

Part I

Current Issues of the South China Sea

Chapter 1

Maintaining an Asian Maritime Order Matters for SCS Peace and Stability

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The South China Sea (SCS) has been relatively calm lately. However, the SCS disputes are resilient and may worsen promptly because none of the root causes for standoffs have been effectively dealt with. This paper will track these causes that have underlined the upward spiral of dispute escalation among the SCS claimants in recent years, and analyze particularly the military aspects of the dispute. At the same time, this paper explores possible measures for dispute management, an essential precondition for creating a conducive maritime order in Asia.

An Asian maritime order matters to all in the region and is the key to maintaining peace. As far as the SCS is concerned, a stable order must be built on a regional consensus that disputes should not be resolved by force. As such militarization, although natural in all border disputes, should be consciously lowered to a minimum level, which specifically means no deployment of offensive weapons systems in the occupied islands. The existing rules of the game governing high-sea encounters should be observed to prevent accidental fire and standoffs, now looming large with US entry into the 12 nautical miles of China-held islands.¹ Most urgently, crisis management mechanisms such as Code of Conduct (CoC) should be negotiated in good faith and enforced collectively. It is encouraging that China and ASEAN countries signed the guiding framework for the negotiation of the final CoC agreement in July 2017, acknowledging the above points. This means that despite the fact that there is no maritime order in Asia, as far as the SCS disputes are concerned, it is not a given that the SCS dispute will definitely deteriorate to the point of military confrontation, and a crisis can be avoided if all involved share the same desire to contain it, especially through de-escalating militarization and joint efforts for status quo stability.²

¹ *China File* discussion, “Freedom of Navigation Operations in the SCS are not Enough,” 16 May 2017. If US vessels are stationary within the 12-NM of China-held islands for an extended of time suggested by some US officers, the PLA counterparts might resort to ramming tactics to expel them under rising domestic pressure. Talk with Chinese military analysis in Beijing, November 2016.

² All the disputants in the SCS disputes have rejected the use of force as a method of sovereignty resolution. Therefore, military confrontation is largely a distant possibility in the SCS.

The Lasting Impact of the SCS Ruling on the Dispute Management

A stable order is often and ideally embedded in a generally accepted legal regime of dispute settlement. The UN Convention on the Law of the Sea (UNCLOS) provides the basic rules and guidance for managing maritime affairs.³ However, the conclusion of this set of laws was marked by international politics at the time, resulting in key maritime powers' decisions not to join the club. When it came to effect, many scholars in Asia worried that it may complicate the already messy situation in the SCS. For instance, the UNCLOS recognize both the concept of the exclusive economic zone and the historical maritime rights. The debate over the legal basis for transit by naval vessels through the EEZ was particularly acute with an outcome that continues to affect the current interaction between the intruding powers and the regional countries stressing the legal rights of the EEZ against unwarranted outside military intrusion.⁴ Disagreement on the legal interpretations over specific issues covered by the UNCLOS perpetuates the existing maritime disorder in the region, although all East Asian states signed the UNCLOS.⁵

The SCS arbitration case between China and Philippines was a significant event in the history of SCS disputes. China has rejected the ruling as it believes that the whole episode was politicized to serve more of a geostrategic purpose than a commonly acceptable solution - there is no impartial.⁶ For instance, its arbitration that the Taiping Island is rock, not an island, is at odds with most standard definitions of islands. One year after the announcement of the verdict Beijing has not changed its position on the arbitration. At the same time, no enforcement of the arbitration has been in sight, as it was not meant to in the first place. China seems to have got away from any practical effects of the verdict on its SCS claims. Thanks to the government change in Manila and Sino-Vietnamese party-to-party relations, Beijing has taken an upper hand in the battle of "temperature" in the aftermath of the arbitration. Without a tangible buttress from within ASEAN claimants, it is difficult for outside powers to maximize the pressure on China to yield to the verdict.

On the other hand, the verdict will exert a lasting impact on China's SCS claims, the SCS dispute control and the maintenance of the regional maritime order. To Beijing,

³ Views expressed by contributors to "Roundtable: The Arbitral Tribunal's Ruling on the SCS – Implications and Regional Responses," *Contemporary Southeast Asia*, Vol. 38, No. 3, 2016.

⁴ Jing Geng, "The legality of foreign military activities in EEZ under UNCLOS", *Merkourios: Utrecht Journal of International and European Law*, Vol. 28, Issue 74, 2012, pp. 22-30.

⁵ Charles E. Pirtle, "Military users of ocean space and the law of the sea in the new millennium," *Ocean Development and International Law*, Vol.31, No. 1-2, 2003, pp. 7-41.

⁶ Fu Ying, "Why China says no to the arbitration on the SCS," *Foreign Policy*, 10 July 2016.

the arbitration is all negative and has therefore made great efforts to neutralize it. Its initial success notwithstanding, many strategists in Beijing also regard the verdict to be like the Sword of Damocles, constantly above the head.⁷ To a great extent, President Duterte's strategic turn-around was a historic accident, while the Sino-Filipino territorial disputes are structurally entrenched.⁸ Therefore, the arbitration verdict is always a legally useful weapon with which Manila, and to a lesser extent, other claimants to pressurize China for concessions and places Beijing to be in a defensive position whenever there is a breakdown of political relations between China and the other claimants, which can be predictable.

Conflicts inevitable but manageable

As SCS disputes have been turned into a geostrategic rivalry among major powers vis-a-vis China, Sino-US relations will long be affected by the direction of the SCS disputes, for better or for worse.⁹ To the US and other powers in and outside Asia, the SCS dispute is China's soft-underbelly for punches whenever there is an opportunity: China's history-based claim is relatively weak vis-a-vis some provisions in the UNCLOS, Beijing faces ASEAN as a collective, and it is helpless in reversing the efforts to internationalize SCS affairs. US SCS involvement stimulates intervention by a number of regional/extra-regional states into SCS affairs. In contrast, the arbitration to other claimants and their supporters is and will remain cost-effective in countering China's SCS initiatives. Ironically the cost of Philippines' lawsuit in the neighborhood of \$30 million with \$7 million paid to foreign lawyers was extremely cheap in considering the verdict's long-term effects in hurting China's core interests.¹⁰ Additionally, there are other consequences that China has to cope with in the years to come.

- 1) The SCS arbitration has won endorsement in some ASEAN countries, such as Singapore, and the West-centric international society, which regards the verdict as part of the rules-and-law based world order. Legally and morally this has visibly undermined China's SCS claims.

⁷ Prof Wu Shicun held that despite the current pause of Philippines' insistence on China to abide by the ruling, the situation of SCS disputes would become unpredictable and even worse in the years to come. His speech to the international conference Sino-US relations and the South China Sea dispute, University of Macau, 10 November 2016.

⁸ On President Duterte's rule in Philippines, see the special issue of *Journal of Current Southeast Asian Affairs*, Vol. 35, No. 3, 2016.

⁹ You Ji, "Sino-US "Cat-and-Mouse" Game Concerning Freedom of Navigation and Overflight," *Journal of Strategic Studies*, Vol. 39, No. 5-6, 2016, pp. 631-661.

¹⁰ "US urged to reimburse Philippines over the SCS arbitration case", *Xinhua News Agency*, 15 July 2016; and *ABS News*, 21 July 2016.

- 2) The SCS arbitration delegitimizes the nine-dash line, which has seriously eroded the foundation of the Chinese claims based on historic rights.
- 3) As the SCS arbitration has de-justified China's law enforcement in the Spratlys inside the nine-dash line, China will be under greater pressure in conducting administrative patrols.
- 4) The SCS arbitration serves as an invitation for other claimants to challenge China's maritime rights, leading towards possible stand-offs in countering Chinese activities in the SCS.
- 5) The game is not over and will last long.

Ideally, UNCLOS can serve as a legal framework to help build an Asian maritime order if it can generate a consensus on how to deal with territorial disputes among the disputants. However, as Australia's former foreign minister Bob Carr pointed it out, the territorial challenge is unresolvable. It is impossible for any legal solution to be struck over the SCS disputes if there is no common ground for such solution.¹¹ Largely any sovereign government would subject its handling of the country's international dispute to the concerns of domestic politics.¹² In China, as in some Asian states, the rising levels of nationalism have placed huge constraints on the leadership to make territorial concessions even if these are just tactical. A legal solution is more strategic and political by nature and thus creates zero-sum responses unless concerned claimants find it preferable to accept the verdict, like the solution between China and Vietnam over the demarcation of the Gulf of Tokin. China's rejection of the arbitration verdict was well anticipated and it will not budge under external pressure.

Is this an example of China's obstruction to constructing an Asian maritime order? Generally speaking, Beijing respects the existing world order as it is the largest beneficiary of this Western-dominated order.¹³ The success of Xi Jinping/Trump summit in April 2017 can be seen in the light that Xi finally convinced Trump that Beijing would not challenge US global leadership and the existing world order. This brought "shared chemistry" between the two national leaders. If the interests of all claimants can all be addressed properly, it is in Beijing's interests to accept a rules-based maritime order

¹¹ Bob Carr, *The SCS disputes: some practical thinking from Australia*, Parliament of Australia, posted by Cameron Hill, 25 September 2012.

¹² See for instance, Indonesia-Malaysia dispute over the Ambalat Region could not be resolved even there was a decision by the International Court of Justice. John Butcher, "The International Court of Justice and Territorial Dispute between Indonesia and Malaysia in the Sulawesi Seas," *Contemporary Southeast Asia*, Vol. 35, No. 2, 2013, pp. 235-57.

¹³ Johnstone, Iain, "Is China a Status Quo Power?," *International Security*, Spring 2003.

in Asia. The logic is simple. Without a shared code of conduct, standoffs are likely to happen. In current international politics standoffs normally hurt a large country more than a small state, especially when the latter is part of the regional alliance system.

To risk a level of simplicity, China is dialectical on the order-building in Asia. It is generally supportive to the efforts as long as the direction of the regional security architecture under construction does not undermine its key national interests. In a way, Beijing's world-view on the world order reflects Trump's, testified by his withdrawal from the Paris Climate Agreement. However, to Beijing, the current urgent task for the construction of the Asian maritime order is not to resolve the territorial disputes but to contain the conflicts within a certain limit.¹⁴ Stabilizing the situation is the first step for the eventual erection of a generally accepted Asian maritime order. Therefore, management of the SCS disputes and prevention of new escalation are foundational to the endeavor of the order-building, which requires a series of regime reconstructs.

First, mechanisms of *de-combatization* should be created. This paper argues that SCS militarization is a natural result of territorial disputes and is inevitable. Yet it is essential to reduce the intensity of militarization. This serves the interests of all claimants which should make sure that militarization does not reach the level of *combatization*.¹⁵ For instance, China and other claimants will not deploy offensive weapons systems in their occupied islands. More relevantly, US freedom of navigation operations (FONOPs) inside any country's 12 nautical miles would not go beyond the challenge to sovereignty claims. This is to say that such operations would not create a scene of military confrontation leading to an accidental exchange of fire.¹⁶ More on this will be discussed in later sections.

Secondly, formulating a list of *dos* and *don'ts* and incorporating them into the on-going CoC negotiations. These would include provisions against excessive law enforcement against civilians, e.g., fisherman arrests; constraints of unilateral commercial activities in disputed areas, such as oil and gas extraction; and facility construction in the occupied islands for the purpose of power projections. Sino-Filipino acquiescence on Filipino fishermen's return to fish in the waters around the Scarborough Shoal has paved the way for a Sino-Filipino rapprochement that has eased the prospects of standoffs in

¹⁴ Fu Ying and Wu Shicun, "South China Sea: How We Got to this Stage," *China News Weekly*, 9 May 2016.

¹⁵ You Ji, "Xi Jinping and PLA Centrality in Beijing's South China sea Dispute Management," *China: An International Journal*, Vol. 15, No. 2, 2017, pp. 4-24.

¹⁶ Sam Bateman, "The risks of US freedom of navigation operations in the South China Sea, 1 June 2015," *East Asian Forum*, 1 June 2015.

the area.¹⁷ Relevantly, that China and other ASEAN claimants have agreed not to reclaim any SCS islands that do not have any human habitation structures has marked a new starting point for all to avoid creating new irritants. In addition, Beijing's promise not to reclaim Scarborough Shoal is an important CBM measure to restore ASEAN confidence in China's ease of its assertive SCS policy. More importantly, the conclusion of the CoC Framework in July testifies the acceptance of the concerned parties to a rule-based mechanism of dispute management. If the CoC is to be signed as planned the regional maritime states can finally expect a no-surprises state of affairs in the Spratlys in the years to come. Positively, this will contribute to the next stage negotiation for a permanent SCS peace structured into an abiding legal regime.

Thirdly, Spratly claimants should distinguish sovereign patrols for domestic consumption and routine patrols for hardening sovereign claims at the expense of others. The typical example is the James Shoal. China shows its flag once or twice each year as sovereignty statement for the domestic audience. Although this flag-showing generates media criticism and negative response in Malaysia, the activities have not intensified the disputes and tension between the two countries.¹⁸ Therefore, the efforts to build an Asian maritime order requires the claimants not to turn symbolic sovereignty patrols to routine administrative patrols casually. Apparently, the patrol frequencies matter and when they are kept to a minimum, stability of SCS disputes can be expected.

Militarization: Debate and Reality

Militarization has been a buzz word in describing the SCS disorder. According to Professor Austin definitions of the English word "militarize" range from giving an activity or organization a military character (with even a small number uniformed personnel or equipment) to a "process by which a society organizes itself for military conflict and violence."¹⁹ This definition is fine but is more applicable to a nation that goes for a whole-sale militarization as a national goal for the purpose of aggression. It is probably too broad for defining a situation where claimant states are geared to deal with the military aspects of territorial disputes.

It is a common belief that SCS militarization becomes an irreversible trend.

¹⁷ During the Sino-Filipino summit in Beijing in 2016 a draft agreement was signed by the two sides governing the fishing matters in the disputed areas in the Spratlys. This is a positive step in easing tension between the two countries. Dr. Li Lingqun's speech to the international conference *Asian Response to the Trump Era*, The SCS Research Centre, Nanjing University, 26-27 April 2017.

¹⁸ "Malaysia protests against China's intrusion of island near Sarawak," *Malaysia Insider*, 15 August 2015.

¹⁹ Greg Austin, "Xi Jinping and Maritime Militarization," *Diplomat*, March 23, 2016.

However, this paper argues that the term of militarization is confusing and packed with a lot of political meaning. It is useful to provide a realistic and practical definition of the term for the sake of building a workable maritime order in Asia.

The debate over the meaning of militarization

Generally, militarization is a natural and normal result of territorial disputes between claimants who deploy soldiers in the occupied islands and build defensive facilities to protect their holdings. The real challenge is not the militarization of the disputes among the claimants as long as no claimant commits irredentism through ejecting others from their islands by force. The real challenge is now located in the waters around these islands involving a seesaw battle over the EEZ rights, resources extraction, and law enforcement. The seriousness of this challenge lies in the fact that while territorial disputes (islands) are mainly among the disputants, maritime disputes (waters in the EEZ) also involve top powers that have structured SCS disputes into the geostrategic rivalry in the region and beyond. Hence to PLA analysts, facilities on the islands by themselves do not lead to military confrontation but the navies' direct physical contacts do as indicated in the naval vessels' activities of intruding and shadowing.

This evolution further worsens the phenomena of maritime disorder in the Asian-Pacific region. Specifically, as mentioned earlier, US FONOPs inside 12-NM of the Spratly Islands may raise the levels of militarization because it may trigger physical contacts unless the other side does not react. First, the FONOPs are conducted by warships and secondly, the receiving countries have to respond by naval intercepts under tremendous domestic pressure. The action-reaction dynamics may escalate the combat gears with prospects of *combatizing* the encounters.²⁰ Concretely the “cat-and-mouse” FONOPs game between American and Chinese naval forces in the SCS galvanizes a visible level of *combatization*.

Currently, the term of militarization mainly refers to China's construction of defense facilities in its reclaimed islands in the Spratlys. Yet to PLA analysts, facilities per se do not lead to military confrontation. According to Professor Austin definitions of the English word “militarize” range from giving an activity or organization a military character (with even a small number uniformed personnel or equipment) to a “process by which a society

²⁰ Senior Colonel Du Wenlong of the PLA Academy of Military Science to *News in Focus Today* (今日关注), CCTV-4, 20 July 2016. The Cold War examples are indicative of such possibilities. See David Walker, *Cold War at Sea: High-Sea Confrontation between the United States and the Soviet Union*, Annapolis: Naval Institute Press, 2000.

organizes itself for military conflict and violence.” Large doses of political meanings have been injected into the concept.²¹

The fact is that as SCS disputes are now part of geostrategic rivalry militarization is a useful mechanism for subduing the opponents, especially from a position of strength. For instance, a mainstream Pentagon view seems to see any other means rather than the military to be ineffective in dealing with the China challenge in the SCS. This can be testified by a congressional report: *First, we are strengthening our military capacity to ensure the US can successfully deter conflict and coercion and respond decisively when needed. Second, we are working together with our allies and partners from Northeast Asia to the Indian Ocean to build their maritime capacity. Third, we are leveraging military diplomacy to build greater transparency, reduce the risk of miscalculation or conflict, and promote shared maritime rules of the road. Finally, we are working to strengthen regional security institutions and encourage the development of an open and effective regional security architecture.*²² Theoretically, most of these efforts are embedded in military intentions and capabilities, a clear sign of militarization of the disputes.

In practice, Spratly militarization is natural, as mentioned earlier, starting from the inception of the disputes. In the 1970/80s, militarizing the Spratlys in way of fortification was a top priority by the ASEAN claimants. Reclamation began with five airstrips built on the reefs as the most convincing proof of militarization. They are capable of landing and taking off combat aircraft and military transports: Thitu (Philippines), Spratly (Vietnam), Swallow Reef (Malaysia), and Itu Aba (Taiwan). When China began its Spratly occupation in 1988 it constructed defense facilities but remained as the only claimant without an airstrip until 2015. The majority of the inhabitants in all of the occupied islands are soldiers, and they are all under military control. The military implements the mission of routine patrols in disputed areas. Certainly, these inject a militarizing character into the SCS dispute, rendering the dispute not only about sovereignty and diplomacy but also militarily. Islets there have been turned into electronic warfare stations to collect navigation and flight information of passing civilian and naval ships and aircraft. The soldiers record climate and tidal changes for preparation for future combat. Anti-aircraft guns are deployed, and ports are built to anchor naval vessels.

However, history also shows that Spratly militarization *per se* does not cause military confrontation, still less war, even though it causes uneasiness. The fact is that the dispute

²¹ Greg Austin, “Xi Jinping and Maritime Militarization,” *Diplomat*, March 23, 2016.

²² Ronald O'Rourke, *Maritime Territorial and EEZ Disputes Involving China: Issues for Congress*, Congressional Research Service, 27 April 2016.

had been under control most of the time, as all the claimants have never ceased to seek political solutions.²³ This is to state that militarization in terms of fortifying the occupied islets and naval patrols is the normal part of territorial dispute left by history. Militarization in the form of building defensive facilities in the islets has not changed the collective resolve of all claimants not to resort to force in resolving disputes, nor the fact that no islets have been taken by force in the last 20 years, a valuable contribution of the Declaration of Conduct to the maintenance of the status quo, which is the largest common denominator shared by all claimants. Here, *fortification* is a better definition to capture the real meaning of the debate on the term militarization. It strips the political couture out of it.

A crucial dividing line between pro-active militarization and passive fortification is marked by the category of the weapons systems deployed in the occupied islands. Offensive weapons point to the former. Therefore, for the situation of the Spratlys dispute to remain stable and predictable, all claimant states should commit themselves not to field offensive weapons in the region, while defensive weapons are regarded as acceptable means of self-defense. When the islets are physically small this was not a grave concern. Even when the reclaimed islands opened new space for such weapons to be inducted, they are still very small in size. In a way, China will bear a heavy responsibility to maintain a relatively low level of militarization since it now owns several large islands in the Spratlys with three long airstrips there. So far Sino-US acquiescence that no military combat aircraft should be deployed has been strictly observed, a sign of relief against dispute escalation.²⁴ For its own self-interests, the PLA Air Force would not go for this deployment because of the three “highs”: high temperature, high humidity, and high salt levels would substantially reduce the longevity of the aircraft. At the current level of territorial dispute, there is no urgent need for such deployment anyway.

Another interesting point needs to be addressed. There is a grey area in defining what are the defensive weapons. A typical example is China’s HQ-9 anti-air missiles, briefly deployed in the Woody Island in 2015 and 2016, mainly for joint war games by the Southern War Theatre Command. With a range of only 200-km, it is generally regarded not as an offensive system as it is far away from the Spratlys and only covers a fracture of the vast SCS areas.²⁵ Its range is about that of Vietnam’s EXTRA rocket

²³ Ralf Emmers, *Geopolitics and Maritime Territorial Disputes in East Asia*, Routledge, 2009.

²⁴ Interviews with US and Chinese security analysts in Beijing and Australia, September 2016.

²⁵ Timothy Heath, “Beijing ups the ante in SCS dispute with HQ-9 deployment,” *China Brief*, 28 March 2016.

launchers that were deployed in the Spratlys in August 2016. Yet given the relatively short distances of the islands in the South China Sea, a system with a range of 200-km can place several of them under the attack range, the logic for its deployment echoes China's.²⁶ Therefore, the Sino-ASEAN CoC negotiation should make specific regulations on what weapons systems should be deployed, with defining the criteria of the range, firepower, lethality and so on.

Land reclamation and management of militarization

The ASEAN claimants' reclamation resulted in five airstrips built on the reefs, convincing proof of militarization followed by China in the 2010s. China constructed defense facilities in its Spratly holdings but without an airstrip until 2015. Recently China's land reclamation has been a hot topic lately.²⁷ In comparable terms, its endeavor was much bigger in scales and pace and may have substantially changed the shape of the islets (tactical status quo). On the other hand, what China did has not changed the map of occupation by all claimants (strategic status quo). China will not and cannot strengthen its sovereignty claims in the Spratlys with reclamation.²⁸ It remains the only country not announcing the territorial baselines and points in the Spratlys. The challenge to China is had it not started land reclamation in 2014, it would have lost all opportunities to do so, given the timing of Xi's state visit to America in 2015, the anticipated regime change in Taipei in 2016, the accelerated CoC negotiations and the ruling on Philippines' lawsuit. It would have remained the only country without an airstrip in the Spratlys, an unacceptable phenomenon for the PLA. The questions are why it did reclamation on such a scale and why it built three airstrips at the same time? Is it necessary? The PLA may have tried to avoid a phenomenon "warm spoiled frog" in reclamation. It was still not cost-effective and problematic for the PLA to do reclamation in such a manner, given the lasting international backlash.

There is no denying that in peace-time China's new airstrips have enhanced the PLA's capabilities for SCS operations and, as a result, the level of fortification of the islands. For instance, the enhanced islands can be used as a mid-way forward base for the

²⁶ Le Hong Hiep, "Understanding Vietnam's rocket launcher deployment in the Spratlys," *Strait Times*, 17 August 2017.

²⁷ *Chinese Land Reclamation in the SCS: Implications and Policy Consequences*, Congressional Research Service, 18 June 2015.

²⁸ "China's Island Factory," *BBC News*, 9 September 2014.

PLA Navy's expeditionary task forces to the Indian Ocean.²⁹ The three airstrips in the Spratlys can provide emergency logistical, meteorological, and other help to the PLAN battle groups passing by, e.g., emergency landing for carrier aircraft. More importantly, it extends China's southern air defense depth by 1,000-km. The reclaimed islands better enable forward signal imagery intelligence, reconnaissance, surveillance of crucial SLOCs in the SCS. Finally, the PLA's reinforced SCS presence can help counter activities by other claimants and from extra-regional powers, e.g., through deploying major surface combatants in the newly built ports. All these mentioned above can reduce the PLAN's burden of timely supply to the Spratly Islands by overcoming the long geographic distance from its nearest Hainan land base. Airstrips are especially useful for this purpose as the supplies to the Spratlys are disrupted frequently in the typhoon season.

However, the island defense facilities are only of limited military value in times of major military conflicts. The islands are normally defenseless in a precision bombardment. The airstrips' foundation is built upon soft coral that sustains box caissons and sink with great difficulty. This means that even if the airstrips are solid enough to handle heavy aircraft, i.e., carrier aircraft in an emergency situation, their landing and taking off cannot be too frequent or it would cause serious damage to the runways. Logically the PLA spokesman claim that the airstrips are mainly for logistic and equipment supplies.³⁰ In peacetime, it is not likely for combat aircraft to be deployed in the Spratlys or the aircraft would be damaged quickly due to high temperature, salt, and humidity. In times of war, the airstrips and aircraft are highly vulnerable to attacks. This casts doubt about the real meaning of militarization in such a peacetime construction.

This analysis reflects the technical recognition of Xi Jinping's 2015 commitment not to militarize the reclaimed islands. Politically it was a message that Beijing would not deploy additional weapons systems on top of the current ones that are exclusively light infantry arms. Xi's remarks do not mean that China would not station soldiers or defense equipment there; no other claimants would make such a commitment. More likely it means that despite reclamation, the PLA would be careful in deploying weapons in the islands, a commitment of restraints on the use of force. Beyond that, Xi's commitment should not be overstated.

²⁹ You Ji, "The Indian Ocean: A Potential New Zone of a Grand Sino-Indian Game of Go," in David Brewster (ed.), *India and China at Sea: Strategic Competition in the Maritime Domain*, Oxford University Press, 2017.

³⁰ Sheng Zhiping, "The urgency for building an effective defense system for SCS development," *Naval and Merchant Ships*, No. 7, 2014, p. 1.

Combatization: the danger to be managed

Militarization is thus not an invitation to combat confrontation by itself, which is most likely caused by worsening political relations between claimants. What is the worry if the possibility of any country raising militarization into combat gear that is a higher level of militarization? *Combatization* is a privilege of a stronger power trying brinkmanship as a policy option based on military superiority to subdue adversaries, although not seeking real action. It is a sub-state of war affairs in the form of “no war, no peace” that is currently a realistic threat to the Spratly’s peace and stability. It would render all measures of crisis management difficult to sustain.³¹

Conceptually, SCS *combatization* turns a territorial issue into a national/military security threat and serves geostrategic purposes. Military confrontation normally does not happen among the claimants but between major powers, most likely between the US and China as a result of an accidental fire in the FONOPS. Both sides are formulating combat plans to deal with a worst-case scenario. Differing military actions to secure islands, the Sino-US battling is for control of air and oceanic space around the disputed areas. Inherently a stronger power would be attempted to use the means of *combatization* for broader geostrategic objectives.

First, combatization is built upon military superiority, a practical means to forcing the adversary to yield without a fight. Secondly, the Carter (former DoD secretary) strategy of isolating China in the SCS dispute could not work without enough military pressure on China, which is crucial for an anti-China coalition to emerge.³² Generally, this is about the “incentives to initiate a show of force to gain bargaining leverage in a Sino-American crisis”. Thirdly, the dominance of crisis escalation is available to the stronger power to generate controllable tension and events, such as the 12-NM entry, to which the opponent has to respond from a position of weakness.³³

The elements of *combatization* have been structured into the US Asian pivot with a clear military focus on containing China’s assertive right-protection in SCS. Thanks to maritime conflicts, US military pivot has gradually transcended the Pentagon’s China policy from hedging towards a catered war scenario and plan. For instance, the 12-NM entry may gradually shift from an initial design to pressure China diplomatically to gain

³¹ Senior Colonel Han Xudong of the National University of Defense, “The no-war-no-peace threat is no less that war,” *Global Times*, 30 July 2016, p. 7.

³² DoD, *Asia-Pacific Maritime Security Strategy*, Washington D.C., 2015.

³³ Robert Ayson and Desmond Ball, “Can a Sino-Japanese War be Controlled,” *Survival*, Vol. 56, Vol. 6, 2015, pp. 135-166.

militarily in the potential Sino-US confrontation. For instance, when FONOPs are conducted submarines are deployed nearby and in a combat gear.³⁴ It is anticipated that some sort of standoff would occur when a US vessel deliberately stays stationary within 12-NM, say in the Mischief Reef, to challenge Chinese sovereignty claims. Effectively, FON operations may be uplifted into presence operations with US naval vessels spending extended time around China's holdings in the SCS.

Specifically, *combatization* has the following features of militarization in the SCS conflicts:

- 1) The military actions are increasingly put into the combat gear, as seen from the FONOPs in the area.
- 2) Two carrier battle groups are no longer just a show of force but preparation for combat actions.
- 3) Forward deployment of strategic bombers is a sign of pressure-escalation from surveillance flights by P3-Cs to combat flights.
- 4) US submarines coming to the Chinese backyard is just like to come to their own backyard, as claimed by a US nuclear submarine captain. Together with the P8-As, they conduct intensive anti-submarine-warfare at China's doorsteps.
- 5) Catered military exercises with clear designs of island-seizer and re-capture. And the war games are set up to the campaign levels.
- 6) The US and China have upgraded its routine aero patrols to the level of combat readiness.
- 7) The alert levels of both militaries have been brought up to high levels.

There are other signs of *combatization* that represent a dangerous trend of dispute-escalation in the SCS. For instance, preparations are underway to create joint US/ASEAN naval/coast guard forces to patrol SCS waters.³⁵ The risk lies in a dual-challenge. The Pentagon continues to stimulate China militarily but without a resolve to fight. In turn, this stimulates the PLA to modernize its forces to reduce the capability gap with the US and thus enlarge that with the ASEAN claimants. This gives China a larger room for maneuvering than other claimants when the US supports the latter but is reluctant to confront the former head-on. What would be the end result of this cycle of dynamics? The answer lies in building a generally accepted maritime order where no relevant states

³⁴ *News in Focus Today*, CCTV-4, 29 November 2015. Apparently, Yin's revelation carried an official message to quieten down China's domestic audience. This shows that Xi's non-confrontational US policy has not changed with US FONOPs in the SCS and the 12-NM entry.

³⁵ James Holms, "Responding to China's Assertiveness in the South China Sea," *NBR Analysis Brief*, 12 June 2015.

lose in a zero-sum fight. The key to this is a Sino-US agreement on SCS crisis prevention and management.

De-combatization: the most urgent task facing us

The most urgent task facing us is to bring down the level of *combatization* for the sake of maintaining stability in the Spratlys. Speaking in a forum in Singapore on 1 September 2016, Vietnam President Tran Dai Quang expressed the view shared by all involved: a war would make all the parties in the SCS disputes a loser.³⁶ Today the largest common denominator in security-making in the Spratlys is still the non-use of force in dispute control. Therefore, the likelihood of military confrontation is kept low with a manageable Sino-US rivalry in the region.³⁷

Positively, Trump still places the maintenance of the overall Sino-US relations above using military pressure against China. The Pentagon has played down the military significance of continuing FONOPs. Admiral Richardson's remarks that a "US-China relationship is one of extreme importance and the navy-to-navy part of it bears great responsibility to make sure that we get to our mutual benefit."³⁸ America's need to solicit Chinese support in international politics, e.g., over the Korean crisis, underlines the relatively low frequency of 12-NM entry, which has in a way helped prevent the bar of SCS militarization to be lifted to a level that would hurt the bilateral ties beyond repair. Under the circumstances, the 12-NM entry is defined more as innocent transits than other depictions. Despite vocal condemnation, China has not dramatized the matter of 12-NM entry so as to preserve a workable relationship with America. So far both sides seem to have drawn an important distinction between the symbolic entries to challenge China's nine-dash line and a pattern of persistent entries to undermine Chinese sovereignty from a geostrategic and military angle.

Tactically both sides have abided by a series of rules of engagement in the seesaw interaction of the FONOPs. When *USS Chancellorsville* conducted FONs in the Spratlys (not inside the 12-NM of China-held islands), the PLA frigate *Yueyang* followed her politely for two days, strictly observing the requirement of the Sino-US encounter agreement by keeping a distance of 10-km from each other and by keeping constant radio communication with the US captain. To PLA commanders, this distance is large enough

³⁶ *Lianhezaobao* (Singapore), 2 September, 2016.

³⁷ Danny Roy, "Why China-US tensions in the SCS are manageable," *The Straits Times* May 04, 2016.

³⁸ Sam LaGrone, "PLAN's Wu to CNO Richardson: Beijing Won't Stop South China Sea Island Building," *USNI News*, 18 July 2016.

to avoid a collision but is close enough to maintain eye contact with the counterpart. Rather than expressing indignation, the PLAN radio check started from “talking about weather” and “have a great day at sea” to the dispatch of a non-confrontational message. While showing this rational softness a PLAN helicopter was ordered to take off to monitor the motions of *USS Chancellorsville* at a relatively close range, a way to show hardness. Yet during the whole process, both sides observed a high level of professionalism.³⁹

In the long run, however, the measures of self-constraints need to be institutionalized and structured into a stable maritime crisis-prevention regime. These include:

- 1) Entry frequencies do matter: i.e., with a symbolic design currently in practice.
- 2) China’s proportionate response: shadowing and accompanying are a normal method for crisis prevention, not ramming or any drastic measures.
- 3) No qualitative increasing of arms deployment in the reclaimed islands, especially no deployment of combat aircraft.
- 4) Establishment of hot-line communications between all claimant states, including those between the front lines commanders and troops in the Spratly Islands.
- 5) Reinstating DoC effects and accelerating negotiations for an early signing of the CoC.

Therefore, the construction of an Asian maritime order has to be built upon various institutional building of CBM mechanisms. The CoC negotiations should include specific items of dispute management, such as no-arrest of fishermen in the disputed areas (expulsion allowed), restraints of using arms in administrative and maritime portals, and environmental protection provisions. All these are relatively achievable under the principle or the concept of the status quo which is the most viable way for the largest common denominator of the non-use of force to be translated into security-making in the Spratlys and the building of an Asian maritime order.

Conclusion

Xi’s major readjustment of China’s foreign policy to cope with SCS tension increases the pressure on SCS dispute control. Beijing’s more pro-active tone and deeds are stimulated by Asia’s changing security environment precipitated by US pivot that will be carried forward by Trump. The PLA is mentally and materially prepared to contain armed rifts, especially in the advent of US naval 12-NM entry into China’s Spratly Islands. However,

³⁹ Rear Admiral Yin Zhou’s analysis in *News in Focus Today*, CCTV-4, 2 April 2016; and Helene Cooper, “Patrolling Disputed Waters: US and China Jockey for Dominance,” *The New York Times*, 30 March 2016.

Beijing's overall maritime policy has remained fundamentally unchanged: non-irredentist and non-confrontational, as it has to meet other more urgent challenges at home. If the waters in the SCS remain calm the SCS issues actually remain a low priority in China's overall foreign policy hierarchy. This dictates that Beijing's SCS objective is practically oriented towards crisis management rather than a major expansion of occupation, a conducive condition for the regional states to construction an Asian maritime order. After a period of intensive SCS policy adjustment with assertive moves, such as reclamation since 2013 Beijing has now returned to the phrase of making "no surprises." Hopefully, this will contribute to the current calming-down situation in the SCS.

The management of SCS dispute has encountered structural difficulty. Legality is ultimately a vehicle for resolving sovereignty dispute. However, legal arbitration without political trust among the disputants are made to serve as a mechanism of major power rivalry can be a zero-sum game triggering military confrontation, in nobody's interests. Therefore, it is a priority for all to cool down the temperature, as called by Secretary Kerry to turn over the page of ruling in 2016's ASEAN Foreign Ministers' Conference. The way out seems to be an old one: at the beginning, we seek maintenance of the status quo rather than sovereignty resolution which only intensifies the disputes. When political trust is accumulated, we start the next stage of dispute resolution through creating a rule-based order; and finally, the conditions become ripe for the arbitration to be implemented.

As pointed out insightfully by Commodore Sam Bateman: "Demilitarizing the South China Sea should be an objective of all stakeholders. To this end, China should clarify its SCS claims and refrain from activities that might be seen as assertive or aggressive. Japan and India should moderate their activities, and the United States should step back from its current naval initiatives, including by not undertaking provocative FONOPs. These prominent players in the South China Sea should all back off from their current military activities, lest the region continue down a track that could lead to more serious incidents and even conflict". This paragraph serves as the best remarks to conclude this presentation.⁴⁰

⁴⁰ Sam Bateman, "Brinkmanship in the South China Sea helps nobody," *East Asia Forum*, 7 June 2016.