



# **Raising Islands, Rising Tensions: Perceptions from Washington on the South China Sea Dispute**

---

**Benjamin A. Engel,  
Thomas Burkhalter,  
Seunghwa Madeleine Han,  
and Jordan Marks**


August 2016

## Knowledge-Net for a Better World

---

The East Asia Institute(EAI) is a nonprofit and independent research organization in Korea, founded in May 2002. The EAI strives to transform East Asia into a society of nations based on liberal democracy, market economy, open society, and peace.

The EAI takes no institutional position on policy issues and has no affiliation with the Korean government. All statements of fact and expressions of opinion contained in its publications are the sole responsibility of the author or authors.

 **EAI** is a registered trademark.

Copyright © 2016 by EAI

This electronic publication of EAI intellectual property is provided for non-commercial use only, as long as it is unaltered and complete. Copies may not be duplicated for commercial purposes. Unauthorized posting of EAI documents to a non-EAI website is prohibited. EAI documents are protected under copyright law.

“Raising Islands, Rising Tensions: Perceptions from Washington on the South China Sea”  
ISBN 979-11-87558-03-3 95340

The East Asia Institute  
#909 Sampoong B/D, Eulji-ro 158  
Jung-gu, Seoul 04548  
Republic of Korea  
Tel. 82 2 2277 1683  
Fax 82 2 2277 1684



## Raising Islands, Rising Tensions: Perceptions from Washington on the South China Sea Dispute

Benjamin A. Engel, Thomas Burkhalter,  
Seunghwa Madeleine Han, and Jordan Marks<sup>1</sup>

East Asia Institute

August 2016

The South China Sea (SCS) has, in recent years, been a flashpoint for contention among the countries which count their shores along its coastline, and for the global community as a whole. All told, six countries claim to be the rightful owners of various shoals, reefs, rocks, and islands in the region. Disputes over territory and the legality of certain maritime activities have been unresolved for decades, yet tensions have recently risen alongside bellicose rhetoric and the aggressive consolidation of claimed territorial features within the SCS from China starting around the beginning of 2014. The most recent point of contestation in the SCS comes on the heels of a change in Chinese policy, according to Truong Minh Vu and Ngo Di Lang (CSIS). In their view, the Chinese strategy known as “salami slicing” has five core features, centered upon a desire to gradually alter the territorial status quo through persistent yet gradual pressure.<sup>2</sup> This pressure will be low-intensity and diffuse, coming in the form of simultaneous small disputes against other claimants, bolstered by a wide array of diplomatic tools, military coercion, and bilateral negotiations to maximize the leverage available to the Chinese government vis-à-vis other countries and the international community as a whole.<sup>3</sup> To that end, the Chinese government has been slowly but surely solidifying its grasp over islands, reefs, and shoals in the SCS. China has dredged the ocean

---

<sup>1</sup> Benjamin A. Engel is a research associate at the East Asia Institute and a Ph.D. candidate in East Asian Studies at Seoul National University’s Graduate School of International Studies where he is focusing on modern Korean history with a particular interest in ROK-US relations. Thomas Burkhalter is an intern at the East Asia Institute and a graduate student at the University of California - San Diego’s School of Global Policy and Strategy where he is focusing on international economics and management as well as Japanese and Korean area studies. Seunghwa Madeleine Han is an intern at the East Asia Institute and an undergraduate student at Stanford University where she is majoring in International Relations and English. Jordan Marks is an intern at the East Asia Institute and is also a graduate student at the University of California - San Diego’s School of Global Policy and Strategy where he is focusing on international economics, international development, non-profit management, and Korean studies.

<sup>2</sup> Vu Minh Truong and Lan Di Ngo, “Flexible Response to Deter in the South China Sea,” CSIS, April 7, 2016, accessed June 28, 2016, <http://amti.csis.org/flexible-response-deter-south-china-sea/>.

<sup>3</sup> Ibid.



floors for sand to build artificial islands and reclaim thousands of square feet from the sea, and recently constructed various military related installations on several rock features in the Spratly Islands, including Fiery Cross Reef and Subi Reef.<sup>4</sup> These Chinese actions have in turn set off alarms in Manila, Hanoi, Washington, and many other capitals. The US has responded by staking a claim under UNCLOS for freedom of navigation (FON) and has conducted FON operations in waters claimed by China, ratcheting up the tensions in the region. ASEAN could provide a local vehicle to confront what some see as Chinese aggression, yet not all member states are anxious to be on Beijing's bad side. Indeed the SCS dispute is wrapped up in a myriad of issues including international law, territorial disputes, conflict between rising and established powers, and the forming and weakening of alliances.

This analysis will explore perceptions of the conflict through a lens of several renowned American think tanks to try to capture dominant narratives and opinions in the mainstream American academic and professional discourse on the state of current affairs in the SCS. The scope will encompass a broad overview of the contemporary circumstances and the political, economic, and security considerations from which they may have been borne. Individual points of international contention will also be highlighted and analyzed, with special consideration being given to the case of international arbitration under the United Nations Convention on the Law of the Sea (UNCLOS) framework between the Philippines and China over the legality of the Chinese *nine-dash line* claim over the SCS. The considerations of other global actors, notably those of the US and the US desire to maintain FON operations in the SCS, will also be explored. The following analysis will culminate with an examination of policy measures that could be employed to reach a mutually amenable solution for all concerned parties.

## Philippines Arbitration Case

A key development in the SCS dispute was the initiation of an arbitration tribunal under the UNCLOS treaty by the Philippines against China, both countries being signatories to UNCLOS and having ratified the treaty. The case was announced on January 23, 2013 by the Philippines but the tribunal was officially rejected by China a month later. The Philippines formally submitted its entire case in March 2014 with China given until December of the same year to submit its counter-arguments. No official submission was ever made by the Chinese, but the tribunal accepted a public Chinese government position paper as its de facto argument. On October 29, 2015, the tribunal issued a ruling on whether or not the tribunal held jurisdiction over the 15 claims made by the Philippines and concluded that the tribunal held jurisdiction over seven and deferred the ruling over jurisdiction of the other eight claims to the ruling over the merits of the claims, which is set to be released on July 7, 2016. The Philippines claims can be classified into three groups according to Jay Batongbacal (CSIS): claims that accuse China of declaring rights and entitlements in excess

---

<sup>4</sup> Dingli, Shin et al., "China's Maritime Disputes," Council on Foreign Relations, February 2016, accessed June 30, 2016, [http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#/#/](http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#/).



of what is agreed upon under UNCLOS, claims that China is illegally occupying or controlling features in the SCS, and claims that China illegally declared rights to and exploited resources within the Philippines EEZ.<sup>5</sup> The claims brought forth by the Philippines all address the Spratly Islands in the more southern part of the SCS and Scarborough Shoal, which is located further to the north. The Paracel Islands, which the Philippines also claim, are not part of this case. Manila further sought clarification by the tribunal as to which of the eight Chinese occupied features in the region are entitled to a 12-mile territorial sea, and which of them are merely low-tide elevations which are entitled to nothing.<sup>6</sup> The ruling by the tribunal proved shocking to many international observers: what many suspected to be a somewhat weak and muddled ruling came about as a comprehensive and decisive repudiation of most Chinese claims in the SCS. The validity of the nine-dash line was thrown out on the grounds that China had previously ratified the UNCLOS treaty, and the court further ruled on the status of each feature in question, determining that each and every one did not meet the standards of an island and thus were not entitled to an exclusive economic zone (EEZ) of their own.<sup>7</sup> Mischief Reef, occupied by the Chinese since 1995, was declared inside the Philippine EEZ, as was the Second Thomas Shoal, which made headlines in 2014 when Filipino troops stationed on a derelict ship marooned on the island were blockaded for weeks on end by Chinese forces.<sup>8</sup>

The validity of the Filipino case and the usefulness of the UNCLOS tribunal as a means to settle the SCS problem is a matter of debate. According to Paul Gewirtz (Brookings), the UNCLOS tribunal has no jurisdiction to rule on sovereignty of specific features and merely has the right to classify features (island, rock, etc.), thus delimiting the rights that can be declared by the country that controls any said feature. Determining which features in the SCS are classified as rocks instead of islands may clear up some issues regarding overlapping EEZs, but the foundational problem of who should rightfully control certain features will remain unresolved. For this reason, Gewirtz does not expect this or other UNCLOS arbitration cases to settle the SCS disputes.<sup>9</sup> Joseph Chinyong Liow (Brookings) argues a similar point that as long as claimants demand indisputable sovereignty over their respective claims, political will, rather than international law, will inevitably shape the outcome.<sup>10</sup> This view sharply contrasts with that of Jerome A. Cohen (CFR) who argues

---

<sup>5</sup> Jay Batongbacal, "Arbitration 101: Philippines v. China," CSIS, January 21, 2015, accessed June 29, 2016, <http://amti.csis.org/arbitration-101-philippines-v-china/>.

<sup>6</sup> "South China Sea Arbitration Anticipating the Next Moves and Countermoves," CSIS, June 20, 2016, accessed June 30, 2016. [https://csis-prod.s3.amazonaws.com/s3fs-public/event/160620\\_SChina\\_Sea\\_Arbitration.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/event/160620_SChina_Sea_Arbitration.pdf)<https://www.csis.org/node/36404>.

<sup>7</sup> Liow, Joseph Chinyong. "What Does the South China Sea Ruling Mean, and What's Next?" Brookings. July 12, 2016. Accessed August 02, 2016. <https://www.brookings.edu/2016/07/12/what-does-the-south-china-sea-ruling-mean-and-whats-next/>.

<sup>8</sup> Ibid.

<sup>9</sup> Paul Gewirtz, "Limits of Law in the South China Sea," Brookings, May 2016, accessed June 23, 2016, <http://www.brookings.edu/research/papers/2016/05/06-limits-of-law-south-china-sea-gewirtz>.

<sup>10</sup> Joseph Chinyong Liow, "The South China Sea Disputes: Some Blindspots and Misperceptions." The Asan Forum, July 31, 2015, accessed June 29, 2016, <http://www.theasanforum.org/the-south-china-sea-disputes-some-blindspots-and-misperceptions/>.



that “bombarding” China with international legal battles will force China from its demand of purely individual bilateral talks between itself and other claimants.<sup>11</sup> Batongbacal also argues that China could face more legal challenges in the wake of the Filipino victory in the jurisdiction ruling, which signified that UNCLOS arbitration was a viable path for other claimants in the SCS.<sup>12</sup>

However, even in this latter group of scholars, UNCLOS tribunals are mostly seen as a tool for the US and its allies to bring China to the bargaining table to settle the dispute diplomatically rather than as a mechanism that will indisputably settle issues between claimants. A popular view is that a positive ruling for the Philippines will push China to compromise or, if China defies the tribunal’s decision, suffer a significant loss in soft power. Additionally, with China’s public declaration that they will ignore the tribunal’s ruling, other claimants in the dispute are likely to gravitate closer to Washington.<sup>13</sup> Given these potential costs, scholars urge the US and Filipino governments to build a coalition of support for the tribunal’s ruling to increase the pressure on Beijing to acknowledge the ruling and begin a process of finding a diplomatic solution to this dispute. This point takes on further importance given the fact that China is running a counter-public relations push with its allies.<sup>14</sup> But, the US argues this point from a position of weakness. There is near unanimous support for the US finally ratifying the UNCLOS treaty so that it can overcome taunts by Beijing that the US is demanding it to “do what I say, not as I do.” A final concern is that a “win” for the Philippines will embolden the Filipino government to more vigorously police the contentious area leading to higher tensions and more conflict.<sup>15</sup>

With the recent litigation against China under UNCLOS, it remains to be seen what we can expect moving forward, beyond recent Chinese proclamations wherein they declared they shall not abide by the ruling of the tribunal, wherein the UNCLOS tribunal rule decisively in favor of the Philippines. A recent panel discussing the issue at CSIS outlined four possible or likely reactions from China.<sup>16</sup> First, China could immediately return to island building reclamation activities at the Scarborough Shoal, only 190 miles off of the coast of Manila, violating China’s ASEAN declaration and infuriating the US and the Philippines. Second, China could reenact a now de-

---

<sup>11</sup> Jerome A. Cohen, “Forecasting the Aftermath of a Ruling on China’s Nine-Dash Line,” *Foreign Policy*, April 20, 2016, accessed June 23, 2016, <http://foreignpolicy.com/2016/04/20/a-big-ruling-on-the-south-china-sea-nine-dash-line-draws-near-beijing-philippines-japan-taiwan-aftermath/>.

<sup>12</sup> Jay Batongbacal, “Implications of the Philippines v. China Award on Jurisdiction,” November 5, 2015, accessed June 29, 2016, <http://amti.csis.org/implications-of-the-philippines-v-china-award-on-jurisdiction/>

<sup>13</sup> Gregory Poling, “A Tumultuous 2016 in the South China Sea,” CSIS, February 18, 2016, accessed June 29, 2016, <https://www.csis.org/analysis/tumultuous-2016-south-china-sea>.

<sup>14</sup> Jerome A. Cohen, “Is there a way for Beijing to save face after the South China Sea arbitration ruling?” *South China Morning Post*, June 15, 2016, accessed June 29, 2016, <http://www.scmp.com/comment/insight-opinion/article/1975070/there-way-beijing-save-face-after-south-china-sea>.

<sup>15</sup> Mingjiang Li, “Possible Consequences of the Philippines’ South China Sea Arbitration Case,” CSIS, December 17, 2015, accessed June 29, 2016, <http://amti.csis.org/possible-consequences-of-the-philippines-south-china-sea-arbitration-case/>.

<sup>16</sup> “South China Sea Arbitration Anticipating the Next Moves and Countermoves,” CSIS, June 20, 2016, accessed June 30, 2016, [https://csis-prod.s3.amazonaws.com/s3fs-public/event/160620\\_SChina\\_Sea\\_Arbitration.pdfhttps://www.csis.org/node/36404](https://csis-prod.s3.amazonaws.com/s3fs-public/event/160620_SChina_Sea_Arbitration.pdfhttps://www.csis.org/node/36404).



funct blockade of Filipino forces stationed on a derelict ship on the Second Thomas Shoal, one of the many rock features in the region. The last occasion of blockade ended only when the Filipinos loaded a civilian ship with supplies and foreign journalists and dared the Chinese military to respond with force. Third, China could establish an air defense identification zone in the SCS (ADIZ), similar to the one imposed recently over a large part of the East China Sea. Finally, China could respond by deploying air assets to already established air bases and hangers in the Spratly Islands.

## US Freedom of Navigation Operations

The US main avenue to challenge main of these Chinese moves, given its lack of status as a claimant in the SCS, has been FON operations. At the ASEAN Regional Forum in 2010, the US clearly described its interests in the SCS as pertaining to freedom of navigation (FON), peaceful settlement of disputes, and adherence to international law.<sup>17</sup> In order to emphasize these interests, the Obama administration has focused much of its attention to the current disputes in the SCS. According to a number of scholars from various US think tanks, the most important of these interests is the right to FON operations and exercises. The right to FON exercises and operations is a maritime right under international law that was first compromised during the Third United Nations Conference on the Law of Sea (UNCLOS III), which concluded in 1982.<sup>18</sup> Given that FON operations are legally permissible under international maritime law due to UNCLOS III, the US argues that itself and other claimants in the SCS dispute have every right to conduct these operations within the territories of the SCS.

However, China's strategic ambiguity and lack of clarified claims in the SCS has resulted in a shift in the objective of FON operations. Prior to the current SCS disputes, FON operations were conducted in response to another player forcing excessive maritime claims. Due to China's current strategic ambiguity, these operations are now viewed as a method to prevent such excessive maritime claims.<sup>19</sup> Without FON operations undertaken by the US and other claimants in the SCS, it is argued that China would be capable of asserting its currently ambiguous maritime claims with little to no challenge from the international community. Yet, challenge from the US in the form of FON operations has been deemed by China as an attempt to militarize the SCS. The problem herein lies with the diverging definition of "militarization" between the US and China. According to China, any FON operations undertaken by the US that pass through China's EEZs have been viewed by China as a form of militarization. The US, however, views its FON operations and its patrolling of international waters as a means to promote the right to FON opera-

---

<sup>17</sup> Douglas H. Paal, "China's Counterbalance to American Rebalance", Carnegie Endowment for International Peace, November 1, 2015, accessed June 27, 2016, <http://carnegieendowment.org/2015/11/01/china-s-counterbalance-to-american-rebalance-pub-61857>

<sup>18</sup> Lynn Kuok, "The US FON Program in the South China Sea", Brookings, June 2016, accessed June 27, 2016, <http://www.brookings.edu/research/papers/2016/06/07-south-china-sea-fon-kuok>

<sup>19</sup> Ibid.



tions earned during UNCLOS III.<sup>20</sup> The US could also very well call China out for its hypocrisy regarding patrolling through EEZs, as China itself has previously conducted surveillance and FON operations in US EEZs around Guam and Hawaii, which, according to China's stance on FON operations, would be seen as a form of militarization against the US.<sup>21</sup>

In response to US FON operations and what China views as US violations of international law, China has deployed military equipment and missiles (such as the HQ-9 missile deployment to the Paracel Islands) to islands in the SCS, stating that these deployments are purely a defensive response to US FON operations. In response to these deployments, the US continues to increase its FON operations in the SCS. This back and forth between the US and China regarding US FON operations and China's subsequent reactions can be described as a classic quid-pro-quo or action-reaction dilemma regarding deterrence, in which each competitor justifies its actions as a defensive or pre-emptive measure against supposed provocation from the other competitor.<sup>22</sup> According to Liselotte Odgaard (Wilson Center), unless both China and the US tone down deterrence simultaneously, the likelihood of diffusing the current situation in the SCS is highly unlikely.<sup>23</sup>

While there may be some truth to the above statement by Odgaard, other scholars from various US think tanks have also brought up countless policy recommendations pertaining to the issue surrounding the right to FON operations in the SCS. Contrary to Odgaard's suggestion, the main consensus seems to be for the US to continue its FON operations and get China to clarify its claims in the SCS. According to Timothy Heath (RAND), the US must continue to build just the proper amount of international pressure through joint patrols and the use of international courts in order to quell China's aggressive stance in the SCS.<sup>24</sup> The outcome of the upcoming arbitration case against China brought up by the Philippines under the UNCLOS treaty will help clarify the intricacies behind FON operations, which will allow the US to argue that its FON operations are legally permissible by international law.<sup>25</sup> This would in turn help garner support for FON operations from the international community and encourage other key players in Asia to carry out their own FON operations in the SCS as well. For the US, the dispute surrounding FON operations is more about the preservation of international law as described in UNCLOS III. If the US

---

<sup>20</sup> Ibid.

<sup>21</sup> Michael Swaine, "America's Security Role in the South China Sea", Carnegie Endowment for International Peace, July 23, 2015, accessed June 27, 2016, <http://carnegieendowment.org/2015/07/23/america-s-security-role-in-south-china-sea-pub-60826>

<sup>22</sup> Douglas H. Paal, "Obama Tests China's Xi on South China Sea", Carnegie Endowment for International Peace, March 30, 2016, accessed June 27, 2016, <http://carnegieendowment.org/2016/03/30/obama-tests-china-s-xi-on-south-china-sea/j1se>

<sup>23</sup> Liselotte Odgaard, "If China and the U.S. Wants the South China Sea Disputes to Cool Down", October 6, 2015, Accessed June 27, 2016, <https://www.wilsoncenter.org/article/if-china-and-the-us-wants-the-south-china-sea-disputes-to-cool-down>

<sup>24</sup> Timothy R. Heath, "Beijing Ups the Ante in the South China Sea Dispute with HQ-9 Deployment", March 29, 2016, accessed June 27, 2016, <http://www.rand.org/blog/2016/03/beijing-ups-the-ante-in-south-china-sea-dispute-with.html>

<sup>25</sup> Kuok, "The US FON Program."





were to dial back on these operations due to Chinese opposition, it is argued that the right to FON operations could disappear altogether.

## No Clear Path Through the Murky Waters of the SCS

With the variety of challenges that persist in the region even after the ruling and no clear-cut strategy that can neatly solve the issue, there exists considerable variation among expert recommendations regarding the position the US should take in the SCS. While there is virtual agreement that the US must ratify UNCLOS if it wishes to avoid having its say undermined by members of the international community, as well as demonstrate respect for the tribunal ruling, scholars continue to debate the degree to which the US should get involved, as well as the nature of said involvement—much of which will be dependent on whether China continues its defiance of the ruling.

In the short-term, a majority of scholars have called for the US and China to **exercise restraint and demonstrate clear respect for the ruling**, especially given the definitive position The Hague has taken against China's claims. Joseph Chinyong Law (Brookings) cautions that the US should avoid aggravating the militarized status quo of the SCS. Though the US continues to patrol the region, Law suggests that "China's SCS claim is also informed by a deep sense of vulnerability" resulting from US military activities in the region.<sup>26</sup> Jeffrey A. Bader (Brookings) adds that the US should clarify that it is willing to reconsider its own "island" holdings in the SCS, many of which would qualify as rocks under the tribunal's criteria. Bader also cautions against the US encouraging other states to bring their own cases against China to avoid escalating tensions.<sup>27</sup> As for China, Richard C. Bush (Brookings) writes that the ruling presents China with an opportunity to "[seriously] assess how it has exercised its diplomatic, coercive and legal power over the last half-decade," suggesting that retreating from aggressive policies in the region and committing to international institutions might better serve China's interests for the future.<sup>28</sup>

Scholars have also largely been in consensus that the US should **continue and amplify diplomatic efforts in the region to deescalate tensions with China**. Prior to the release of the ruling, Paul Gerwitz and Lynn Kuok advocated pairing FON operations with redoubled diplomatic efforts with China. Kuok writes, "Diplomatic protests... should not only be regarded as ends...but also as means by which, coupled with diplomatic consultations, a common understanding of...maritime claims may be achieved."<sup>29</sup> Douglas H. Paal (Carnegie) calls for the US and China to scale back on inflammatory rhetoric and focus on mutual protection of the status

---

<sup>26</sup> Joseph Chinyong Liow, "What does the South China Sea ruling mean, and what's next?," Brookings, July 12, 2016, accessed on August 2, 2016.

<sup>27</sup> Jeffrey A. Bader, "What the United States and China should do in the wake of the South China Sea Ruling," July 13, 2016, accessed on August 2, 2016.

<sup>28</sup> Richard C. Bush III, "The South China Sea ruling and China's grand strategy," Brookings, July 13, 2016, accessed on August 2, 2016.

<sup>29</sup> Kuok, "The US FON Program."



quo by agreeing to exercise restraint on their military operations in the SCS.<sup>30</sup> Michael Swaine (Carnegie) calls for the US to do away with deterrence altogether to avoid further aggravation of the SCS dispute. He writes that, in the short term, the US should press China and other claimants to pledge not to employ force without warranted provocation and lead diplomatic talks to demilitarize the region.<sup>31</sup> For the long term, Swaine suggests that the US demilitarize in the SCS, warning that “the current course of action threatens to produce a far more dangerous situation that will prove extremely difficult to reverse.”<sup>32</sup>

For the long-term, scholars have expressed a wide swath of opinions on how the US and China’s neighbors should proceed in the SCS—opinions that are largely contingent on whether China continues to resist the ruling and take military risks in the region. For that reason, **taking an increasingly militaristic US approach in the SCS remains controversial**. Bader argues that the need for FON operations in the SCS has diminished post-ruling, suggesting that the US maintain its military presence in the SCS but avoid exercises close to Chinese installations that may be seen as “gratuitously provocative.”<sup>33</sup> Paal argues that the US should exercise restraint unless China pursues further aggressive policies in the region—say, by militarizing the Scarborough Shoal.<sup>34</sup> On the other hand, Andrew S. Erickson (CFR) insists that the tribunal’s lack of enforcement capabilities means the US should deploy robust FON operations to demonstrate its commitment to defending the tribunal ruling.

A variety of scholars have supported continuing or upping **US naval activity in the SCS**. Prashanth Parameswaran (Brookings) points out that the Hague ruling eliminates the need for Washington to “even invoke innocent passage” to justify its naval operations within close distance of China’s claims.<sup>35</sup> In the past, scholars have suggested a nuanced continuation of current US policy. Kuok (Brookings) recommended that the US continue to assert maritime rights by continuing its current program of FON operations in the SCS—but with renewed clarity. Kuok wrote that the US must demonstrate its commitment to FON by specifying on record the maritime right legitimizing each FON operation, publishing a consolidated report of diplomatic protests made in respect of excessive maritime claims and by clarifying whether China understands the US-China MOU of regulations on behavior during air and maritime encounters to apply to the entirety of the SCS. Kuok has also suggested that the US persuade other states to engage in FON operations, stage diplomatic protests or engage in joint patrols.<sup>36</sup>

---

<sup>30</sup> Paal, “Obama Tests China’s Xi on South China Sea.”

<sup>31</sup> Michael Swaine, “The Heat: South China Sea Arbitration Result,” July 12, 2016, accessed on August 2, 2016.

<sup>32</sup> Swaine, “America’s Security Role in the South China Sea.”

<sup>33</sup> Jeffrey A. Bader, “What the United States and China should do in the wake of the South China Sea Ruling,” July 13, 2016, accessed on August 2, 2016.

<sup>34</sup> Douglas Paal, “Beijing’s Refusal to Accept South China Sea Ruling Has All Sides on Edge,” July 13, 2016, accessed on August 2, 2016.

<sup>35</sup> Prashanth Parameswaran, “U.S. South China Sea policy after the ruling: Opportunities and challenges,” July 22, 2016, accessed on August 2, 2016.

<sup>36</sup> Kuok, “The US FON Program.”



Others have suggested **working more closely with regional militaries**. Prior to the ruling, Gerwitz agreed that the US should clarify the legal bases of its FON operations, adding that the US should also encourage regional military exercises.<sup>37</sup> Richard Javad Heydarian (Brookings) points out that, now, the ruling may serve as basis to conduct multilateral FON operations close to China's artificial islands to enforce the verdict. Others have suggested the US might consider taking a more indirect position by bolstering the defense capabilities of regional militaries to boost deterrence. Regarding potential conflict between China and Vietnam, Joshua Kurlantzick (CFR) recommends that, in addition to potentially developing US-Vietnam combat exercises—a suggestion has since become a reality—the US expand its arms sales to Hanoi, approved by Congress in the fall of 2014, to include aircraft and naval vessels.<sup>38</sup> This would allow regional states to defend themselves without US intervention. Karen B. Brooks (CFR) writes that lifting the remaining ban on arms sales to Vietnam would “accelerate Vietnam’s ability to provide its own minimum credible deterrent capability.”<sup>39</sup> Aaron Picozzi and Lincoln Davidson (CFR) also propose that the US train and equip the coastguards of its regional partners to counter Chinese attempts to control commerce on the SCS.<sup>40</sup>

Alternative avenues via which the US may pursue cooperation with its regional allies **lie in coordinating a unified position on SCS activities among ASEAN members and promoting resource development to pressure China into scaling back on its SCS operations**. Brooks highlights that China has resisted the establishment of a binding Code of Conduct for the SCS since 2002 and therefore calls for the US to encourage ASEAN to draft regulations on activities in the SCS—“if not resolving boundaries, then regarding shared development of resources.”<sup>41</sup> However, Parameswaran has pointed out the inability of ASEAN to adopt a joint statement thus far, suggesting that the US needs to find a way to recruit regional commitment to enforcing the tribunal ruling.<sup>42</sup> Kurlantzick writes that the US could promote ASEAN-China joint economy scientific projects in the SCS to foster trust and lay the foundation for future ASEAN-China resource development projects, which “have the potential to dramatically reduce tensions.”<sup>43</sup>

Despite persisting concerns about how to proceed with respect to China in the SCS, scholars have cautioned that the SCS issue should not inhibit the **US from taking up a broader, forward-looking position in the region**. Law writes that the US must ensure that efforts to strengthen relations with regional partners and allies are “undergirded by an alignment of interests and shared outlooks” among the US and said partners—a commonality that “cannot, and

---

<sup>37</sup> Gerwitz, “Limits of Law in the South China Sea.”

<sup>38</sup> Kurlantzick, “China-Vietnam Military Clash.”

<sup>39</sup> Karen B. Brooks, “A Security Message for the South China Sea,” CFR, August 4, 2015, accessed on June 23, 2016.

<sup>40</sup> Aaron Picozzi and Lincoln Davidson, “Responding to Coast Guard Expansion in the South China Sea,” June 9, 2016, accessed on June 23, 2016, <http://blogs.cfr.org/zenko/2016/06/09/responding-to-coast-guard-expansion-in-the-south-china-sea/>

<sup>41</sup> Brooks, “A Security Message for the South China Sea.”

<sup>42</sup> Parameswaran, “U.S. South China Sea policy after the ruling: Opportunities and challenges.”

<sup>43</sup> Kurlantzick, “China-Vietnam Military Clash.”



should not, be assumed.”<sup>44</sup> Jennifer Harris (CFR) agrees, acknowledging that many countries in the region are economically dependent on China. Parameswaran addresses this potential issue with relation to forthcoming bilateral talks between Manila and Beijing, writing that it may be difficult for Washington to support the talks, for Philippine interest in strengthening economic ties with China may undermine US interests in the region. Harris suggests that, if the US wants to curtail Chinese expansionism in the long run, the US must help the economies of its allies in Asia wean themselves off of China. Law adds that Southeast Asian states have expressed that they do not want the SCS issue to dominate US engagement in the SCS, encouraging the US to broaden the scope of its engagement in the region.

## Looking to New Horizons

Given that the dispute in the SCS has largely disrupted the political and economic relationships in the region along with the US, the Philippines case against China could be one of the most important sea tribunals to date. As the tribunal ruled that the majority of the features in the SCS under dispute have been classified as rocks, China has no jurisdiction to the overly extensive EEZs, which they have claimed through their nine-dash line. Nonetheless, it was no surprise to the international community that the tribunal ruled in favor of the Philippines, in essence undermining the legitimacy of China’s nine-Dash line, nor is it surprising that China has publicly denounced the ruling. The vast majority of scholars at numerous US think tanks agree that, in response to the tribunal verdict, the Philippines and the US should react with prudence and caution while seeking a peaceful resolution through talks with China—all in hopes of persuading China to recognize the legitimacy of the ruling and ultimately achieve de-escalation of regional tensions. However, as the probability of successful de-escalation remains unknown, so does the future for the ever-escalating dispute in the SCS.

---

<sup>44</sup> Liow, “What does the South China Sea ruling mean, and what’s next?”

## Knowledge-Net for a Better World

---

- This working paper is the result of research activity of the East Asia Institute's Center for International Relations Studies and was part of EAI's Internship Program which partners with students from Stanford University and the University of California - San Diego. The writing of the paper was done by all authors under the supervision of EAI research associate Benjamin A. Engel.
- Any citation or quotation is prohibited without prior permission from the authors.
- This publication and other EAI reports can be found on our website, [\[EAI Working Papers\]](#). The contents of this publication do not necessarily reflect the views of the East Asia Institute.
- For inquiries:  
Young Hwan Shin, the Chief of the Peace and Security Research Unit  
Tel. 82 2 2277 1683 (ext. 107) [yhshin@eai.or.kr](mailto:yhshin@eai.or.kr)
- Typeset by Benjamin A. Engel