

# Rules and Rocks: The US-China Standoff Over the South China Sea Islands 岩対ルール 南沙諸島で米中行き詰まる

Mel Gurtov

The long-running, multi-party dispute over control of islets in the South China Sea (SCS) is worsening both in rhetoric and provocative activity. Meeting in late May at the Shangri-La Dialogue on regional security, US and Chinese defense officials sparred over responsibility for the increased tension, though they stopped short of issuing threats. In fact, all sides to the dispute say they want to avoid violence, prefer a diplomatic resolution, and support freedom of navigation. Both the US and China insist that the dispute notwithstanding, their relationship overall is positive and enduring. But China, citing its indisputable sovereignty over the SCS, is backing its claim in ways that alarm the US and several Asian governments: construction of an air strip on the Spratly Islands, a land reclamation project that has artificially expanded its claimed territory, and most recently emplacement of two mobile artillery vehicles.

Accompanying these latest Chinese actions are acknowledgments by the foreign ministry of their military purposes. The original explanation of China's expanding presence on the islands was that they were intended for search-and-rescue operations, environmental protection, and scientific work. Now the explanation is the need to protect Chinese territory. The Pentagon has responded by publicly discussing US options such as flyovers and navigation in Chinese-claimed air and sea space. A US navy surveillance aircraft has already challenged China's sovereignty claim by overflying Fiery Cross Reef in the Spratlys, prompting a Chinese order (which the aircraft ignored) to leave the area. In the meantime, US military assistance to other claimants,

including Vietnam and the Philippines, has enabled their coast guards to at least keep an eye on Chinese activities.



The current standoff repeats, but at a more dangerous level, positions taken at earlier gatherings of US, Chinese, and Southeast Asian officials. (I reported on these, with background information on the dispute, at In the Human Interest, Posts #23 and 41.) In February 2014, for instance, Kerry called on the parties to abide by international law and the UN Convention on the Law of the Sea (UNCLOS), despite the fact that China, but not the US, has ratified UNCLOS. Then and at all other times, the Chinese have insisted that the SCS is among China's "core interests"; it has rejected

both international adjudication of the issue (which the Philippines is seeking by pressing its claims before the UNCLOS arbitration panel) and the involvement of outside powers. Thus, at meetings of the ASEAN (Association of Southeast Asian Nations) Regional Forum in August 2014, when Kerry put forward the idea of a freeze on “provocative acts” in the SCS area, China’s reaction was to accuse the US of being the provocateur by its “finger-pointing”; their representatives urged focusing instead on a code of conduct (see below) between China and the ten member-states of ASEAN.

The US-China debate over the SCS would be a tempest in a teapot were it not for two other sources of contention. One is the gas and oil potential underneath the South China Sea, long subject to intense competition, contracting with oil companies to divide up the ocean floor, and differing interpretations of maritime boundaries. Measuring territorial waters is complicated by exclusive economic zones (EEZs), zigzagging coastlines, and unclear continental shelves, for instance. The other matter is the friction that almost inevitably arises from the different US and Chinese strategic postures in East Asia. The US deploys enormous air, naval, and nuclear power across the region, and ever since World War II has treated the Pacific as America’s lake, above all in creating a vast network of bases and access points that ensure military predominance. Rising China will not accept a subordinate position in the region, one Chinese scholar writes, and is prepared to undertake more muscular responses to perceived threats: “China today is no longer susceptible to U.S. coercion or bullying. Under President Xi Jinping, the more confrontational stance Washington takes, the more assertive Beijing will become in response. That’s the new reality of Chinese foreign policy” (Feng Zhang, “Provoking Beijing in the South China Sea Will Only Backfire on Washington”).

The US “rebalancing” of forces in Asia since

2009, with emphasis on deploying additional naval power to the Pacific; its backing of Japan in its territorial dispute with China over the Senkaku/Diaoyutai islands in the East China Sea, as well as US support generally of Japan’s nationalistic revival under Abe Shinzo; and the Trans-Pacific Partnership trade agreement that aims to undercut China’s commercial as well as political success in Asia—these are among the US moves in Asia that have prompted Chinese pushback both economically and militarily. China’s buildup in the SCS should be seen as part of that pushback, though its row with Vietnam and the Philippines goes back to the 1970s. Its [latest official strategy statement](#), issued on May 26 just prior to the start of the Shangri-La Dialogue, explicitly links “maritime military struggle” and “active defense” to the “provocative” actions and “meddling” of foreign parties in that area. The strategy statement conceives of a greatly increased role for the Chinese navy in “offshore waters defense.”<sup>1</sup>

### The US and Chinese Positions

The US position was summarized by Daniel Russel, assistant secretary of state for East Asian and Pacific Affairs, on May 13. “Our strategy aims to preserve space for diplomatic solutions,” [he said](#), “including by pressing all claimants to exercise restraint, maintain open channels of dialogue, lower rhetoric, behave responsibly at sea and in the air and acknowledge that the same rules and standards apply to all claimants, without regard for size or strength. We strongly oppose the threat of force or use of force or coercion by any claimant”. As for the actions of other claimants, notably Vietnam and the Philippines, Russel said:

“It is certainly true that other claimants have added reclaimed land, placed personnel, and conducted analogous civilian and even military activities from

contested features. We have consistently called for a freeze on all such activity. But the scale of China’s reclamation vastly outstrips that of any other claimant. In little more than a year, China has dredged and now occupies nearly four times the total area of the other five claimants combined.”

“Rules, not rocks,” said Russel, is the essence of the US position. But for China, rocks, not rules, seem to be central. China has rejected all five other countries’ claims to the islands, and has taken aim at the US for “interfering” in the dispute. In answer to the charge that Chinese actions in support of its claims endanger regional peace, PRC officials have pointed to other countries that have increased their presence on some islands, as Russel’s statement above acknowledged. The escalation of Chinese activities in the SCS is therefore presented as defensive: to ward off other (illegal) challengers and send the message of military preparedness to protect sacred Chinese interests. But the scale and speed of Chinese activities in the Spratlys to change the status quo is what most worries other parties.

A war of words and cat-and-mouse games at sea can readily entrap governments in an escalating crisis. During the May 2015 Shangri-La Dialogue, US defense secretary Ashton Carter rejected China’s territorial grab and vowed that “the United States will fly, sail and operate wherever international law allows.” Admiral Sun Jianguo, China’s deputy chief of staff, insisted that “China and the Chinese military have never feared the devil or an evil force, and we are convinced by reason and not by hegemony. Don’t ever expect us to surrender to devious heresies or a mighty power”. Even though both men also spoke of finding common ground, they hinted at a military scenario that might well lead to a

direct collision: China’s unilateral declaration of an air defense identification zone (ADIZ) over the Spratlys and US defiance of it, a scenario that unfolded in 2013 in the disputed East China Sea islands when US B-52 bombers flew over China’s ADIZ.



**Sun Jianguo, deputy chief of staff of the People's Liberation Army, left, and Ashton Carter, US Secretary of Defense at Shangri-La Dialogue in Singapore.**

### Opportunities for Conflict Management

Although China’s declared position would seem to make the sovereignty issue nonnegotiable, that doesn’t rule out conflict management. Ownership can be separated from, and thereby detached from, political and economic issues. All sides might agree, for instance, not to object to others’ sovereignty claims and to freeze the situation on the ground, disallowing further construction and land reclamation,<sup>2</sup> entry of vessels and weapons, and introduction of civil or military personnel. Agreement on sharing of energy resources would be a positive step that could begin with appointment of a joint China-ASEAN management committee.

Crafting a binding code of conduct is an option



that seems to have China's and ASEAN's support. They agreed on the current version, the Declaration on the Conduct of Parties in the South China Sea (DOC), in November 2002. It commits the parties to resolving disputes by peaceful means, without using threats or force and in accordance with international law, including UNCLOS. The key article 5 of the Declaration states:

The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner. Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence . . .

Unfortunately, what constitutes self-restraint and how actions that are not peaceful or restrained would be handled, remain to be determined. The concerned Southeast Asian nations seek to rely on multilateral trust-building efforts to ease tensions, while the Chinese prefer bilateral talks and, it seems clear, unilateral actions to strengthen their claim.

More formal legal avenues might also be utilized despite China's objections, including the Philippines arbitration case before UNCLOS<sup>3</sup> and recourse to the International Court of Justice. The US does not stand on firm ground, however, when it comes to international legal remedies. Like so many other treaties promoted by the United States, UNCLOS has been awaiting Senate approval since 1994! ([Professor Jerome A. Cohen, a leading expert on international law, urges ratification.](#)) Moreover, the US has a long record of ignoring adverse ICJ decisions and,

since 1986, has rejected the court's compulsory jurisdiction. The US could be a more effective actor here if it were more law-abiding—certainly more effective than by deploying forces to test China's intentions.

Inasmuch as US-China relations impacts the SCS controversy, thought might also be given to strengthening the maritime code of conduct and related agreements that were reached at the 2014 summit.<sup>4</sup> These agreements provide for exchanges of defense documents, avoidance of accidents at sea, and notification of military exercises. Upgrading the agreements might include advance notification of exercises and curtailment of close-in US surveillance of China's coastline, the latter a frequent subject of Chinese criticism. China's agreement not to impose an ADIZ over disputed territory could be a quid pro quo for stoppage of US overflights.

### The Logic of Peace

The SCS dispute holds the possibility of suddenly spiraling out of control. As events of the last year indicate—not only the Chinese oil rig incident but also landings of personnel on particular islands, contracts with international oil companies, detention of fishermen, deployments of ships, interference with other parties' vessels, and anti-Chinese riots in Vietnam—none of the stakeholders has a monopoly on good behavior. We could be on the verge of a dangerous action-reaction game in which each side takes a step to deter the other, only to end up provoking increasingly threatening actions that compel a forceful response.

All the parties, and especially Washington and Beijing, surely see the down side to continued tension—not just the risk of a firefight, but also the damage to China's reputation as a “responsible great power,” the retreat of US-China relations to Cold War-style tests of resolve, the difficult policy choice the ASEAN countries would ultimately and unwillingly have

to make between supporting China or the US, and the impact on all parties' commercial interests. "Conflict is bad for business," the new head of US Pacific forces is quoted as saying. It's bad for many other things too, but countries have gone to war over far lesser stakes when clashing notions of self-righteousness and national security prevail over common sense.

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### Notes

<sup>1</sup> State Council Information Office of the People's Republic of China, *China's Military*

*Strategy* (Beijing, May 26, 2015). The relevant portion of the report states: "On the issues concerning China's territorial sovereignty and maritime rights and interests, some of its offshore neighbors take provocative actions and reinforce their military presence on China's reefs and islands that they have illegally occupied. Some external countries are also busy meddling in South China Sea affairs; a tiny few maintain constant close-in air and sea surveillance and reconnaissance against China. It is thus a long-standing task for China to safeguard its maritime rights and interests." Thus, "the PLA Navy (PLAN) will gradually shift its focus from 'offshore waters defense' to the combination of 'offshore waters defense' with 'open seas protection,' and build a combined, multi-functional and efficient marine combat force structure. The PLAN will enhance its capabilities for strategic deterrence and counterattack, maritime maneuvers, joint operations at sea, comprehensive defense and comprehensive support. . . . The traditional mentality that land outweighs sea must be abandoned, and great importance has to be attached to managing the seas and oceans and protecting maritime rights and interests."

<sup>2</sup> Carl Thayer disputes the notion that China is merely engaging in land reclamation. He argues that China is "building forward staging bases" for oil and gas and fishing purposes, as prelude to military uses of the islands. See Thayer, "No, China is Not Reclaiming Land in the South China Sea," *The Diplomat*, June 7, 2015.

<sup>3</sup> The Philippines took its claim before an arbitral tribunal under the UNCLOS in January 2013, challenging the validity of China's so-called nine-dash line as the basis for its territorial claim. China rejected an invitation to submit evidence, whereas the Philippines filed evidence in March 2014. Manila is now responding to the five-judge panel's questions and a ruling is pending. Gregory B. Poling, "The Philippines vs. China in the South China



Sea: A Legal Showdown,” *The National Interest*.

<sup>4</sup> See Bonnie Glaser, “A Step Forward in US-China Military Ties,” November 11, 2014.