven by a historic mission to achieve its rightful status as a maritime nation, rather than by a grand design to achieve maritime hegemony. In essence, the Chinese leadership has adopted a mixed strategy of seeking to consolidate its growing maritime power while balancing wider national interests: treading a fine line between asserting the right to become a great maritime nation (*haiyang daguo*) and acting upon the pragmatic imperative to engage cooperatively with its neighbours and the United States to maintain regional stability. In practice, Beijing has overestimated its capacity to maintain this equilibrium by underestimating the legitimate concerns of other states. Now in the process of testing the boundaries of its control over contested maritime features and waters, in keeping with its stronger military capabilities, its attention is primarily focused upon demonstrating political resolve to defend China's maritime periphery. Yet conclusive evidence that the Chinese leadership is intent upon dominating the South China Sea for the broader purpose of building a Sino-centric maritime order in east Asia is difficult to find.

What the analysis reveals is that maritime nationalism is now a central motivating force across the legal, strategic and political dimensions of China's stance in the South China Sea.⁷ Assessments that seek to interpret the Chinese

⁷ This supports an earlier argument made by Robert Ross in relation to China's naval modernization: see

position simply on the basis of *realpolitik* and strategic calculations miss a crucial point: China's maritime rejuvenation project is a major source of contention, but it is also incurring legitimacy deficits that are undermining its potential to contribute towards building maritime order in positive ways. As a consequence, Beijing is now confronted by serious challenges in its relations with other regional powers that expose the constraints on its maritime ambition.

In responding to China's ambition, the question for policy is how to move towards a genuinely rules-based maritime order in east Asia that is both inclusive and legitimate. Like other states, China stands to gain from the collective benefits provided by existing rules and institutions governing the oceans and seas. For its part, it has a role to play in mitigating conflicts and actively working to safeguard the integrity of the maritime commons. But to succeed, this will require deeper integration into the evolving maritime order on the basis of a renewed commitment to collective responsibility.

On legitimate maritime order⁸

It is commonplace to assess China's potential to integrate more fully into a rules-based order on the basis of a simplistic dichotomy between realist and liberal world-views. From a traditional realist perspective, order constitutes stability, which in turn privileges the sovereign independence of states. Superimposed upon the maritime domain, this interpretation focuses concern upon the relationship between established and aspiring naval states and the central importance of maintaining a balance of power. In contrast, liberals stress the common benefit of order based on collective action requiring a degree of shared sovereignty and institutionalized cooperation. A liberal maritime order is underpinned by the common interest and by international law that seeks a fairer distribution of ocean benefits between naval powers and coastal states.

A fundamental proposition in this article is that we need to think more in evolutionary and socially dynamic terms about the relationship between *order* (understood as the preservation of national integrity) and *legitimacy* (defined as claims to political authority on the basis of social consent), especially in the context of maritime east Asia. A liberal conception of maritime order has to come to terms with the upsurge in state entitlements linked to the historical quest to preserve sovereign independence under conditions of power domination. Equally, realist interpretations suffer from a tendency to place historical experience at the service

Robert Ross, 'China's naval nationalism: sources, prospects, and the US response', *International Security* 34: 2, 2009, pp. 46–81.

⁸ The idea of a legitimate maritime order is presented here as a preliminary framework for the purpose of illuminating both the constraints on China's maritime ambition and the potential for a stronger equilibrium between power and legitimacy in maritime east Asia. It is inspired by the work of International Relations scholars focusing on the relationship between legitimacy and the balance of power as well as international legal scholars addressing the evolution of international order. See Ian Clarke, *Legitimacy in international society* (Oxford: Oxford University Press, 2005); Andrew Hurrell, *On global order, power, values, and the constitution of international society* (Oxford: Oxford University Press, 2008); Hilary Charlesworth and Jean-Marc Coicaud, *The evolution of international order and faultlines of international legitimacy* (New York: Cambridge University Press, 2010).

of power politics, also failing to take into account the social foundation of power. Herein lies the dilemma: *action to defend the nation cannot be taken in isolation from the political imperative for social consent.*

Even one of the founding philosophers of political realism, Thomas Hobbes (1588–1679), strongly advocated good government of the people by avoiding unnecessary wars:

Salus populi suprema lex: by which must be understood, not the mere preservation of their lives, but generally their benefit and good. For such commonwealths, or such monarchs, as affect war for itself, that is to say, out of ambition, or of vain glory, or that make account to revenge every little injury, or disgrace done by their neighbours, if they ruin not themselves, their fortune must be better than they have reason to expect.⁹

In today's world, higher levels of global interconnectivity are transforming the relationship between order and legitimacy in ways that demand stronger political responses to changing power dynamics as well as to mounting trans-boundary challenges. In the maritime realm, this dynamic relationship has yet to be clearly defined. Order-building is primarily concerned with the emergence of new maritime powers. Growing uncertainty over maritime leadership in east Asia, especially between the United States and China, is reinforcing a static conception of order based upon social hierarchy that privileges stability at the expense of legitimacy. The risk is that order-building, in seeking to reinforce the status quo, will merely serve to exacerbate strategic competition. Adopting a dynamic conception of order that allows for political adjustments over time is more likely to generate political dividends. To the extent that these adjustments are based on social consent, it is also more likely to achieve a power equilibrium that endures.

A second dimension of order-building involves institutions and transnational interests. In essence, a rules-based maritime order is primarily predicated upon international law and the United Nations Convention on the Law of the Sea (UNCLOS), which provides a means of adjudicating between individual and collective state interests. International law by its very nature is progressive, acting as a guide for appropriate state conduct. It remains, however, dependent upon political sponsorship, especially among major powers.

A central political impetus behind UNCLOS was to safeguard the oceans and seas at a time of Cold War rivalry, and to ensure greater equity between richer nations and developing states. At the time of ratification, open trade and navigation were accorded a far higher priority than the major challenges of today concerning resource security and the degradation of the oceans.¹⁰ Consequently, international governing arrangements still fall far short of addressing the severity of contemporary realities such as climate change. This, in turn, reinforces the need for renewed collective action on the basis of a changing maritime security agenda.

A third dimension of order-building in the maritime realm relates to conflict prevention. Under UNCLOS, a dispute settlement regime is in place to adjudicate

⁹ Thomas Hobbes, *Of the duty of them that have sovereign power*, ch. 28, 'Elements of law, natural and politic', c. 1640 (cited from original text).

¹⁰ Robert L. Friedheim, *Negotiating the new ocean regime* (Columbia: University of South Carolina Press, 1993).

legal matters arising from the interpretation and/or application of the treaty.¹¹ A state may declare 'optional exceptions' to third-party adjudication in cases where disputes involve existing maritime boundaries, military activities or concerns under discussion at the United Nations Security Council. Formal adjudication is not the only option for managing tensions. Legal ambiguities persist, and political struggles over the balance of interpretation call for stronger political mechanisms (both formal and informal) to reduce frictions. Many protocols exist for the purpose of guiding responsible conduct at sea. Yet international norms and governing mechanisms aimed at conflict prevention across a broad spectrum of maritime security concerns remain weak, thus reducing the potential to establish a shared normative consensus.

In short, the shift towards a legitimate maritime order will require three major political adjustments: *adaptation to evolving maritime power dynamics on the basis of social consent; mediation through institutions of a changing maritime security agenda; and the consolidation of conflict prevention norms.*

The crisis in the South China Sea informs these political adjustments and provides a valuable experience for assessing the potential for order-building in the most contested maritime space in the world. In the discussion that follows, attention focuses primarily upon providing a fresh perspective on China's ambition in the South China Sea by linking recent Chinese actions with the larger quest to safeguard the maritime commons. As an emerging maritime power, China dominates changing political and strategic dynamics in the Asian littoral, but it equally shares responsibility for bringing about a more stable and legitimate peace. Highlighting legitimacy deficits in the current Chinese approach provides deeper insights into the bigger question of where China fits within the broader transformation of maritime order.

Currents of confrontation in the South China Sea

The South China Sea¹² encompasses approximately 3.5 million square kilometres of water surrounded by China and the littoral states of south-east Asia—Vietnam, the Philippines, Malaysia, Brunei Darussalam and Indonesia. Stretching from the Strait of Malacca in the south-west to the Taiwan Strait in the north-east, this semi-enclosed maritime space is of vital strategic importance. Over 40,000 ships pass through the South China Sea every year, constituting around 40 per cent of global sea trade.¹³ As a critical artery for commerce and energy security, the 800-kilometre Strait of Malacca offers the shortest navigational route between

¹¹ Parties to a dispute have a choice of four procedures: adjudication by the International Court of Justice; submission to the International Tribunal for the Law of the Sea (ITLOS) (annex VI); submission to binding international arbitration (annex VII); or submission to a special arbitration tribunal (annex VIII).

¹² The South China Sea is referred to as Nanhai (South Sea) in Chinese, Biền Đông (Eastern Sea) in Vietnamese and Dagat Kanlurang Pilipinas (West Philippine Sea) in Tagalog. Throughout this article I shall retain the English term as a neutral position.

¹³ United Nations Conference on Trade and Development (UNCTAD), *Review of maritime transport*, Geneva, 2015, <http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1374>. (Unless otherwise noted at point of citation, all URLs cited in this article were accessible on 9 May 2016.)

Europe and Pacific Asia, and the most convenient transit passage for supertankers transporting oil from Africa and the Middle East to the resource-dependent east Asian nations.

Rich in energy resources and fisheries, the waters of the South China Sea provide a vital source of economic security for neighbouring states. Over 200 companies are currently engaged in oil and gas exploitation. But estimates of proven and probable oil and gas reserves differ widely on account of the absence of region-wide verification procedures. A report published in 2013 by the US Energy Information Administration confirmed a total of 11 billion barrels of oil and 190 trillion cubic feet of gas, in contrast to higher Chinese National Offshore Oil Company (CNOOC) estimates in the range of 125 billion barrels of oil and 500 trillion cubic feet of natural gas.¹⁴ More contentiously, reports from China's Ministry of Land and Resources estimate that 23–30 billion tonnes of petroleum and 16 trillion cubic metres of gas fall within the Chinese traditional maritime boundary line.¹⁵ In the coming years, it is highly likely that competition in the energy and minerals sector will accelerate on account of new deep-sea technologies that are paving the way for advances in exploration and extraction.¹⁶

Competition over dwindling fish stocks is also on the rise. The major species of tuna, mackerel, shrimp and shellfish are among the most heavily exploited in the world, especially in the western part of the South China Sea.¹⁷ Fish stocks are shrinking in size and value owing to serious coastal pollution, unsustainable fishing practices and the destruction of marine ecosystems. Consequently, facilitated by new communication technologies, fishing fleets are venturing into deeper waters more frequently, leading to escalating tensions over overlapping maritime claims.

Equally worrying is the negative trend in piracy and organized crime. In 2014 the South China Sea officially displaced the Gulf of Aden as the most dangerous region in the world.¹⁸ Records released by the International Maritime Organization (IMO) revealed a rapid rise in armed robberies and violent attacks in ports and waters off the coast of the Philippines and Indonesia.¹⁹ These incidents feed off rising insecurity and growing conflicts between neighbouring states over marine resources, territorial sovereignty and maritime jurisdictions. On this basis,

¹⁴ 'South China Sea', US Energy Information Administration, 7 Feb. 2013.

¹⁵ Li Guoqing, 'China Sea oil and gas resources', China Institute of International Studies, 5 Jan. 2015.

¹⁶ Yuan Ying, 'Jiaolong submarine starts scientific missions in June', South China Sea Institute/Xiamen University Center for Oceans, Law and the China Seas, 24 March 2013, <http://scsi.xmu.edu.cn/en/show.asp?id=2022>.

¹⁷ UN Food and Agriculture Organization, *2014 state of the world fisheries and aquaculture report 2014: opportunities and challenges* (Rome, 2014). Verification of the status of fish stocks remains a difficult task on account of low levels of data sharing, and a tendency by some states in the region to employ double accounting methods to mask the declining trend in availability.

¹⁸ In recent years, anti-piracy efforts have contributed to a downward trend in incidents, but the region remains highly vulnerable, especially in the Straits of Malacca and Singapore. See Regional Cooperation on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), *Annual Report 2015* (Singapore, 2015), http://www.recaap.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=421&PortalId=0&TabId=78.

¹⁹ In 2013 the IMO recorded 142 incidents of piracy and armed robbery in the South China Sea, up from 90 in 2012. See International Maritime Organization, *2013 Annual report on acts of piracy and armed robberies*, http://www.imo.org/en/OurWork/Security/SecDocs/Documents/PiracyReports/208_Annual_2013.pdf.

the buildup of transnational security challenges is a direct consequence of weak regional maritime order.

Over the past four decades, a wealth of literature has documented the waxing and waning of conflicts between claimant states over maritime features and jurisdictional boundaries.²⁰ More recently, a dominant view among western and Chinese scholars alike is that the regional maritime landscape is now undergoing a major geostrategic transformation as a result of China's emergence as a maritime power, the US rebalancing strategy in Asia, hedging strategies by south-east Asian states against China's rising status, and the expanding activities of India and Russia in maritime east Asia.²¹

Often missing in these structurally orientated accounts is a stronger emphasis upon the growing convergence between maritime nationalism, resource security and geopolitics that highlights the Chinese predicament: caught between internal pressures to secure vital resources for economic development and external pressures to counterbalance US domination in the region. Managing this predicament in positive ways that enhance China's legitimate role in maritime security presents a major challenge for the political leadership. Current defensive and assertive postures appear to be exacerbating rather than alleviating tensions, in regard to China's relations with both the littoral states of east Asia and the United States. This, in turn, is undermining prospects for the future development of a regional maritime order.

China and the maritime disputes

Historical claims vs UNCLOS

The People's Republic of China (PRC) officially claims indisputable sovereignty over all four major archipelagic groups in the South China Sea—the Spratlys (Nansha Qundao), Paracels (Xisha Qundao) and Pratas (Dongsha Qundao), and the Macclesfield Bank and Scarborough Shoal (Zhongsha Qundao).²² Claims of sovereignty over maritime features and jurisdictions are driven in part by

²⁰ For recent studies on the maritime disputes, including those focusing upon cooperative solutions, see Ralf Emmers, *Geopolitics and maritime territorial disputes in east Asia* (Abingdon and New York: Routledge, 2010); Mark Valencia, Jon M. Van Dyke and Noel A. Ludwig, *Sharing the resources of the South China Sea* (Honolulu: University of Hawaii Press, 2010); Sarah Raine and Christian Le Mière, *Regional disorder: the South China Sea disputes*, Adelphi Series 53: 436–437, 2013; Gregory B. Poling, *The South China Sea in focus: clarifying the limits of the maritime disputes* (Lanham, MD: Rowman & Littlefield, 2013); Bill Hayton, *The South China Sea: the struggle for power in Asia* (New Haven and London: Yale University Press, 2014); and Wu Shicun and Nong Hong, eds, *Recent developments in the South China Sea dispute: the prospect of a joint development regime* (London and New York: Routledge, 2014).

²¹ For Chinese sources see Mei Ran, 'Haijun kuozhan yu zhanlüe wending: cong ying de jingzheng dao zhong mei guanxi' [Maritime expansion and strategic stability: from Anglo-German competition to China-US relations], *Gouji zhengzhi yanjiu* [International politics research], no. 4, 2007, pp. 75–89; Yang Zhen and Zhou Yunxiang, 'Lun zhong mei zhi jian de hai quan maodun' [On the maritime power contradictions between China and the US], *Xiandai guoji guanxi* [Contemporary international relations], no. 2, 2011, pp. 6–11; Wang Shan, 'Nanhai zhengduan chengyin ji weichi zhi dao' [The cause of the South China Sea dispute and the way to deal with it], *Xingshi yu zhengce* [Situations and policies], no. 1, 2011, pp. 17–25.

²² The PRC territorial claims in the Zhongsha Qundao also include Truro Shoal, Dreyer Shoal and Saint Esprit shoal. See Zou Keyuan, *Law of the sea in East Asia: issues and prospects* (London: Routledge, 2005).

UNCLOS, but also by historical grievances arising from the post-1945 Pacific order. In particular, the perceived injustices of the San Francisco peace process, in failing to recognize the PRC and to designate a successor to Japan with respect to the control of certain offshore islands, continue to resonate in Chinese territorial claims.²³

Assessing China's legal positioning in the maritime disputes is complicated by the number of claimant states involved, confusion over the names and geological formations of particular features, and changes in the particular claims of the parties involved.²⁴ The Spratly sub-archipelago (encompassing approximately 140 islets, rocks, reefs, shoals and sandbanks) is claimed in entirety by the PRC, Taiwan and the Socialist Republic of Vietnam (hereinafter Vietnam), and in part by the Philippines, Malaysia and Brunei Darussalam. Fewer than 40 features constitute islands as defined by UNCLOS (naturally formed areas of land above water at high tide: article 121 (1)). The largest island, Itu Aba (Taiping Dao), is occupied by Taiwan; Vietnam and the Philippines occupy the other larger islands; Malaysia and the PRC a number of largely submerged reefs; and Brunei does not occupy but rather claims a small reef within its exclusive economic zone (EEZ), 200 nautical miles from its coastline. Indonesia is not a claimant state, although PRC and Taiwanese claims overlap with its EEZ and continental shelf, including the Natuna gas fields.

Between the coast of Vietnam and Hainan Island, the Paracels claimed by Vietnam, China and Taiwan cover around 20 islands, cays, reefs and banks. The Pratas Islands, 200 nautical miles south-west of Hong Kong, are occupied by Taiwan. The Scarborough Shoal (Bajo de Masinloc) is the only feature in the Zhongsha group that is above sea level at high tide. It is claimed by the PRC and the Philippines as part of the West Philippine Sea, including the Luzon Sea as well as the waters around, within and adjacent to the Kalayaan Island Group.²⁵ See map overleaf for an illustration of these claims.

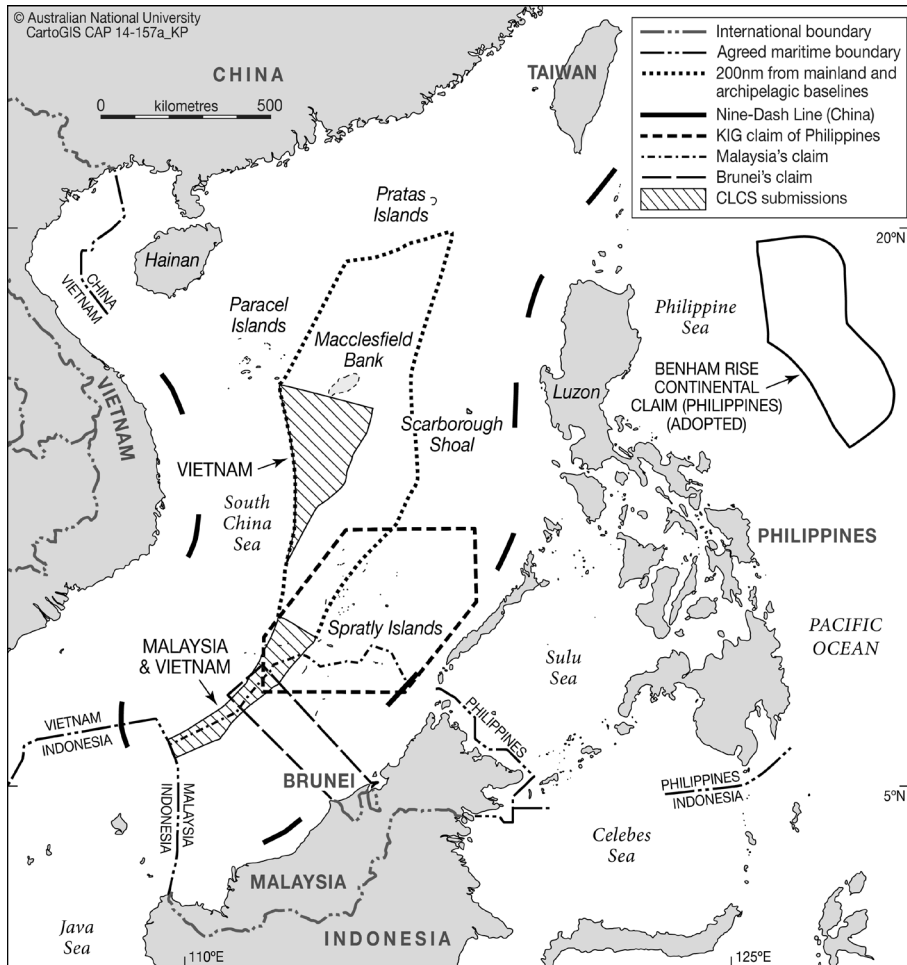
To support its claim to sovereignty over adjacent seas and offshore islands the PRC draws upon UNCLOS and general international law. Beijing relies heavily upon historical claims and steadfastly refuses to support third-party adjudication or a multilateral approach towards dispute resolution. On close examination, China's legal position is influenced by a policy stance that gives priority to national security, combined with a strong sense of entitlement linked to historical concerns over territorial sovereignty.

²³ Japan renounced 'all right, title, and claim to the Spratly islands and Paracel islands' (art. 2 (f)) in the Treaty of Peace with Japan, signed in San Francisco on 8 Sept. 1951. No designated successor to the islands was nominated, and a Chinese delegation was not in attendance. For the treaty text, see www.taiwandocuments.org/sanfranciscoor.htm.

²⁴ For geographical determinants of maritime features in the South China Sea, see Daniel J. Dzurek, 'China occupies Mischief Reef in latest Spratly gambit', International Boundaries Research Unit, University of Durham, *IBRU Boundary and Security Bulletin*, April 1995. For an excellent history of the maritime disputes, see Hayton, *The South China Sea*.

²⁵ Aileen Baviera and Jay Batongbacal, 'The West Philippine Sea: the territorial and maritime disputes from a Filipino perspective', Asia Center and Institute for Maritime Affairs and Law of the Sea University of the Philippines, updated July 2013, http://philippinesintheworld.org/sites/default/files/FINAL_West%20Phil%20Sea%20Primer_UP%20%2815%20July%202013%29.pdf.

Figure 1: Maritime claims in the South China Sea



Source: Cartography Unit, College of Asia and the Pacific, Australian National University.

Note: CLCS stands for Commission on the Limits of the Continental Shelf.

Following ratification of UNCLOS on 7 June 1996, Beijing was slow to specify its maritime boundaries, preferring the political convenience of legal ambiguity. In the 1990s, limits were defined in fairly abstract terms, according to the domestic maritime legal order. For example, the 1992 PRC Law on the Territorial Sea and the Contiguous Zone stipulates that it is applicable to ‘all land territory of China including the mainland and coastal islands, Taiwan, and all islands in the South China Sea’ (article 2).²⁶ In the subsequent law on the EEZ and Continental Shelf (1998), a reference is made to the baselines used to calculate the breadth of the territorial sea (article 2) without further specification.²⁷

²⁶ Law of the PRC on the Territorial Sea and Contiguous Zone, 25 Feb. 1992, <http://www.asianlii.org/cn/legis/cen/laws/lotprocottsac2739/>.

²⁷ Law of the PRC on the EEZ and Continental Shelf, 26 June 1998, <http://www.asianlii.org/cn/legis/cen/laws/lotprocotezatcs790/>.

Imposed at a time of rising uncertainties over regional strategic competition, a deadline to meet obligations under UNCLOS triggered a hardening of China's stance over its maritime claims. In response to a joint submission by Malaysia and Vietnam on 6 May 2009 to the Commission on the Outer Limits of the Continental Shelf, China sent a *note verbale* to the Secretary-General of the United Nations attaching a map with a nine-dash line (*jiuduanxian*) also known as the U-shaped line:

China has indisputable sovereignty over the islands in the South China Sea and adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map). The above position is consistently held by the Chinese government, and it is widely known by the international community (CML/17/2009).

The origins of the U-shaped line date back to the Republican era, when it appeared on a map drafted by a middle-ranking official working for the Land and Water Maps Inspection Committee in the 1930s without special government authorization. At the time, no official position was taken on the waters enclosed within the traditional boundary. The original purpose of the map was to locate islands rather than to define maritime jurisdiction over natural resources and waters. When it first appeared as an official map, under the Ministry of the Interior of the Republic of China in 1947 (in response to the Truman Declaration on the Continental Shelf), it contained eleven dashed lines, including two dashes between Hainan and Vietnam that were later deleted in the 1950s. Resurrected over 60 years later, it has created much confusion over the scope of China's maritime jurisdiction. According to Michael Sheng-ti Gau from the National Taiwan Ocean University, in 2013 an additional dash was added between Taiwan and Japan to indicate boundaries still undefined.²⁸

Many legal scholars maintain that the U-shaped line does not provide the historical basis for asserting rights and jurisdiction over maritime space.²⁹ Under UNCLOS the rationale for historic rights lies in the protection of economic interests in the light of the *res communis* doctrine. However, a fundamental principle in the international law of the sea is that *land determines sea*. Hence, a major argument made by Chinese legal scholars and policy-makers is that UNCLOS cannot be the sole basis for determining maritime rights because territorial sovereignty disputes involve general rules and norms.³⁰ According to Judge Gao Zhiguo—one of 21 judges on the International Tribunal for the Law of the Sea (ITLOS)—the U-shaped line supplements rather than contradicts UNCLOS provisions.³¹

²⁸ Michael Sheng-ti Gau, 'The Sino-Philippine arbitration on South China Sea disputes: admissibility and jurisdiction issues', *China Oceans Law Review* 15: 1, 2015, pp. 166–293. For a discussion of the various names relating to the U-shaped line, see Zou Keyuan, 'China's U-shaped line in the South China Sea revisited', *Ocean Development and International Law* 43: 1, 2012, pp. 18–34.

²⁹ Robert Beckham, 'The UN Convention on the Law of the Sea and the maritime disputes in the South China Sea', *American Journal of International Law* 107: 142, 2010, p. 154; Nong Hong, *UNCLOS and ocean dispute settlement: law and politics in the South China Sea* (Abingdon and New York: Routledge, 2012), p. 66.

³⁰ Zhang Haiwen, 'Cong guojia shijiao kan nanhai zhengyi wenti' [South China Sea dispute from the perspective of international law], *Guojia haiyang ju* [China State Oceanic Administration], *Shijie zhishi* [World affairs], no. 4, 2012, pp. 14–22.

³¹ In the view of Judge Gao Zhiguo, the line has three meanings: (1) it represents historic title to the island

A legal debate has emerged in recent years over whether China's traditional maritime boundary line indicates a claim to historic fishing rights—a continuous exploitation of fisheries over an extended period of time—accorded by customary international law. Under UNCLOS (article 2 (13)), historic rights may be taken into account when providing access to surplus fish stocks, and state practice has recognized that traditional fishing rights may coexist with the EEZ regime; however, as argued by Sourabh Gupta, such recognition would require judicial decision or consensual agreement. The question of compatibility would depend upon a non-exclusive interpretation of historic rights.³²

Regardless of the legal intricacies involved, the Chinese government has been negligent in clarifying the scope of the U-shaped line. Legal ambiguity serves a useful political purpose in placating competing state interests and mobilizing nationalist support. Simply put, in its role as the protector of China's maritime rights and interests, the People's Liberation Army Navy (PLAN) is more inclined towards making expansive claims to the entire South China Sea for strategic purposes, while the State Oceanic Administration (SOA) is a strong defender of China's historical claims and the Ministry of Foreign Affairs (MoFA) places a higher priority upon responding to the concerns of neighbouring states and championing China's maritime status in diplomatic forums.³³ Regardless of its more cooperative stance, MoFA did not specify the limits of China's maritime jurisdiction until tensions peaked in early 2012, confirming at a press conference on 29 February that 'neither China nor any other claimant states lay claim to the entire South China Sea'.³⁴

A further complication lies in the absence of a unified legal position across the Taiwan Strait. Beijing and Taipei share identical claims, with one important distinction: for Taiwan the waters enclosed by the U-shaped line were in the past considered as 'historic waters' providing entitlements 'to all the rights therein'.³⁵ This reference to historic waters originated under the 1958 Convention on the Law of the Sea when Taiwan held the seat at the UN; it is a legacy of Taiwan's earlier participation in the Law of the Sea negotiations that was not recognized when the PRC took the UN seat in 1971. Under modern international law, the status of 'historic waters' is now defined on the basis of internal waters or territorial seas.³⁶

groups it encloses—sovereignty over islands and other insular features, and sovereign rights and jurisdiction in accordance with UNCLOS over the waters and seabed and subsoil adjacent to those islands and insular features; (2) it preserves historic rights in fishing, navigation, and activities such as oil and gas in the waters and continental shelf surrounded by the line; and (3) it serves potentially as a maritime delimitation line. For further explanation of China's U-shaped line, see Zhiguo Gao and Bing Bing Jia, 'The nine-dash line in the South China Sea: history, status, and implications', *American Journal of International Law* 107: 1, Jan. 2013, pp. 98–124.

³² Sourabh Gupta, 'The nine dash line as a historic rights line and its basis in international law', paper presented at the Third International Workshop on Cooperation and Development in the South China Sea, Wuhan, China, Oct. 2015.

³³ Author's interviews with Chinese officials and analysts in Beijing, Oct. 2015.

³⁴ Hong Lei, Foreign Ministry spokesperson, regular press conference, 29 Feb. 2012, http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t910855.shtml.

³⁵ Daniel J. Dzurek, 'The Spratly Islands dispute: who's on first?', *Maritime Briefing* 2: 1, 1996.

³⁶ Florian Dupuy and Pierre-Marie Dupuy, 'A legal analysis of China's historic rights claim in the South China Sea', *American Journal of International Law* 107: 1, 2013, p. 138.

Legal arbitration

At a broader level, a major problem for the Chinese leadership is that legal ambiguity over its maritime boundaries no longer serves a purpose in maintaining the regional status quo. In recent years, China's more assertive stance towards the enforcement of its maritime claims has fuelled suspicions among south-east Asian littoral states, provoking legal action by the government of the Philippines to seek awards under ITLOS.

The Filipino submission to ITLOS in January 2013 was made in response to an escalation of the maritime dispute with China over the Scarborough Shoal a year earlier, reminiscent of the skirmishes in 1995 when China occupied Mischief Reef. A standoff between the Philippines' naval frigate the *Gregorio del Pilar* (a decommissioned US coastguard cutter) and eight Chinese fishing boats, located 124 nautical miles to the west of Luzon, demonstrated the growing gap in capacity to patrol claimed maritime territory. The Chinese catch included live sharks, corals and giant clams from waters within the Philippines' EEZ, raising serious questions about the protection of natural resources and China's responsibility to defend its rights without destroying the ecosystems that support one of the highest levels of marine biodiversity in the world.

The Philippines' 20-page Notification and Statement of Claim requested that the Arbitral Tribunal adjudicate on 13 points relating to China's maritime claims in the South China Sea based upon the U-shaped line, including the occupation of certain elevations, and interference with the Philippines' right to fishing and navigation.³⁷ Beijing rejected Manila's request for international arbitration in accordance with article 298 of the Convention, further arguing that it was contrary to the 2002 Association of Southeast Asian Nations (ASEAN)–China Declaration of the Conduct of the Parties in the South China Sea that reaffirmed support for resolving disputes through bilateral negotiations. In so doing, China forfeited the right to nominate arbitrators and shape the rules of procedure.

With hindsight, it is tempting to conclude that Beijing's refusal to participate in the arbitration process was carefully coordinated with a unilateral campaign to strengthen its maritime claims relative to other claimant states. Since early 2014, China has carried out land reclamation activities on a number of its occupied atolls and reefs on an industrial scale that has fundamentally changed both the political and ecological status quo.³⁸ China is not the first claimant state to conduct land reclamation activities and construct military installations on the tiny coral atolls and reefs in the Spratly sub-archipelago. According to the Center for Strategic and International Studies (CSIS) in Washington, Vietnam has been building up

³⁷ It sought clarity over whether Chinese-occupied low-level elevations are entitled to generate a 12-nautical mile territorial sea (Mischief Reef, McKennan Reef, Gaven Reef and Subi Reef) and whether Chinese-occupied high-level elevations (Scarborough Shoal, Johnson Reef, Cauteran Reef and Fiery Cross Reef) are entitled to generate an EEZ and a continental shelf. See Embassy of the People's Republic of China, Manila, Republic of the Philippines, 'Notification and statement of claim' (no. 13-0211), 22 Jan. 2013, <https://assets.documentcloud.org/documents/2165477/phl-prc-notification-and-statement-of-claim-on.pdf>.

³⁸ Shannon Tiezzi, 'The environmental costs of China's South Sea construction', *The Diplomat*, 18 Sept. 2015.

its military facilities on Sand Cay and Western London reef, the Philippines has upgraded its naval port facilities on Spratly Island, and Taiwan has extended its airstrip on Itu Aba to 1,195 metres.³⁹ The fundamental difference lies in the scale and speed of China's buildup of occupied maritime features (discussed in detail below in reference to US–China strategic competition). Critically, this strategic gambit has seriously undermined China's legitimacy as a claimant state and further reduced its potential to seek a *modus vivendi* with ASEAN.

The Permanent Court of Arbitration in The Hague on 29 October 2015 confirmed that the tribunal would not adjudicate on the sovereignty of any maritime feature, or on the legality of the U-shaped line. The ruling did, however, agree to determine legal entitlements to ten disputed maritime features on the basis of their natural state.⁴⁰ It also agreed to consider whether China's island construction activities were consistent with its obligations to protect and preserve the marine environment under article 192 of UNCLOS.⁴¹

The final decision, expected in June 2016, will confirm the legality of Chinese claims to maritime entitlements generated from disputed features. Only naturally formed islands above sea level at high tide can generate a territorial sea (article 21 UNCLOS). With the exception of Fiery Cross Reef, the majority of Chinese-occupied features were totally submerged prior to the island construction campaign. While any legal ruling is unlikely to bring about a change in China's legal position, it will reduce the scope for making expansive claims. Furthermore, it may provide greater clarity over the question of whether a right to historic fishing can be preserved in the waters surrounding the Scarborough Shoal.⁴² Recent Chinese incursions into Indonesian waters off Bungarun (Natuna Besar) Island in the name of safeguarding traditional fishing rights further signals Chinese intentions concerning the U-shaped line.⁴³ Notwithstanding the legitimate rights of Indonesia to access the resources within its EEZ, the practical question of how to maintain customary rights in the context of rampant illegal fishing and poaching off the coastlines of south-east Asian states cannot be ignored.

Controlling access to resources

China's dispute with Vietnam highlights the continuing importance of competition over resources. China's historic waters claim overlaps with Vietnam's EEZ and continental shelf claims. Both countries claim sovereignty over the Paracel and Spratly archipelagos on the basis of historical records dating back to the seventeenth-century reign of the Hung Duc Emperor of Annam, and earlier in

³⁹ CSIS Asia Maritime Transparency Initiative, Island Tracker, available at <http://amti.csis.org/island-tracker/>.

⁴⁰ Scarborough Shoal, Mischief Reef, Second Thomas Shoal, Subi Reef, Gaven Reef, McKennan Reef, Hughes Reef, Johnson Reef, Cauteran Reef and Fiery Cross Reef.

⁴¹ Permanent Court of Arbitration, 'Arbitration between the Republic of the Philippines and the People's Republic of China', press release, The Hague, 29 Oct. 2015.

⁴² I am grateful to Sourabh Gupta for this point.

⁴³ Francis Chan and Wahyudi Soeriaatradja, 'Indonesia to charge Chinese fishing crew with poaching', *Straits Times*, 23 March 2016.

the case of China to the Ming Dynasty. China took the islands by force in 1974 and a serious naval confrontation occurred in 1988 over the Johnson Reef.⁴⁴

China and Vietnam share land and maritime borders. Growing dependency of China's southern provinces on fish for food and employment, especially in the poorer autonomous region of Guangxi (whose population is equal to half that of Vietnam), means that competition over declining stocks is an important driver of conflict. The administrative centre for Chinese control over the South China Sea is now located in Sansha City on Woody Island. In 2011, in order to strengthen local regulatory controls, the newly established authorities in Sansha City imposed an annual fishing ban beyond the Gulf of Tonkin in waters surrounding the Paracels, leading to an escalation in conflicts between fishing vessels.⁴⁵

In this case there are some grounds for optimism, given that resource security concerns also create an incentive for cooperation. Agreements negotiated in 2000 on the demarcation of waters, EEZs, continental shelves and fishing cooperation established the right of both countries to apprehend vessels that are fishing illegally in overlapping jurisdictions and to set up joint ventures with third parties in the respective EEZs. The Sino-Vietnamese agreement on fisheries management includes a maritime boundary delimitation and a joint fishery commission with authority over dispute settlement.⁴⁶ The agreements expired at the end of 2015, but efforts are now under way to establish a new bilateral agreement.

Rising energy demands also continue to play a role in the escalation of disputes. Like other littoral states, China began offshore oil exploration in the 1970s in response to the steep rise in oil prices and the changing balance of power in the region following the withdrawal of US troops from Vietnam.⁴⁷ Over the past two decades, both China and Vietnam have exploited oil exploration licensing to defend their maritime claims. Competition over the allocation of oil and gas exploration contracts is now on the rise with a larger number of stakeholders. For example, in 2012 PetroVietnam signed joint exploration contracts with Exxon Mobil, Gazprom and India's Oil and Natural Gas Corporation (ONGC), and a few months later CNOOC issued new concessions to international bidders in overlapping Vietnamese blocks.⁴⁸

The first major Chinese discovery in the South China Sea (Liwán 3-1 gas field, with an estimated 4–6 trillion cubic feet of reserves) was not made until 2006. Until recently, Chinese oil companies have been reluctant to operate in disputed waters. Contested areas face significant geological and technological constraints, and require expensive subsea pipelines to carry gas to processing facilities. This changed in May 2014 when CNOOC moved the mobile rig Haiyang Shiyou 981

⁴⁴ Greg Austin, *China's ocean frontier: international law, military force and national development* (Canberra: Allen & Unwin/ Department of International Relations, Australian National University, 1998).

⁴⁵ Author's interview, Nanning provincial government, 6 June 2012.

⁴⁶ David Rosenberg, 'Governing the South China Sea: from freedom of the seas to ocean enclosure movements', *Harvard Asia Quarterly*, XII: 3 and 4, Winter 2010, pp. 4–12. For further details, see Ramses Amer, 'The Sino-Vietnamese approach to managing boundary disputes', International Boundaries Research Unit, University of Durham, *IBRU Maritime Briefing* 3: 5, 2002.

⁴⁷ Dzurek, 'The Spratly Islands dispute'.

⁴⁸ Rakesh Sharma, 'ONGC to continue exploration in the South China Sea', *Wall Street Journal*, 19 July 2012.

into waters just 17 nautical miles away from the Paracels and 120 miles from the coast of Vietnam for the purposes of exploration and drilling.⁴⁹ In so doing, Beijing reneged upon its longstanding pledge to avoid placing oil rigs in disputed areas. This intervention triggered anti-Chinese riots on the streets of Hanoi, leading in turn to a massive evacuation of Chinese nationals and the destruction of hundreds of foreign-owned businesses.⁵⁰

According to China's Maritime Safety Administration, the rig is currently operating within China's EEZ, 75 nautical miles from Hainan Island, indicating a moderated approach towards the enforcement of maritime claims and a renewed resolve to work towards a diplomatic agreement.⁵¹ It would appear that the lesson to be drawn from this incident is that China is likely to continue to test the boundaries of its control over maritime resources as its technological prowess grows. In so doing it will face a difficult legitimacy dilemma over how to resolve its own resource security predicament without exacerbating the collective insecurity concerns that now prevail among neighbouring states. The oft-cited principle of 'setting aside disputes and pursuing joint development', first proposed by Deng Xiaoping in 1978, still offers a practical solution for building confidence; but the economic and political stakes are now much higher, making it increasingly difficult to advocate resource cooperation as a source of peace.

Looking at the overall pattern of confrontation over maritime disputes in the South China Sea, it appears that former mechanisms for managing the disputes are no longer adequate. Chinese leaders continue to express a willingness to engage in negotiations over a formal code of conduct (COC), building upon the Declaration on the Conduct of the Parties in the South China Sea signed by China and ASEAN in 2002.⁵² The establishment in November 2011 of a China-ASEAN Maritime Cooperation Fund (amounting to US\$500 million) signalled continuing support for regional maritime cooperation. And more recently, at the tenth East Asia Summit in November 2015, Premier Li Keqiang confirmed China's commitment to a dual-track approach to the South China Sea in which 'sovereign states directly concerned in the issue resolve the relevant disputes through negotiations and consultations, and China and the ASEAN countries jointly safeguard peace and stability'.⁵³ If a consensus over a code of conduct can be achieved, it will be an important contribution to building a rules-based maritime order.⁵⁴ However,

⁴⁹ Charlie Zhu, 'China optimistic of finding gas off Vietnam could test ties further', Thomson Reuters, Eikon, 29 May 2014.

⁵⁰ Agence France-Presse, Beijing, 'Chinese flee Vietnam as Hanoi counts cost of riots', *Guardian*, 19 May 2014, www.theguardian.com/world/2014/may/19/chinese-flee-vietnam-hanoi-riots.

⁵¹ <http://www.msa.gov.cn/Notice/Notice/8cf1322b-4029-4123-b126-c6af49539884> (in Chinese).

⁵² Guidelines for implementation of the code of conduct adopted in July 2011 created four expert committees on maritime scientific research, environmental protection, search and rescue, and transnational crime. For further details see Carlye A. Thayer, 'ASEAN's code of conduct in the South China Sea: a litmus test for community building', *Asia-Pacific Journal* 10: 3, 2012.

⁵³ PRC MoFA, 'Li Keqiang expounds on China's principled stance on South China Sea issue at East Asia Summit', tenth East Asia summit, Kuala Lumpur, 22 Nov. 2015, www.fmprc.gov.cn.

⁵⁴ For an elaboration of this position, see Alice Ba, 'Managing the South China Sea disputes: what can ASEAN do?', in Murray Hiebert, Phuong Nguyen and Gregory B. Poling, eds, *Perspectives on the South China Sea: diplomatic, legal, and security dimensions of the dispute* (Lanham, MD: Rowman & Littlefield, 2014).

it is unlikely to temper conflict dynamics because it is non-binding and lacks the means to enforce responsible conduct.⁵⁵

In summary, China's current positioning in the maritime disputes reveals a growing resolve to enforce its maritime claims while maintaining an advantageous position in resource competition. Beijing seeks to legitimate its claims in accordance with international law, but reserves the right to resort to coercive action if provoked—and in this respect the traditional maritime boundary line acts as a de facto line of defence. China is not alone in its nationalistic stance; what distinguishes its position from those of other claimant states is the scale, speed and intensity of its rights enforcement campaign. At a broader level, Chinese actions attract greater external scrutiny on account of the strategic environment, which has changed irrevocably over the past decade.

US–China strategic competition: freedom of the seas vs national security

A central driver in the buildup of geostrategic rivalry between the United States and China in the South China Sea concerns the question of how to reconcile navigational access and freedom of the seas with national security. For its part, the United States has consistently supported the international norm of freedom of navigation as both a fundamental state interest and a condition for regional and global stability. In contrast, Chinese support for freedom of the seas is conditioned upon a longstanding goal of seeking security guarantees in the maritime arena, dating back to its earlier involvement in negotiations over the Law of the Sea. Since the turn of the century, clashes over US reconnaissance activities in China's EEZ have raised the stakes even higher. The EP-3 incident in April 2001, involving a collision between a US Navy plane and a PLA F-8 jet fighter, the clash between the USNS *Impeccable* and Chinese vessels just 75 nautical miles south-east of Hainan Island in March 2009, and the confrontation between a US Navy P-8 Poseidon plane and a PLA Su 27 fighter in August 2014 all reveal a pattern of low-level conflict that attests to the growing suspicions between the two states.⁵⁶

Both states suffer from legitimacy constraints in their respective positions. The legal case presented by the United States is weakened by its failure to ratify the Law of the Sea Convention. Its surveillance activities in Chinese waters are

⁵⁵ See Ian Story, 'Slipping away? A South China Sea code of conduct eludes diplomatic efforts', *East and South China Seas Bulletin*, Center for the New American Century, 20 March 2013; M. Taylor Fravel, 'Maritime security in the South China Sea and competition over maritime rights', in Patrick M. Cronin, ed., 'Cooperation for strength: the US, China and the South China Sea', Center for the New American Century, Jan. 2012, www.cnas.org/southchinasea.

⁵⁶ The EP-3 incident in April 2001 involved a collision, 70 nautical miles from Hainan Island, between a US navy EP-3 reconnaissance plane and a PLA naval F-8 jet fighter that crashed into the sea. Following an emergency landing on Hainan Island, the Chinese authorities detained the US crew for eleven days on the accusation that they had entered Chinese airspace without permission. See Shirley A. Kan, ed., 'China–US aircraft collision incident of April 2001: assessments and policy implications', CRS report for Congress, updated 10 Oct. 2001, www.fas.org/sgp/crs/row/RL30946.pdf. The USNS *Impeccable* incident in March 2009 also took place in waters close to Hainan Island. Five PRC vessels forced an unarmed US Navy vessel to take emergency action in order to avoid a collision. The ship returned the next day under the escort of a guided-missile destroyer. See Captain Raul Pedrozo JAGC, 'US Navy close encounters at sea: the USNS *Impeccable* incident', *Naval War College Review* 62: 3, Summer 2009, pp. 101–111.

predicated upon previous tenets of customary law and upon UNCLOS, which recognizes the right to ‘innocent passage’ through territorial waters that is ‘not prejudicial to the peace, good order, or security of the coastal state’.⁵⁷ However, in the absence of treaty ratification US surveillance serves to bolster Chinese support for a hard-line defence of its maritime rights.

The PRC ratified UNCLOS on 7 June 1996, at the time reaffirming ‘the right of a coastal state to request, in accordance with its laws and regulations’, that foreign warships and planes give notification or seek permission when traversing the territorial sea of a coastal state.⁵⁸ China is not alone in protecting its maritime sovereignty. Malaysia and Thailand both support the right of consent of coastal states in constraining foreign navies.⁵⁹ In June 2012, Vietnam passed a maritime law that claimed jurisdiction over the Paracels and Spratlys, demanding that foreign naval ships entering waters around these islands register with Vietnamese authorities. Other developing maritime states, including Brazil and India, also assert rights to restrict foreign military activities in their coastal waters. But while defending the norm of prior consent on procedural grounds is in line with the tenets of international law, and may be observed on the basis of the comity of nations (*comitas gentium*), the securitization of the maritime commons falls strictly outside both the remit of the Convention and customary state practice.⁶⁰

China’s declaration of an Air Defence Identification Zone (ADIZ) in the East China Sea in November 2013, and the ensuing intensive programme of island-building activities in 2014 and 2015, have raised further questions about the increasingly blurred boundary between national security and maritime freedoms.⁶¹ The 1944 Convention on International Civil Aviation Law (Chicago Convention) allows states to claim sovereignty over territorial airspace, but this does not extend to EEZs. The declaration and implementation of ADIZs are permitted in accordance with UNCLOS and customary state practice on condition they do not impair safe passage. The complicating factor in east Asia is that the Chinese ADIZ overlaps with existing Japanese and Korean zones, thus increasing the risk of possible miscalculations. It is also defined in terms of absolute sovereignty. Unlike the United States, which only applies domestic regulations to foreign aircraft that are

⁵⁷ Convention on the Territorial Sea and the Contiguous Zone 1958, art. 14 (4); UNCLOS, art. 19 (2). Passage by all ships, including warships, is deemed innocent so long as it is ‘not prejudicial to the peace, good order, or security of the coastal state’ (art. 19). UNCLOS does not support the use of force, ‘wilful or serious pollution’ or any acts ‘aimed at collecting information to the prejudice or security of the coastal state’ (art. 19 (2)). Those states conducting scientific expeditions for peaceful purposes within the EEZ and on the continental shelf must request prior consent, but this should be given in normal circumstances and without bureaucratic delays (art. 246 (3)).

⁵⁸ The 1998 Law of the PRC on the EEZ and Continental Shelf requires foreign entities to seek prior government approval before conducting fishing, natural resource exploitation and marine scientific research within the EEZ. On this basis, military activities are classified as marine scientific research. The provision is more specific about the national security concerns pertaining to warships. See www.un.org/depts/los/convention_agreements/convention_declarations.htm#China%20after%20ratification.

⁵⁹ Raine and Le Mière, *Regional disorder*, p. 111.

⁶⁰ The principle of ‘comity of nations’ was first used to interpret the passage of warships in territorial waters at the Hague Conference in 1930. It refers to the body of rules states observe on the basis of mutual respect for each other’s laws and institutions.

⁶¹ Defence spokesman Yang Yujin’s response to questions on the establishment of the East China Sea Air Defense Identification Zone, Ministry of Defence, PRC, 23 Nov. 2013 (no longer available online).

bound for a destination in the US, China requires all aircraft transiting the ADIZ to seek prior consent.⁶²

As noted above, large-scale land reclamation activities have further compromised the distinction between the protection of maritime sovereignty and securitization. This strategic gambit has raised serious concerns that Beijing may intend to control the South China Sea by force, possibly establishing military bases to advance power projection capabilities.⁶³ Airbus Defence and Space satellite imagery reveals extensive land reclamation taking place on Fiery Cross Reef, Subi Reef and Mischief Reef, with smaller-scale dredging activities on Cauteran, Hughes, Johnson South and Gaven reefs along with the installation of communications and defence facilities.⁶⁴

According to the Asia Maritime Transparency Initiative at the CSIS in Washington, the total extent of land reclaimed reached 12.8 square kilometres by January 2016. Fiery Cross Reef (Yongshu Jiao), occupied by the PRC since 1988, is now considered to be the largest new landmass in the Spratlys, with an additional expansion of 2.74 square kilometres. It has a port facility large enough to receive tankers and warships as well as a new 3,000-metre airstrip that is within strike fighter range of the Philippines, Vietnam and Malaysia.⁶⁵ The reef was established as a command centre for maritime operations in the 1990s on account of its location and two rock features that remain above sea level at high tide. Although the reef is strategically vulnerable in the event of any military conflict, exclusive military control and patrolling of surrounding waters does have serious implications for the fragile maritime order—in particular placing in jeopardy the legal norm that artificial islands do not generate maritime entitlements (UNCLOS, article 60).

Land reclamation on the low-tide elevations of Subi Reef (Zhubi Dao) and Mischief Reef (Meiji Jiao) is estimated to amount to around 3.9 and 5.6 square kilometres respectively. Subi Reef is located only 22 nautical miles from Itu Aba and just 15 nautical miles from Thitu Island (occupied by the Philippines), while Mischief Reef lies within the Filipino EEZ, 129 nautical miles from Palawan. Pre-existing military facilities are in the process of being upgraded with the possible construction of two further 3,000-metre airstrips, satellite communication centres and harbours.⁶⁶

In official statements, Chinese foreign affairs and defence officials claim that island-building is not simply for military defence purposes, but also to support civilian demands by improving existing facilities while meeting international obligations with respect to maritime search and rescue, disaster prevention and

⁶² See Peter Dutton, 'Caelum liberum: Air Defense Identification Zones outside sovereign airspace', *American Journal of International Law* 103: 4, 2009, pp. 691–709.

⁶³ John Chen and Bonnie Glaser, 'What China's militarization of the South China Sea would actually look like', *The Diplomat*, 5 Nov. 2015.

⁶⁴ James Hardy and Sean O'Connor, 'China advances with Johnson South Reef construction', *IHS Jane's Defence Weekly*, 19 Sept. 2014.

⁶⁵ See CSIS Asia Maritime Transparency Initiative, <http://amti.csis.org>; Derek Watkins, 'What China has been building', *New York Times*, 27 Oct. 2015; James Hardy and Sean O'Connor, 'China completes runway on Fiery Cross Reef', *IHS Jane's Defence Weekly*, 15 Sept. 2015.

⁶⁶ CSIS Asia Maritime Transparency Initiative.

meteorological observations. On this basis, Beijing asserts that reclamation activities are carried out in accordance with international law—by building upon pre-existing structures, and following the practice of other claimant states. In a press release issued on 16 June 2015, Foreign Ministry spokesman Lu Kang defended the Chinese position in fairly strident tones:

[land reclamation activities are] lawful, reasonable, and justified ... they are not targeted at any other country, do not affect the freedom of navigation and overflight enjoyed by all countries in accordance with international law in the South China Sea, nor have they caused or will they cause damage to the marine ecological system and environment in the South China Sea, and are thus beyond reproach.

He further announced that ‘the land reclamation project of China’s construction on some stationed islands and reefs of the Nansha (Spratly) Islands will be completed in the upcoming days ... China would then continue construction on the new islands.’⁶⁷

With hindsight, the assurances from MoFA in the lead-up to the US–China Strategic and Economic Dialogue proved to be premature, later overshadowing Xi Jinping’s first state visit to Washington on 23 September 2015. In deflecting criticism, the Chinese President declared at a press conference with President Obama on the lawn of the White House that ‘relevant construction activities that China is undertaking in the island of the South [*sic*] Nansha Islands do not impact or target any country and China does not intend to pursue militarization’.⁶⁸

The PLAN, under the direct control of the Chinese Communist Party, has been more forthright in confirming its resolve to meet the requirements of military defence, as well as to strengthen its capabilities to fulfil international obligations. A visceral fear of a US interventionist strategy to isolate China within its near neighbourhood appears to drive an assertive–defensive stance. In the words of one PLA officer: ‘China asserts its right to defend against the interference of third parties in pursuit of discriminatory action against Chinese maritime interests.’⁶⁹ An absolutist stance views any intrusion into the territorial waters or airspace surrounding Chinese artificial islands in the name of freedom of navigation or overflight as a pretext for undermining China’s rightful position as a maritime power.

The official US position on China’s expanding maritime presence is equally unequivocal, albeit cautious over how best to respond. Washington remains neutral over sovereignty claims, insists on the non-use of force and the resolution of maritime disputes in accordance with international rules, and opposes the increasing militarization of maritime features. US concerns are primarily focused upon the possible hidden intentions behind China’s military ambition in relation

⁶⁷ PRC MoFA, Foreign Ministry spokesman Lu Kang, press statement, 16 June 2015, http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1273370.shtml.

⁶⁸ The White House, Office of the Press Secretary, remarks by President Obama and President Xi Jinping of the People’s Republic of China, joint press conference, Washington DC, 25 Sept. 2015 (as interpreted), <https://www.whitehouse.gov/the-press-office/2015/09/25/remarks-president-obama-and-president-xi-peoples-republic-china-joint>.

⁶⁹ PLA officer, remarks at Nanjing Forum on Maritime Security in China, Nanjing, PRC, 25 Oct. 2015.

to controls over global trade, the announcement of an ADIZ over the South China Sea, or the broader challenge to the post-Second World War Pacific order and the supremacy of the US Pacific Fleet. These concerns reaffirm the centrality of the United States in safeguarding maritime freedoms as announced by Defense Secretary Ashton Carter at the Shangri-la Dialogue in May 2015: 'The United States will fly, sail, and operate wherever international law will allow, as we do all around the world.'⁷⁰

A little-reported event in early September 2015 underscored the action–reaction dynamic in US–China relations and the growing confidence on the Chinese side in elevating its maritime status: five Chinese Navy ships traversed US territorial waters off the coast of Alaska within 12 nautical miles of the Aleutian Islands on the southern side of the Bering Sea. No prior permission was sought. The flotilla conducted an innocent passage in accordance with international law and therefore failed to provoke a political response.⁷¹ Symbolically, the event was remarkable on two accounts in demonstrating Chinese prowess. First, the ships were returning from a joint Chinese–Russian military exercise off the Pacific coast and Sea of Japan; and second, the innocent passage coincided with President Obama's three-day visit to Alaska to promote action on climate change in the lead-up to the Paris summit in December 2015.

A US Senate Armed Services Committee hearing on 17 September revealed that the US Navy had not conducted a freedom of navigation operation in Chinese territorial waters since 2012.⁷² A month later, on 26 October 2015, a US Navy missile destroyer, USS *Lassen*, from Yokosuka naval base in Japan, conducted a freedom of navigation patrol within the Chinese-claimed 12 nautical miles territorial limit of Subi Reef. Despite the buildup of tensions and media outrage, signs of restraint were evident on both sides. China responded in words only, urging the United States to 'immediately correct its wrongdoing' and refrain from military provocation.⁷³ In the event, the US destroyer conducted an innocent passage by lowering its radar as consistent with international law.⁷⁴

In assessing the competitive dynamics between the United States and China it is also important to acknowledge the advances in bilateral cooperation. Both navies contributed to the adoption of a Code for Unplanned Encounters at Sea (CUES),

⁷⁰ IISS Shangri-la Dialogue, first plenary session, Dr Ashton Carter, 'The United States and the challenges of Asia–Pacific security', 30 May 2015, <https://www.iiss.org/en/events/shangri-la-dialogue/archive/shangri-la-dialogue-2015-862b/plenary1-976e/carter-7fa0>.

⁷¹ Sam LaGrone, 'Chinese warships made "innocent passage" through US territorial water off Alaska', 3 Sept. 2015, <http://news.usni.org/2015/09/03/chinese-warships-made-innocent-passage-through-u-s-territorial-waters-off-alaska>.

⁷² Admiral Harry B. Harris, statement before the Senate Armed Services Committee on Maritime Security Strategy in the Asia–Pacific Region, 17 Sept. 2015, <http://www.pacom.mil/Media/SpeechesTestimony/tabid/6706/Article/617626/statement-before-the-senate-armed-service-committee-on-maritime-security-strate.aspx>.

⁷³ Foreign Ministry spokesman Lu Kang, 'China lodges protest with US on warship patrol in South China Sea', statement at press conference, 27 Oct. 2015, http://news.xinhuanet.com/english/2015-10/27/c_134754630.htm.

⁷⁴ According to Bonnie Glaser and Peter Dutton, 'the innocent passage acted as a freedom of navigation operation because it challenged China's illegal restrictions on the movements of ships': see Bonnie Glaser and Peter Dutton, 'The US Navy's freedom of navigation operation around Subi Reef: deciphering US signaling', *The National Interest*, 6 Nov. 2015.

which was signed by 21 Pacific nations at the Western Pacific Naval Symposium hosted by China in Qingdao in April 2014. In the same year, an additional mechanism for enhancing strategic communications was established between defence agencies regarding the safety of air and maritime forces.⁷⁵ Televised meetings between Admiral Harry Harris, Commander of the US Pacific Command, and Admiral Wu Shengli, Commander of the PLAN, have further helped to advance military diplomacy.⁷⁶

Equally relevant is the fact that US and Chinese interests in safeguarding global maritime stability are increasingly aligned. Redefining the US–China relationship on the basis of a global maritime security agenda is likely to gain momentum over time, in keeping with China’s expanding maritime interests from the polar oceans to the Gulf of Aden and the Mediterranean. However, this positive realignment may not be sufficient to offset the buildup of tensions in the South China Sea.⁷⁷

At a more fundamental level, recent events demonstrate that strategic power competition between the United States and China is bounded by legitimacy constraints. For the US, the potential exists to maintain a strong leadership role in protecting the rules-based maritime order and stabilizing the region. But the risk remains that an overreaction to the buildup of tensions in the South China Sea could seriously undermine its status as the guardian of last resort, leading to entanglements in neighbourhood disputes. The legitimacy problem for China is even greater. In the absence of an agreed ASEAN code of conduct, unilateral Chinese actions can be easily perceived as representing a deliberate attempt to gain advantage in changing the status quo while ignoring the legitimate concerns of other regional states. The unintended consequence has been the strengthening of America’s ties not only with its Pacific allies, especially Japan, Australia and the Philippines, but also with non-aligned states such as Vietnam, Indonesia and India.

Reinvigorated security and defence partnerships are now being formed in the region to counterbalance China’s expanding maritime presence. The case of the Philippines is particularly illustrative in this respect. During the Second World War, Japanese forces stationed troops on Spratly Island, with a submarine base on Itu Aba that was subsequently used for the invasion of the Philippines in 1941.⁷⁸ In the aftermath of the Pacific War, the US established a military base at Subic Bay on the western side of Luzon Island; this was closed in 1991. In response to confrontations with Chinese paramilitary forces, the Filipino government has recently announced the reopening of its former base to the Philippine military on

⁷⁵ Memorandum of understanding between the Department of Defense of the United States of America and the Ministry of Defense of the People’s Republic of China regarding the rules of behaviour for safety of air and maritime forces, signed in Washington and Beijing, 9–10 Nov. 2014, http://archive.defense.gov/pubs/141112_MemorandumOfUnderstandingRegardingRules.pdf.

⁷⁶ For further discussion of military diplomacy, see Peter Dutton, ‘Military activities in the EEZ: a US–China dialogue on security and international law in the maritime commons’, China Maritime Studies Institute, US Naval War College, Newport, Rhode Island, China Maritime Studies, no. 7, 2010.

⁷⁷ See Sun Kai and Guo Peiqing, ‘Beiji zhili jizhi bianqian ji zhongguo de canyu zhanlue yanjiu’ [Research on changing Arctic governance mechanisms and China’s participation and strategy], *Shijie jingji yu zhengzhi luntan* [Forum of world economics and politics], 2 March 2010, pp. 118–28.

⁷⁸ M. S. Samuels, *Contest for the South China Sea* (New York: Methuen, 1982).

the basis of a 15-year lease under the Subic Bay Metropolitan Authority.⁷⁹ Under the Enhanced Defense Cooperation Agreement signed with the United States in April 2014, Manila has now agreed to open five air bases to the US military on a rotational basis.⁸⁰ Of even greater symbolic significance is the fact that the Shinzo Abe administration in Japan has secured a new defence agreement with the Philippines to transfer equipment and technologies—the first of its kind with an Asian state—and in return gain access to military bases.⁸¹

Australia has reconfirmed its support for the US rebalance to Asia in its 2016 Defence White Paper, expressing direct concerns over the unprecedented pace and scale of China's land reclamation activities.⁸² India is tilting towards stronger defence cooperation with the United States, Japan and Australia in a bid to counter the buildup of Chinese military activities in the Indian Ocean. And Indonesia, which has traditionally played a neutral role in the region, is now in the process of strengthening its position as a maritime power at the intersection of the Pacific and Indian oceans. President Joko Widodo has expressed stronger intentions to defend Indonesian national integrity, and is increasingly vocal over the need to protect Indonesian maritime rights. In response, China's MoFA has confirmed that 'the Chinese side has no objection to Indonesian sovereignty over the Natuna Islands', suggesting that the traditional boundary line can be adjusted to accommodate the concerns of non-aligned states.⁸³ On a broader scale, however, it is difficult to see how Beijing can counterbalance these shifting strategic realignments while remaining resolute over its expansive maritime claims.

US–China strategic competition is not limited to the buildup of tensions in the South China Sea; it is also closely aligned with China's future trajectory as a maritime power. The current resolve on the part of Chinese elites to bring about a great maritime rejuvenation has important implications for the country's naval modernization drive as well as the new strategy to protect its global maritime interests. It is to this final dimension underpinning China's maritime ambition that we shall now turn.

The Chinese strategy on maritime power

China's maritime renaissance has been a long time in the making—shaped by centuries-long internal struggles over its national identity as a continental power. This geo-cultural and strategic debate over China's future destiny has resurfaced in recent decades; first inspired by the Soviet threat during the Cold War, and later by fears concerning a US encirclement strategy on the Chinese maritime periphery. During the 1980s, the Soviet naval threat stimulated a re-examination of China's strategic frontiers—understood as 'territories not necessarily coinciding with

⁷⁹ Staff and agencies in Manila, 'Philippines re-opens Subic Bay', *Guardian*, 6 July 2015.

⁸⁰ Prashanth Parameswaran, 'A big deal? US, Philippines agree first bases under new defense pact', *The Diplomat*, 19 March 2016.

⁸¹ Franz-Stefan Gody, 'Japan and Philippines sign defense agreement amid growing tensions in South China Sea', *The Diplomat*, 1 March 2016.

⁸² Commonwealth of Australia, 'Australia 2016 defence white paper', Canberra, 25 Feb. 2016, p. 58.

⁸³ Zhu Xi, 'China holds no objection to Indonesia's sovereignty over Natuna islands', *People's Daily*, 13 Nov. 2015.

national boundaries, but still within the sphere of influence and thus warranting military protection'. The conception of sea as territory (*haiyang guotuguan*) began to attract interest among military strategists, focusing attention on the geopolitical relationship between continental and maritime domains.⁸⁴

In the mid-1990s, in the context of debates over the scope and pace of naval modernization, President Jiang Zemin confirmed that China was both a continental and a maritime power, a declaration that coincided with the commissioning of China's first aircraft carrier on the grounds that sea-battle capabilities relied upon air power.⁸⁵ Towards the end of the decade, the Vice-Chairman of the Central Military Commission, Admiral Liu Huaqing, called for a longer-term strategy for developing a blue-water presence via the establishment of three island chains—the first extending from Japan through the Taiwan Strait to the Philippines by 2010, the second south from Sakhalin to the islands of the south-west Pacific by 2025, and the third from the Aleutian Islands in the north to Antarctica in the south by 2050.⁸⁶ Even today, this widely cited strategic vision continues to invoke concerns over the scope of China's naval ambitions.

Under the Hu Jintao leadership, the role of the navy took on additional significance, prompted by concerns over energy insecurity and the potential for other maritime states, especially the United States, to cut off vital sea lines of communication. Symbolically, in his final speech at the 18th Party Congress in November 2012, Hu Jintao referred explicitly to placing China's maritime power at the centre of strategy in the twenty-first century: 'We should enhance our capacity for exploiting maritime resources, absolutely safeguard China's maritime rights and interests, and build China into a maritime power.'⁸⁷

The fifth-generation leadership under Xi Jinping inherits the task of securing China's destiny as a great maritime nation. Policies and directives aimed at strengthening maritime power are expressed in fairly prudential terms, highlighting the military, economic and political aspects of nation-building with strong nationalistic overtones. Expressed succinctly in the words of Xi Jinping, the strategy involves 'resolutely safeguarding maritime rights and interests', while simultaneously 'valuing the harmony between [*sic*] mankind and the sea ... [and] carrying out cooperation with other countries'.⁸⁸ Under the surface lies a strong moral conviction that the maritime commons in east Asia belong to the PRC.

Interviews conducted by the author over the past three years have revealed that this overtly nationalistic stance is not simply condoned on the basis of a quest for cultural superiority, but rather supported as a necessary response to the failure of past efforts at accommodation under the Hu Jintao regime. A commonly held

⁸⁴ David Shambaugh, *Modernizing China's military: progress, problems, and prospects* (Los Angeles: University of California Press, 2004), pp. 66–9.

⁸⁵ State Oceanic Administration, *Zhongguo haiyang fazhan baogao 2009* [China's Ocean Development Report, 2009] (Beijing: Ocean Press, 2009).

⁸⁶ State Oceanic Administration, *Zhongguo haiyang fazhan baogao 2009*.

⁸⁷ For the full text of Hu Jintao's report at the 18th Party Congress, 17 Nov. 2012, see http://news.xinhuanet.com/english/special/i8cpenc/2012-11/17/c_131981259.htm.

⁸⁸ Xi Jinping, 'Building China into a maritime power', speech to study session meeting of the Political Bureau of the CPC Central Committee, 30 July 2013, www.china.org.cn/report/2013-08/30/content_29871583.htm.

view among Chinese foreign policy experts is that sincere diplomatic efforts at reassuring states over China's peaceful rise have not been appreciated; joint development has not worked because Chinese companies have been discriminated against; and the United States, despite its language of neutrality with respect to maritime disputes, continues to take sides with other claimant states.⁸⁹

In the current ideological climate, it is increasingly difficult to arrive at a balanced analysis of China's naval modernization drive. Given that China's maritime power is now deeply ingrained within the national psyche, naval modernization is no longer simply a question of keeping pace with economic growth, but lies at the heart of debates over China's rightful status in the world. On this basis, any careful examination is inevitably fraught with contradictions and ambiguities. That said, the overall trend appears to be in the direction of establishing a blue-water navy beyond China's maritime periphery.

Naval modernization

It is now difficult to conceive of a future in which maritime power is not a central feature of China's expanding global presence. In today's China, naval modernization and the development of the maritime economy are closely intertwined.⁹⁰ Until recently, naval modernization was proceeding at a measured pace, based upon a conception of national peace and development. The fundamental change under the maritime rejuvenation project is the rapid expansion of naval assets within a relatively short time-frame.

Fears of a possible strategic blockade by the United States and its allies mean that attention remains focused upon preventing foreign forces from entering the Taiwan Strait and China's near seas, a priority encapsulated in the 'offshore defence' strategy based upon anti-access and area denial (A₂/AD). Access denial capabilities include anti-ship ballistic missiles, anti-cruise ship missiles, attack submarines from Russia, indigenous submarines, and Russian-made jet fighters to defend against US control of airspace from bases in Okinawa and Guam.⁹¹ Building upon this trend, major advances are now taking place in undersea warfare, with a focus upon nuclear submarines and sea mines.⁹² Currently, China has an expanding submarine programme for the purpose of defending against foreign navies as well as protecting its broader maritime rights. Its total number of submarines, of all

⁸⁹ Author's interviews conducted at Maritime Security Institute, China Institutes of Contemporary International Relations, Beijing, 3 April 2013; China Institute of International Studies, Beijing, 2 April 2013; and roundtable discussion at the National Institute for South China Sea Studies, Haikou, Hainan Island, 26 July 2013.

⁹⁰ Zhang Haiwen, Wang Fang and Liu Jiayi, 'Luoshi kexue fazhan guan cujin haiyang jingji chixu kuaisu fazhan—guanche "quanguo haiyang jingji fazhan guihua gangyao" de ji dian tihui' [Implement scientific development, promote the speedy development of the marine economy—some points of experience on implementing the 'outline of the national plan for marine economic development'], *Haiyang kaifa yu guanli* [Ocean development and management], no. 5, 2006, pp. 145–7.

⁹¹ See Andrew S. Erickson, 'China's naval modernization: the implications of seapower', *World Politics Review*, 23 Sept. 2014; Ronald O'Rourke, *China's naval modernization: implications for US navy capabilities—background issues for Congress* (Washington DC: Congressional Research Service, 8 Sept. 2014).

⁹² Andrew S. Erickson, Lyle J. Goldstein and William S. Murray, *Chinese mine warfare: a PLA navy's assassin's mace capability*, China Maritime Studies, no. 3 (Rhode Island: Naval War College, June 2009).

class types, rose to 56 in 2015. Some analysts suggest that in quantitative terms Chinese naval assets in the region are now catching up with the military advantage of the United States, although a sole emphasis upon numbers is not a sound basis for assessing actual war-fighting capability.⁹³

Caution is still needed in assessments of the quality of China's naval capabilities as well as of the scope of its naval ambition. Sober analysis suggests that PLAN is in the process of developing a blue-water navy (*yuanyang lanshui haijun*) on the basis of a regionally orientated defence capability.⁹⁴ Efforts are already under way to extend its reach beyond the first island chain into the western Pacific, through the waterway between the Miyako and Okinawa islands. China's Military Strategy white paper, released in 2015, confirmed the shift towards the establishment of a new 'open seas protection' doctrine (*gonghai baohu yuanze*).⁹⁵ However, a far seas defence capability (*yuanghai fangwei*) is currently limited to non-traditional security concerns relating to anti-piracy in the Gulf of Aden, disaster relief exercises, and humanitarian missions led by the naval hospital ship *Peace Ark* (*Heping Fangzhou*).

As discussed earlier, it is becoming increasingly clear that the Chinese military is determined to build up its presence in the Spratly archipelago as the strategic gateway between the Indian and Pacific oceans, an intention revealed by the new submarine base on Hainan Island, the 3,000-metre runways on Woody Island and Fiery Cross Reef, the construction of deep-water ports on certain maritime features, and new radar facilities on Cauteron Island at the southern tip of the Spratlys.⁹⁶ The recent deployment of HQ-9 surface-to-air missiles and J-11 fighter jets on Woody Island, in response to a US Navy freedom of navigation operation conducted within the 12 nautical miles zone of Triton Island in the Paracels, is yet another step forward in China's incremental access denial strategy.⁹⁷

In the east Asia littoral, China's maritime rights enforcement strategy is more difficult to determine because of the number of agencies involved. China's naval buildup has coincided with the expansion of maritime patrols under the newly created China Coast Guard Administration. Following the National People's Congress in March 2013, the State Oceanic Administration (*Guojia Haiyang Ju*) took administrative control over four existing maritime law enforcement bodies in pursuit of a greater degree of coordination and accountability, especially at times of crisis.⁹⁸ China's coastguard fleet is now the world's largest, with increasing

⁹³ Ronald O'Rourke, *China's naval modernization: implications for US navy capabilities—background issues for Congress* (Washington DC: Congressional Research Service, 21 Dec. 2015).

⁹⁴ Andrew Erickson and Gabe Collins, 'China's real blue water navy', *The Diplomat*, 30 Aug. 2012; Phillip C. Saunders, Christopher Yung, Michael Swaine and Andrew Nien-Dzu Yang, eds, *The Chinese Navy: expanding capabilities, evolving roles* (Washington DC: Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, National Defense University, 2011).

⁹⁵ State Council Information Office of the PRC, *China's military strategy* (Beijing, May 2015).

⁹⁶ Hardy and O'Connor, 'China advances with Johnson South Reef construction'.

⁹⁷ Ashley Townsend, 'The strategic significance of China's Woody Island power play', *The National Interest*, 1 March 2016.

⁹⁸ The newly created China Coast Guard Administration integrates the Maritime Police (Ministry of Public Security), the Fisheries Law Enforcement Command (Ministry of Agriculture), China Marine Surveillance (State Oceanic Administration, SOA), and the Maritime Anti-Smuggling Police (Customs General Administration) into a unified force. The Maritime Safety Administration remains under the Ministry of Transport with special control over foreign flagships in Chinese waters and research and rescue operations. A

numbers of 500–3,000 ton vessels capable of conducting longer patrols on the high seas and in disputed waters far from the coast.⁹⁹ In emulating the coastal defences of the United States and Japan, this enhanced paramilitary force carries light weaponry to enforce maritime surveillance. But it lacks an overall legal framework, and PLAN acts as a shield protecting the coastguard vessels in disputed waters, thus obscuring the boundaries of legitimate coastal defence.

China's Silk Roads

Ultimately, the scope of China's naval ambition is likely to be determined by its national identity as a continental state, as indicated by Xi Jinping's grandiose vision of the new 'Silk Roads'. In an address to the Indonesian parliament on 2 October 2013, President Xi Jinping presented a Chinese version of a new trans-continental maritime order reminiscent of the ancient maritime silk route linking south-east Asia with the Mediterranean.¹⁰⁰ In parallel with the revival of the 'Silk Road Economic Belt' announced in Kazakhstan a month earlier, the 'Twenty-first Century Maritime Silk Road' project combines regional diplomacy with economic investment, also providing a means of securing access rights to ports along strategic waterways.

This strategic reorientation was officially launched in 2015 in the form of the 'one belt, one road' initiative (*yi dai yi lu*) supported by a US\$40 billion Silk Road Fund. The policy framework, presented in a joint report by the National Development and Reform Commission, MoFA and the Ministry of Commerce, brings together the respective missions of the three agencies: namely, to expand and deepen China's opening to the outside world; to strengthen integration and connectedness between Asia, Europe and Africa; and to contribute to the peaceful development of humankind.¹⁰¹

It is still unclear from current Chinese documentation how exactly China's domestic priorities can be leveraged successfully to promote a positive transformation of transregional order. For some, the new vision represents a major challenge to the liberal global order by reinvigorating the nineteenth-century preoccupation with spheres of influence—a Chinese Monroe Doctrine stretching from the South China Sea to the shores of the Mediterranean. Others are more sanguine,

National Maritime Affairs Committee (*Guojia haiyang shiwu weiyuanhui*) under the leadership of Xi Jinping assumes overall leadership in strengthening interagency coordination. However, specific mandates and lines of authority between agencies remain blurred in practice. The Maritime Police, for example, is still under the operational guidance of the Ministry of Public Security; and the respective roles of the SOA and PLAN in patrolling disputed waters remains unclear. For detailed surveys of internal struggles over maritime enforcement, see Linda Jakobson, *China's unpredictable maritime security actors*, Lowy Institute for International Policy report (Sydney, 11 Dec. 2014); International Crisis Group, *Stirring up the South China Sea (I)*, Asia report no. 223 (Beijing and Brussels: ICG, 23 April 2012).

⁹⁹ Ryan D. Martinson, 'China's second navy', US Naval Institute, *Proceeding* magazine, vol. 141/4/1.346.

¹⁰⁰ Xi Jinping, speech to the Indonesian parliament, 2 Oct. 2013 http://www.asean-china-center.org/english/2013-10/03/c_133062675.htm.

¹⁰¹ National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce, *Tuidong gongjian sichou zhi lu jingji dai he 21 shiji haishang sichou zhi lu de yuanjing yu xingdong* [The future vision and actions to promote joint construction of the Silk Road economic belt and the Twenty-first-century Maritime Silk Road], Beijing, March 2015, http://www.sdpc.gov.cn/gzdt/201503/t20150328_669091.html.

highlighting the potential collective benefits to be derived from addressing infra-structural bottlenecks and regional conflicts on the basis of economic interventions.

It is still a matter of intense debate whether the new Chinese vision of ‘one belt, one road’ will serve a broader political purpose of defusing the mounting tensions in the South China Sea by pacifying the concerns of east Asian littoral states and balancing US–China strategic competition. From the Chinese perspective, it may provide an economic counterbalance to the US-sponsored Trans-Pacific Partnership, and a possible means of extending maritime cooperation along the Asian littoral. It may even achieve a far greater ambition by resolving the centuries-long struggle to redefine China as a great continental power with maritime strengths. But it is unlikely that the new strategy will act as a substitute for the absence of positive Chinese engagement in the South China Sea.

In the more immediate future, confronted by scepticism on all sides, the Chinese leadership will be forced to tread a very fine line between projecting its interests across the Eurasian continent and protecting the waterways. In the maritime realm in particular, a deep-seated lack of trust over Chinese intentions bedevils strategic planning in Beijing. On this account, Xi Jinping’s signature foreign policy initiative confirms rather than repudiates the argument presented in this article for a stronger legitimate maritime order in east Asia.

Is a legitimate maritime order possible?

In linking China’s ambition to the wider question of maritime order, the analysis presented in this article suggests that the quest for maritime hegemony is not the central driver of Chinese actions in the South China Sea. Although it would appear that a direct challenge to US centrality in the western Pacific is now under way, Chinese strategy is primarily driven by a nationalistic impulse to achieve its self-proclaimed rightful status as a maritime nation. Across the legal, strategic and political dimensions of the Chinese positioning it is possible to identify three key motivations: first, to expand strategic space (*zhanlüe kongjian*) on the maritime periphery to strengthen its national defence; second, to secure its rights to access maritime resources and compete at the technological frontier; and third, to leverage its negotiating position in any future political agreement. In combination, these mixed motives offer a means of consolidating China’s strategic status as a maritime power while balancing wider diplomatic, political and economic interests. What the analysis brings to the surface are the legitimacy stakes involved in China’s maritime rejuvenation. More specifically, it confirms the relevance of legitimacy as a key attribute in China’s broader quest for maritime status.

In terms of the broader regional social dynamics, rising tensions in the South China Sea cannot be attributed exclusively to any single actor, no matter how recalcitrant, or seemingly aggressive, it appears in the eyes of other stakeholders. An action–reaction dynamic between states is a major impetus behind the upward trend in the escalation of conflict. Hence a sharper focus upon the likely constraints and opportunities involved in developing a more durable maritime order based

upon social consent provides a means of redirecting attention towards positive engagement while remaining acutely aware of the key constraints involved.

Is a legitimate maritime order possible? Here I offer three key observations, drawing upon the framework presented earlier that brings together power dynamics, institutional mediation and conflict prevention.

First, we are witnessing a breakdown of the boundary between maritime freedoms and national security that is leading to an escalation of strategic competition between the United States and China. Clearly, strategic reassurances are required on the part of both states over the limits of their national ambitions in maritime east Asia. Chinese attempts to secure strategic space on its maritime periphery have created a classical security dilemma—when military or diplomatic actions taken by one state to reduce vulnerability are seen by other states as threatening, thus leading to a spiral of unintended provocations—with the buildup of military forces on a regional scale.¹⁰² The situation is further complicated by China's strong normative—and, at times, ideologically driven—stance with respect to nation-building. Under these circumstances, any US intervention in the name of stabilizing the South China Sea could be perceived in Beijing as a quest to impose a US-centric power-based maritime order that discounts the legitimate concerns of emerging naval powers.

To adopt Homer's Greek metaphor, adapting to changing power dynamics under these conditions is like crossing the perilous Messina Strait: navigating between the Scylla of power competition and the Charybdis of maritime nationalism (a dilemma rendered into Chinese as *jintuiliangnan*).

In practical terms, navigating this dilemma requires shifting to a new paradigm of collective responsibility that places an obligation upon all states to unite national security with the broader imperative of safeguarding the maritime commons. Here it is worth restating a fundamental principle of the law of the sea among nations, first articulated in 1967 by a Maltese diplomat, Arvid Pardo, in an impassioned speech to the UN General Assembly at the height of superpower Cold War rivalry: Legitimate defence needs and the balance of terror, as well as the interests of all countries, can far better be safeguarded by developing within an international framework credible assurances that the sea-bed and the ocean floor will be used exclusively for peaceful purposes.¹⁰³

On the eve of the 50th anniversary of this propitious occasion in diplomatic history, a renewed commitment to the demilitarization of the South China Sea—inclusive of disputed maritime features and the deep sea—is now of central importance in mitigating the buildup of strategic and economic competition. At the political level, a higher ambition to safeguard the deep-sea frontier for the future of humankind, first announced half a century ago, may well be the catalyst for a meaningful and enduring US–China maritime partnership—assuaging in equal measure China's anxieties over its national security status and America's concerns over its global security leadership. Building upon the recent success in establishing

¹⁰² Robert Jervis, 'Cooperation under the security dilemma', *World Politics* 40: 1, 1975, pp. 167–214.

¹⁰³ UN General Assembly, 22nd Session, First Committee, 1515th Meeting, official records, A/C.1/PV.1515, 1 Nov. 1967, p. 7.

a US–China climate partnership, this would represent a significant step forward in sharing responsibility for safeguarding the global commons.

Second, maritime rights and entitlements dominate the regional agenda, leading to weak maritime security governance. A central tenet of a rules-based maritime order is the fulfilment of collective obligations. Yet, across the region, political and diplomatic engagement in maritime affairs is now heavily circumscribed by maritime nationalism. Historical legacies and rising consciousness over maritime rights, in part driven by UNCLOS deadlines, are currently reinforcing national security imperatives over collective gains. Under these conditions, there exists a huge risk that over time an entitlement-based approach will lead to the fragmentation of regional cohesion.

More fundamentally, a weak consensus over collective obligations is undermining the potential to respond to the multiple security challenges now facing the region. At the consultative and functional levels, arrangements are in place to facilitate greater regional cooperation over maritime security. The ASEAN–China Maritime Consultative Mechanism, the marine electronic highway in the Malacca Strait and the regional cooperation agreement on combating piracy and armed robbery against ships in Asia provide pertinent examples. However, a longer-term regional strategy for governing the seas does not as yet exist.

An important question is how to establish regional governing mechanisms that are likely to endure. For this to happen, a concerted effort is required on the part of China and ASEAN to finalize the proposed code of conduct and thereby pave the way for a broader and more inclusive political framework aimed at strengthening maritime security governance. In terms of catching up with technological advances, the adoption of stronger regulatory controls—over deep-sea mining, the laying of sea cables and mines on the ocean seabed, and the buildup of military capabilities—is now a critical task if we are to avoid a dangerous action–reaction dynamic in both economic and military competition.

In short, the creation of a *stable* and *legitimate* maritime order depends as much upon the equality of obligation as it does upon the equality of entitlement.

Third, a regional strategy for conflict prevention has yet to emerge. In the absence of a strong regional capacity for preventing and managing conflicts, the hope of a legitimate maritime order rapidly diminishes. Under present conditions in the South China Sea, attention is predominantly focused upon avoiding strategic miscalculations and the rather elusive task of building trust to reduce uncertainty. Confidence-building measures remain important, but it is impossible to escape the reality that building trust is a long-term project. A more active and enlightened response would be to initiate a collective process to counter the buildup of tensions over time. In the first instance, one important step forward would be to galvanize efforts towards the construction of an integrated regional strategy for preventing maritime conflicts in all guises. Broad-ranging discussions over practical measures could consider the establishment of a region-wide emergency notification system for arrests by maritime patrols; an early response mechanism

for mitigating natural disasters; data-sharing agreements to support scientific advances in monitoring trans migratory fish stocks; trilateral dialogues between scientists, corporations and local stakeholders over resource management; and enhanced military and civilian humanitarian coordination efforts.

A recent example of conflict-preventive action is instructive in demonstrating the relevance of external mechanisms for moderating behaviour. Responding to an incident in May 2013 when Filipino coastguards shot and killed a member of a Taiwanese crew in a fishing boat in the Luzon Strait, the Philippines and Taiwan signed an agreement on 5 November 2015 to cooperate over law enforcement. It seeks to avoid the unnecessary use of force by establishing an emergency notification system, and introducing protocols to ensure the prompt release of detained vessels and crew.¹⁰⁴ Given that this particular incident took place just 24 nautical miles off the Philippine coast where the EEZs of both parties overlap, the agreement constitutes an important breakthrough in conflict prevention.

These key constraints and suggestions for moving forward merit further investigation. For the purposes of this article, they raise awareness of the need for a multi-layered response to the maritime crisis that recognizes the value of building social consent. Based upon my earlier premise, high political stakes are involved in maintaining a balance between order and legitimacy in maritime east Asia. If this cannot be achieved, there exists a serious risk that the region will become mired in endless struggles over maritime sovereignty that further fan the flames of power competition and nationalism. Building a more legitimate and peaceful maritime order is not beyond the realm of the possible. But it will require a political framework that can both mediate the concerns of major powers in the region and address the mounting challenges of maritime security affecting all states and peoples.

Conclusion

This article has taken a new approach towards interpreting China's ambition in the South China Sea by taking into account the broader transformation of maritime order. Even if we view the maritime order in east Asia in strictly realist terms, it is evident that legitimacy concerns are already affecting the underlying conflict dynamics in the region, further undermining the prospects for collective action. In his recent book on world order, Henry Kissinger proposes a balanced approach to order-building conditioned upon the dynamic interplay between power and legitimacy, specifically in reference to the United States and China. In his words: 'Order always requires a subtle balance of restraint, force, and legitimacy. In Asia, it must combine a balance of power with a concept of partnership.'¹⁰⁵ The equilibrium that I have in mind is more reflective of expanding maritime interests *and* obligations, as well as cognizant of the political imperative for social consent between major powers and among the littoral states of maritime east Asia.

¹⁰⁴ Agreement concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters, *Taipei Times*, 20 Nov. 2015, <http://www.taipeitimes.com/News/front/archives/2015/11/20/2003632889>.

¹⁰⁵ Henry Kissinger, *World order: reflections on the character of nations and the course of history* (London: Allen Lane, 2014).

A dynamic conception of maritime order that allows for political adjustments over time is more likely to endure. In the South China Sea this requires a multilayered framework that recognizes a threefold need to adapt to evolving maritime power dynamics, to respond to rising maritime security challenges and to strengthen conflict management. A legitimate maritime order in east Asia need not come at a cost to national integrity, nor even involve a trade-off between national security and collective obligations; but it will require sponsorship on the part of regional powers, especially the United States, China, ASEAN, Japan and South Korea.

So where does China fit in? While a pattern of confrontation and engagement underpins the Chinese strategy, an overriding concern with maritime nationalism now determines both rhetoric and action. Above all, an irredentist-inspired ideology evokes an image of Great Power chauvinism, confirming fears that the Chinese leadership is intent on achieving its ambition regardless of the legitimate concerns of other states. Consequently, the maritime rejuvenation project is now incurring serious legitimacy deficits that are likely to constrain unilateral action in the immediate future. More worrying for Beijing is the fact that its recent actions aimed at securing strategic space in the maritime domain have proved to be counterproductive, consolidating rather than displacing US centrality in regional security.

A major risk is that the current spiral of confrontation will provoke the United States to discount the legitimacy stakes involved and succumb to the use of force in a bid to deter Chinese ambition. As many analysts have noted, the preservation of US dominance in the region is not a prerequisite for future regional stability, which instead requires a more equitable balance of power between the United States and China.¹⁰⁶ Equally, any strategy seeking to build an exclusive maritime order that denies China political influence as an emerging maritime power is misguided. It runs the risk of generating a parallel Sinocentric order by default. The Chinese leadership is already seeking to shape the strategic environment by appealing to Asian cultural norms and expressions of civilizational identity that run counter to a common East–West maritime consensus.

In the final analysis, it is the fragility of the existing rules-based maritime order that is of primary concern. To the extent that legitimacy concerns inform China's political calculus, and a broader conception of self-interest supports the maritime strategy of all states concerned, the potential still exists for positive cooperative action in the South China Sea. What we are confronting in this part of the world is one of the defining diplomatic and strategic challenges of the contemporary era—China integrating more deeply into the evolving maritime order on the basis of mutual security and collective responsibility.

¹⁰⁶ Michael D. Swaine, 'The real challenge in the Pacific: a response to "how to deter China"', *Foreign Affairs* 94: 3, May–June 2015, pp. 145–53. For a broader discussion, see Hugh White, *The China choice: why America should share power* (Sydney: Penguin, 2013).