

# US Policy in the South China Sea Across Three Administrations

Written by Adam Gerval and Mark Henderson

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**This is a preprint excerpt from *Asian Territorial and Maritime Disputes: A Critical Introduction*. You can download the book free of charge from E-International Relations.**

Territorial disputes in the South China Sea (SCS) have shifted the narrative of security studies of the region. As the People's Republic of China (PRC) has grown more assertive, the role of the United States to safeguard free navigation has been challenged. Across administrations, traditional allegiances have been in flux, while under the administration of US President Joe Biden, they appear to have become more dynamic. US air and naval superiority are currently being maintained, but the growing PRC defense budget and rapid increases in the quality and quantity of force has begun to change international perceptions. Finally, western assumptions about social and political developments in China have missed the mark. Why has the PRC not begun to liberalize political control as a result of economic development? Where is China's civil society? How has the PRC become a great power while continuing to violate human rights and bend international rules? During the Obama administration, chief US strategists claimed that, as the PRC developed, so too would its sense of international responsibility. So far, Beijing has been showing us the exact opposite. The PRC has been playing games in international organizations, placing their experts in key roles and backing sympathetic candidates for leadership positions. Unambiguous human rights violations are being broadcasted to the world in Xinjiang and Hong Kong. Relations across the Taiwan Strait have returned to a level of tensions not seen in recent memory. China's Paramount Leader Xi Jinping has removed political opposition and will begin an unprecedented third term at the top of the PRC political structure.

The sum of these trends shows an increasingly aggressive and authoritarian government in the PRC, which runs counter to the world's aspirations for China. Recognition of this fact may have begun long before the administration of former President Donald Trump, but US policy on China changed most dramatically in the Trump years. Interestingly, US actions in the South China Sea have been relatively constant. There has been no equivalent to a trade war, as we have seen with economic disputes. In maritime policy, the US position remains largely unchanged: to maintain open shipping lanes and ensure freedom of navigation. Instead, the changes have largely been a means to that end. With the singular exception of reference to the 2016 China-Philippines arbitration, much of the change in US policy has been in the reliance on traditional alliances, frequency of operations, and public messaging on maritime disputes.

### Priority Number One: Navigation

Freedom of navigation has continued to be priority No. 1 for the United States, regardless of who is in office. It is worth mentioning that the beneficiaries of that policy are not only US citizens: a South China Sea that is free for all has allowed economies, even those not physically in the region, to be able to consistently rely on steady shipping costs. Volatility in international commerce undermines the function of liberalized capital markets. Economic growth in the Indo-Pacific has been no exception to that rule, as we can see in the ever-growing transit of goods through the South China Sea. More than US\$3 trillion in goods moved through the SCS in 2016, including more than 30% of the world's crude oil trade (CSIS 2021).

US maintenance of unobstructed transport for commercial, civilian, and innocent-passage military vessels is quite

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simple. Complications largely arise in jurisdiction over economic activity and enforcement of national maritime rules. As a result, the United States adheres to many provisions of the United Nations Convention on the Law of the Sea (UNCLOS), despite never having formally ratified it into US law. Nevertheless, legal distinctions made within UNCLOS are important when trying to understand the largely neutral position of the United States in disputes between claimants over what constitutes a territorial sea, a contiguous zone, and an exclusive economic zone (EEZ). Under the provisions of UNCLOS, rocks and low-tide elevations, for example, do not generate exclusive economic zones, but can extend overlapping territorial sea and contiguous zones from land or naturally formed islands. These distinctions are important for determining what a nation can and cannot do in a particular maritime area: they also represent the fundamental pieces that academics in security studies and international relations have come to wrestle with in creating a larger strategic analysis of the Indo-Pacific region (Fruend 2017).

With that in mind, navigation, mining activities, and research and exploration endeavours are affected differently through the three zone types afforded by land, islands, rocks, and low-tide elevations. In the case of territorial waters, commercial and military vessels may conduct innocent passage through another country's 12-mile zone so long as they do not carry out certain activities while in transit, such as surveillance, fishing, and military exercises. This is not true of contiguous zones, where governments may only conduct punitive operations on vessels that have infringed on regulations inside their territorial waters. The wider EEZ is, for navigation purposes, considered international waters. Any claim which inappropriately widens the range of territorial waters beyond 12 miles, draws improper straight-baselines (only afforded to archipelagic states), labels a rock or low-tide elevation as an island, or restricts navigation (in maritime and aviation) are considered excessive maritime claims. This is where so many of the disputes are generated.

To combat excessive maritime claims, the United States works multilaterally through strategic consultations and diplomatic demarches, as well as through operational assertions called freedom of navigation operations (FONOPS). Such operations and consultations ensure open shipping lanes and access to waters where the United States has vital trade and security interests. The program of FON operations 'includes both planned FON assertions (i.e., operations that have the primary purpose of challenging excessive maritime claims) and other FON-related activities (i.e., operations that have some other primary purpose, but have a secondary effect of challenging excessive maritime claims)' (US Department of Defense 2017). For example, the United States may send a naval vessel through territorial waters (within 12 miles of a naturally occurring island or continental land formation) without giving prior notification. In doing so, the US vessel has conducted an action which is within the legal rights conferred by UNCLOS but conflicts with the demands of a claimant making excessive maritime claims, such as purporting to require prior notification. In another scenario, a US military vessel may linger or conduct a training exercise in an area which is improperly labelled as territorial waters, thus illustrating that the claim is excessive by conducting activities that would otherwise be unacceptable within the 12-mile zone.

It is important to note that the United States does not side with claimants over matters of sovereignty. Rather, the primary strategy has been to ensure that UNCLOS navigation norms are followed, regardless of the origin of the excessive maritime claims. This means that the United States conducts FONOPS in response to excessive claims of its allies and partners as well. It is also worth stating that FONOPS are not exclusively used to delegitimize excessive maritime claims in the SCS, and may be wielded by partners and allies with a varying subset of strategic goals in mind.

Free and unimpeded navigation in the South China Sea is of crucial importance to the United States and others with a vested economic and security interest in the Indo-Pacific. The trillions of dollars in trade that pass through the region annually would be significantly impeded if commercial travel was diverted around contested waters. Additionally, limited navigation would allow an increasingly assertive China to further threaten longstanding US security concerns with partners like Japan, the Philippines, and Taiwan.

## The Obama Years: Pivot to Asia

Conflicting political claims in the South China Sea began after the Sino-Japanese War. They continued after World War II, maintaining relevance following the Treaty of San Francisco, largely concerning the intersection of Japanese,

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Kuomintang (KMT)<sup>[1]</sup>, and PRC interests. In the late 1960s, the discovery of underwater oil deposits and the conflict between China and Vietnam led the United Nations to establish UNCLOS. Following years of tension, the PRC entered into agreements with the United States (the Military Maritime Consultative Agreement), the Association of Southeast Asian Nations, or ASEAN (the Declaration on the Conduct of Parties in the South China Sea), and Japan (the Joint Energy Accord). Whether it was due to China's growing regional predominance, a shrinking US presence in the Indo-Pacific, or a combination of external factors, stability in the South China Sea did not last. Beijing's three policy goals became regional integration, resource control, and enhanced security (Dutton 2011). This approach would ultimately conflict with longstanding US policy in the region aimed at maintaining free navigation. As a result, the US position in the South China Sea was forced into the limelight in 2010 when the SCS disputes began to heat up.

In July 2010, then-Secretary of State Hillary Clinton clarified the US position in the SCS, which would ultimately merge with President Barack Obama's Pivot to Asia. In front of the UN General Assembly, Clinton unambiguously unveiled a policy dedicated to freedom of navigation and began a long-held precedent of neutrality in maritime disputes. Shortly thereafter, President Obama gave a landmark speech in the Australian Parliament in 2011 in which he cemented the policy objectives of the United States in the South China Sea (CFR 2021). The tenets of that policy are as follows:

1. Freedom of Navigation and Unimpeded Trade (Air and Sea): UNCLOS freedoms were paramount. The PRC policy (Law of the Sea) of required notification before military transit through EEZs was rejected and viewed as a minority opinion. The establishment of Air Defense Identification Zones (ADIZ) in the South China Sea by the PRC and others is problematic and destabilizing, despite an often inadequate ability to enforce their integrity. Although unrealistic ADIZ claims proliferated, a growing People's Liberation Army (PLA) Air Force (PLAAF) alone was in a position to challenge long-established aviation routes, including for civilian and commercial transport.
2. Peaceful Dispute Resolution: US policy here may have been ambitious, but it has thus far been upheld, with a few notable exceptions. This is where the misrepresentation of China's 'peaceful rise' came into play. The expectation that the growing global power would refrain from coercive diplomacy and bullying was incorrect. Instead, grey zone tactics largely carried out by civilian fishing boats, sand dredgers, oil prospectors, and the PRC Coast Guard has agitated regional claimants and raised anxieties in the region.
3. UN Convention on the Law of the Sea (UNCLOS) as a Foundation: The United States encourages regional claimants to adhere to the tenets of UNCLOS, despite not having ratified it. The most substantial challenge to the UNCLOS system, aside from island-building and military buildup, is the nine-dash line. The line encircles nearly all of the SCS and is accompanied by ambiguous claims to certain rights based on historical arguments.
4. Diplomatic Partnership: Until the Trump administration took power, the playbook encouraged regional or multilateral negotiation over maritime disputes. During the Obama years, this approach contradicted Beijing's preference for bilateral negotiation, largely as a tactic to isolate and intimidate counter-claimants. US diplomatic capital was underutilized from 2016–2020, ironically turning the established strategy on its head.
5. A Consensus on the Code of Conduct: ASEAN claimants and Beijing agreed to the Declaration on the Conduct of Parties in the South China Sea in 2002. Although the declaration is non-binding, the thought was that such a framework would decrease the likelihood of conflict while disputes were slowly negotiated, likely over many years (Bader and McDevitt 2014).

This framework was largely what the United States implemented in the region from 2008 to 2016 in order to meet its strategic goals. Taylor (2016) explains that, beginning in 2009, the policy began to evolve. First, policy was altered in accordance with the level of tension engendered by the disputes. Second is the US policy of neutrality and not taking sides in the disputes. Third, as its involvement in managing tensions has grown, Washington has been careful to emphasize the process over the product: in other words, that the process for managing conflicting claims be peaceful. To this end it has supported the conclusion of a binding code of conduct between China and ASEAN. Fourth, US policy 'has sought to shape China's behaviour in the South China Sea by highlighting the costs of coercion and the pursuit of claims that are inconsistent with customary international law' (Fravel 2016).

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These goals were largely projected onto the PRC and other regional claimants. In 2021, the Congressional Research Service outlined specific and general goals in the context of US-PRC competition. By viewing it from such a perspective, academics and policymakers are able to refocus the lens through which we view the SCS conflicts. Instead of understanding the maritime disputes as stand-alone interests, we are able to view the South China Sea in its proper light, in the context of competition between Washington and Beijing. Washington's general interests in this effort include: (1) nurturing lasting security partnerships in the Indo-Pacific region with long-term partners such as Japan, the Philippines, and Taiwan; (2) rejecting the position that 'might makes right' in dealing with territorial disputes (Stewart and Pearson 2019); (3) maintaining the US security architecture; (4) ensuring continued US leadership in the region; and (5) protecting freedom of navigation.

According to O'Rourke (2021), specific US interests include halting China's ongoing island construction, military buildup, and excessive maritime and ADIZ claims near Vietnam and the Philippines; (2) encouraging Beijing to cease its coercive actions near the Senkaku Islands, Spratly Island, and Scarborough Shoal; and (3) and convincing the PRC to rein in its non-military assets that are conducting illegal sand dredging and invasive fishing.

It was not until 2016 that the United States signalled a potential change from its position of absolute neutrality. Leading up to that point, the Obama administration conducted several FONOPS in order to assert UNCLOS conventions, even if that meant little headway on resolving individual disputes (Werner 2019). Ultimately the operations were safeguarding the primary US interest in freedom of navigation. Below is a table tallying the FONOPS from 2012–2020, which allows us to contrast tangible operations among the three administrations.

As mentioned above, the position of the United States changed after the UN 2016 tribunal ruling for Manila and against Beijing over the Spratly Islands and Scarborough Shoal. The Permanent Council of Arbitration, headquartered in The Hague, ruled in favour of the Philippines on several designations of maritime objects and against the excessive maritime claims being made by the PRC (PCA 2013). Specifically, the ruling found that Beijing had no basis to assert historic rights, nullifying many of the subsequent claims predicated on the nine-dash line (Poling 2020).

At the East Asia Summit in 2016, then-Secretary of State John Kerry commented that the arbitration was 'final and legally binding on both China and the Philippines.' However, he added, 'we are still studying the decision and have no comment on the merits of the case' (Hindustan Times 2016). Despite the firm US stance on sovereignty, Kerry encouraged both parties to comply with the ruling. His comments were precedent-setting, as no previous US government official had endorsed a particular position on maritime disputes in the South China Sea. The previous US position, originating in 2009, was that Beijing had offered no coherent legal basis to its nine-dash line claims (US Department of State 2019).<sup>[2]</sup> The subtle difference between the two was to connect UNCLOS norms directly to claimants while falling short of enforcing the specific ruling of the arbitration (countries could still disagree on the judgement) by abstaining from calling PRC claims 'illegal.' Instead, by calling the claims 'destabilizing' or 'aggressive,' the administration was able to support the ruling, avoid pushing Beijing into a corner, and maintain the primary goal of supporting free commercial transit and navigation.

For the duration of the Obama presidency, policy was rational and comprehensive in its approach. It maintained ultimate neutrality on specific disputes, even after the 2016 arbitration, while protecting navigation and commercial activity. Although conflicts did not escalate during those years, Obama's approach was, however, incapable of preventing the PRC from building bases on disputed SCS islands, flexing its military muscle, and engaging in bilateral diplomatic coercion (McDevitt 2015).

## The Trump Years: Transactionalism and Assertive Messaging

By the time Trump took office in 2017, Xi had been in power for nearly four years, and the PRC had effectively transformed its approach, jettisoning the rhetoric of the 'peaceful rise' and 'good neighbour' diplomacy in favour of the 'Chinese Dream' and promoting 'Xi thought.' As a result, the Trump administration transformed US policy in recognition of increasing PRC assertiveness and military buildup. For the American public, trade policies were front and center, but strategic options in the South China Sea seemed consequential.

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In retrospect, the Trump administration pulled from several options from 2017–2021, with a heavy emphasis on rollback-style public messaging and tangible actions aimed at containment, especially in the latter years. Trump's transactional style of policy provided minimal assistance in the way of tangible commitments to countries in the region. There were, however, voices calling for an increase in US landpower in the South China Sea to deter the PRC and buttress allies' military positions. Bouchat (2017) argued that 'US landpower gives pause to states with aggressive intentions, creates networks that enhance abilities synergistically, and may also break down barriers to misunderstanding – all of which should result in a stabilizing role for US landpower through its proper application in the South China Sea region' (Bouchat 2017).

President Trump began to heavily employ economic sanctions and ramped up public and diplomatic messaging. Opponents of the policy claim that sanctions under the International Emergency Powers Act were not adequately justified during this time and were instead viewed as rhetorical attempts to counter PRC claims. In any case, such statements certainly supported countries like Malaysia, Vietnam, and Indonesia. Relying too heavily on rhetoric of support for non-PRC claimants called into question the US commitment to its partners, particularly in the absence of military action (Williams 2020). The US Department of State is no stranger to such rhetoric. In the words of then-Secretary of State Mike Pompeo, 'America stands with our Southeast Asian allies and partners in protecting their sovereign rights to offshore resources ... and [we] reject any push to impose "might makes right" in the South China Sea or the wider region.' Moreover, then-Assistant Secretary of State David Stillwell stated, 'there is room for [sanctions],' pointing out that 'nothing is off the table' (Pamuk and Brunnstrom 2020).

Coupling public statements with sanctions may have been the Trump administration's way of avoiding concrete ramifications while stopping short of provoking armed conflict. Ultimately, the United States has been frequently thrust into a position where action must be taken vis-à-vis increased PLA Navy and Air Force operations. Claimants look to the United States to take that action, ideally before the South China Sea becomes 'a Chinese lake' (Brands and Cooper 2018).

Nguyen (2016) sums up the shift from a hopeful Obama administration to that of an assertive and recalcitrant Trump policy in the South China Sea by recognizing PRC 'buildup in the southern reaches of the South China Sea to establish greater control of its near seas, in the process diminishing US access to the waters and airspace of the world's most critical waterways.' In response, US policymakers assured the PRC that they would suffer the 'net effect' of aggressive and provocative actions (Nguyen 2016).

James (2017) asserts that the ramping up of assertive language under Trump was to some degree due to congressional voices. 'Signals by a president's own party members are generally more powerful, while signals from members of Congress from the opposite party are less so,' he writes. Despite less support from across the aisle, the South China Sea has been viewed as a battlefield for supremacy in the Indo-Pacific. In the words of Scott (2017), 'the nature of the challenge and its broader stakes, along with the array of economic interests and global concerns that connect the US and China, as well as the interests of various factions of the US political system, worked to establish competing interests and priorities that muted partisanship and generated more cooperative efforts.'

In 2020, Trump's Indo-Pacific Strategy – calling for a Free and Open Indo-Pacific (FOIP) – was declassified, revealing specific components of its competitive strategy with China in the South China Sea and elsewhere (Chang 2020). Tenets of the strategy included: (1) 'naming and shaming' the PRC for its actions in the SCS (He and Ramasamy 2020); (2) the imposition of economic sanctions on PRC officials linked to such actions; (3) carrying out FONOPS and overflights in the SCS and the Taiwan Strait (Zhen 2019); (4) strengthening the US military presence and countering the PRC buildup in the Indo-Pacific (O'Rourke 2021a); and (5) encouraging allies and partners to do more individually and in coordination with one another to defend their interests in the SCS region (Ng 2019).

The report made conclusions about Beijing's strategy as well, citing a desire to utilize weakened US partnerships. The overall policy picture began to coalesce by late 2018 and grew in intensity until the transfer of power in January 2021. In an effort to connect specific actions under Trump to a mosaic of policy goals, the table below shows a timeline of major diplomatic and policy actions, short of military operations.

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As the Trump administration faced losing re-election in 2020, longstanding US ambiguity towards legal claims in the SCS began to shift. Statements by the Department of Defense and the State Department were representative of that shift, especially concerning Vietnam, the Philippines, and Indonesia. For example, US Ambassador to the United Nations Kelly Craft sent a note to the UN Secretary General which read, 'the United States again urges China to conform its maritime claims to international law as reflected in the Convention; to comply with the Tribunal's 12 July 2016 decision; and to cease its provocative activities in the South China Sea' (Gertz 2020).

Secretary Pompeo went as far as to break from with the previous administration's precedent by edging further into the Beijing-Manila dispute in the Spratly Islands and Scarborough Shoal, stating that, 'Beijing's claims to offshore resources across most of the South China Sea are completely unlawful, as is its campaign of bullying to control them.' Regarding the rights afforded to the land formations, specifically, Poling (2020) shows that the shift explicitly declared, 'it is illegal for China to engage in fishing, oil and gas exploration, or other economic activities in those areas, or to interfere with its neighbours' rights to do so' (Poling 2020).

By labelling PRC claims as illegal, the United States took a definitive position on the dispute, rather than defaulting to UNCLOS norms or a specific code of conduct. In doing so, the Trump administration may have been hoping to corner its successor into a specific policy towards Beijing (Quinn 2020). Some scholars argue that once Trump ramped up anti-PRC efforts, components of his aligned more with the Obama administration's efforts. The policy aimed to; (1) increase the military presence in the East and Southeast Asia regions; (2) collect international support against the PRC; and (3) propagate the PRC's global image as a villain (Hu 2021). Regardless of the similarities in method, the goal has remained the same from Obama to Trump and into the Biden administration: to maintain freedom of navigation in the Indo-Pacific.

## The Biden Administration: Strength Through Alliances

Scholars and insiders alike speculated on the Biden administration's approach to Beijing, especially in the early days of 2021. Campaign rhetoric leading up to the 2020 US presidential election was critical of Beijing on both sides of the aisle, but there was still little clarity as to how that would translate into policy. If the wider policy was unclear, a path forward in the South China Sea was completely indiscernible, especially due to pressing concerns on the economy and public health (due to the COVID-19 pandemic). Area specialists like Glaser and Poling of the Center for Strategic and International Studies had been encouraging cooperation with partners like the Philippines to tamp down coercion from Beijing while working with other Southeast Asian partners to ensure that US absenteeism would cease under a new administration.

At the very least, there is consensus that the PRC is a growing threat to democratic principles, as well as sustained trepidation over an ever-increasing PRC military budget, which has grown from roughly US\$120 billion in 2009 to nearly US\$250 billion in 2019 (SIPRI 2021). A report by the US Chief of Naval Operations, Admiral Michael Gilday, reiterated the need to offset Beijing's naval build-up: 'To defend our Nation and interests around the globe, we must be prepared to flawlessly execute our Navy's timeless roles of sea control and power projection,' the report reads, adding 'there is no time to waste; our actions in this decade will set the maritime balance of power for the rest of the century' (CNO 2021).

Language in the early days answered the call for a return to historic alliances. During his confirmation hearing and in statements following his appointment, Secretary of State Anthony Blinken alluded to Beijing as an opponent, a challenge, and a potential partner, simultaneously. The United States, moving forward, would approach the PRC from a position of strength, derived from US partners and allies. Regarding the Philippines, Blinken reaffirmed that Washington considers the US-Philippine Mutual Defense Treaty applicable in the event of armed attacks against the Philippine forces, public vessels, and aircraft in the Pacific, as well as in the South China Sea. According to a State Department press release, the United States rejects any of China's maritime claims in the South China Sea that exceed what is permitted by UNCLOS (US Department of State 2021a). The appointment of Kurt Campbell, an Obama-era China hand, to the Biden administration has sent signals to allies in the region. The United States seems to be returning to Asia with an expanding roster of partners who are weary of PRC bullying and coercion.

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The positions expressed over the dispute between Manila and Beijing have been similar to the sentiments in other regional disputes, like those the PRC has with Vietnam, Indonesia, Japan, and Taiwan. For example, a visit to Japan and South Korea by Secretary Blinken and Department of Defense Secretary Austin reaffirmed the US commitment to long-time allies in the Indo-Pacific. Statements from the Department of State are representative of the shift back towards reliance on existing security alliances, such as reiterating America's 'unwavering commitment to the defense of Japan under Article V of our security treaty, which includes the Senkaku Islands' (US Department of State 2021b).

During Blinken's discussions with then-Japanese Prime Minister Yoshihide Suga, support from Japan was unexpectedly given to joint defense of Taiwan in the case of a PRC attack. A subsequent high-level trip to Europe further demonstrated a longing for partnerships over key issues (like human rights and freedom of navigation) among Western nations that operate in the Indo-Pacific (Bennan 2021). This is especially apparent with partners like the United Kingdom, the Czech Republic, and members of the 16+1 (a term used to describe a forum for cooperation between Beijing and Eastern European countries) that are reluctant to allow PRC leadership to take hold globally. Developments like the new PRC Coast Guard law in January 2021 has led US partners in the Quadrilateral Security Dialogue (India, Australia, and Japan) to coalesce around a welcome US return to the South China Sea. Growing concerns in Europe over Chinese expansionism saw the HMS Queen Elizabeth aircraft carrier deployed to the SCS, and even Germany dispatched a frigate to traverse the SCS for the first time since 2002, to support freedom of navigation (Aljazeera 2021).

Perhaps most telling in the early days of the Biden administration was the outcome of the US-China meetings in Anchorage, Alaska. From the outside, analysts have seen a continuation of PRC grandstanding for domestic audiences, while the private meetings were likely less confrontational (Politico 2021). How else can one explain the willingness of PRC Foreign Minister Yang Jiechi to meet after the US placed powerful sanctions over Chinese actions in Hong Kong and Xinjiang? Much of the Trump-era toughness on key issues has seemingly remained, as well as the mechanisms to deal with them. The legislative provisions of the National Defense Authorization Act (2019–2020) remain in place to counter PRC military and technological prowess. Regional fora like ASEAN and the Asia-Pacific Economic Cooperation (APEC), as well as the G7, may serve a largely unchanged strategy under Biden. The Department of State has endeavoured to design a regionally focused policy while reporting on PRC activities, including in the South China Sea (Heydarian 2021).

Moving forward, the Biden administration will have to consider the role of Congress in maritime disputes, especially related to mutual defense agreements and a potential, but unlikely, ratification of UNCLOS in the United States. Campbell and Wyne (2020) claim that, 'increased risks caused by ramped up military activity in the South China Sea is becoming cause for concern for experts who believe that the traffic is inevitably going to lead to an accident or escalate into a crisis scenario.' First, US policy makers will have to ask tough questions about bilateral security treaties. For example, what level of strategic clarity or ambiguity is appropriate to deter PRC conflict with the Philippines and Japan? Also, what contingency planning has the Department of Defense put in place to deal with such an eventuality? Finally, has diplomatic messaging been effective in reaching an understanding on a path forward with America's Japanese and Filipino counterparts?

Congress may also raise the question again (last discussed in June 2012) of whether the United States should become a signatory to UNCLOS. In 2012, hearings in the Senate Foreign Relations Committee revealed arguments for and against its adoption under US law. Proponents pointed to navigational rights, increased legitimacy in citing provisions of the treaty (including those related to foreign military activities in exclusive economic zones), and a move away from reliance on non-binding international norms alone (Browne 2019). Opponents have argued that Beijing has, thus far, been able to cite international law to defend activities in their EEZs. Similarly, UNCLOS has not been able to resolve maritime disputes along the PRC's nine-dash line, which leaves little incentive to enshrine such justification in US law, especially from a policy perspective (Dutton 2011). Instead, the United States could better serve regional stability and the interests of US partners by continuing the FONOPS program and bilateral defense support (Bromund and Schaefer 2018). Given the current status quo, a change in the US relationship with UNCLOS is unlikely.

It is important to add a caveat to our current understanding of US policy in the South China Sea, and that is

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recognition of the larger foreign policy concerns of the Biden administration. For the greater part of 2021, the number one priority was to tackle the Covid-19 challenge. Beyond that, Biden pushed for a new energy policy aimed at decarbonisation, energy security, and energy development. Much of those objectives will rely on cooperation with the PRC, and they may take precedence over the long-standing irritants in the South China Sea.

US maritime policy in the South China Sea across the Obama, Trump, and Biden administrations has certainly taken on different forms and varying degrees of intensity. The primary objective, however, has remained constant: maintenance of free navigation.

## References

Aljazeera. 2021. "German Warship to Cross South China Sea for First Time Since 2002." March 4, 2021.

Bader, Jeffrey, Kenneth Lieberthal, and Michael McDevitt. 2014. "Keeping the South China Sea in Perspective." *The Foreign Policy Brief*, Brookings, August.

Bouchat, Clarence. 2017. "US Landpower in the South China Sea." Strategic Studies Institute, United States Army War College, July.

Brands, Hal, and Zach Cooper. 2018. "Getting Serious About Strategy in the South China Sea." *Naval War College Review* 71, no. 1, Article 3.

Bennan, David. 2021. "Antony Blinken Calls Out China in First Foreign Trip to Japan, South Korea." *Newsweek*, March 16, 2021.

Bromund, Ted R., James J. Carafano, and Brett D. Schaefer. 2018. "7 Reasons US Should Not Ratify UN Convention on the Law of the Sea." *Daily Signal*, June 2, 2018.

Browne, Andrew. 2019. "A Hole in the US Approach to Beijing." *Wall Street Journal*, May 20, 2014.

Campbell, Kurt, and Ali Wyne. 2020. "The Growing Risk of Inadvertent Escalation Between Washington and Beijing." *Lawfare*, August 16, 2020.

CFR [Council on Foreign Relations]. 2021. "China's Maritime Disputes: Timeline." Accessed March, 2021. <https://www.cfr.org/timeline/chinas-maritime-disputes>

Chang, Felix K. 2020. "From Pivot to Defiance: American Policy Shift in the South China Sea." Foreign Policy Research Institute, August 24, 2020.

CNO [Chief of Naval Operations] 2021. "CNO Releases Navigation Plan 2021." United States Navy Press Office, January 11, 2021.

CRS [Congressional Research Service]. 2021. "Taiwan Strait Transit (TST) passages and Freedom of Navigation Operations (FONOPS) conducted by CPF (Commander, US Pacific Fleet) forces in the South China Sea (SCS) from CY 2012 through 17 Feb 2021." US Navy Information Paper.

CSIS [Center for Strategic and International Studies]. 2021. "How Much Trade Transits the South China Sea?" Accessed May, 2021. <https://chinapower.csis.org/much-trade-transits-south-china-sea>

Dutton, Peter. 2011. "Three Disputes and Three Objectives." *Naval War College Review*, 54–55.

Federal Register. 2020. "Suspension of Entry as Nonimmigrants of Certain Students and Researchers From the People's Republic of China." Presidential Proclamation 10043. May 29, 2020.



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- Fravel, Taylor. 2016. "U.S. Policy Towards the Disputes in the South China Sea Since 1995." In *Power Politics in Asia's Contested Waters*, edited by Enrico Fels and Truong-Minh Vu, 389–402. Heidelberg: Springer.
- Fruend, Eleanor. 2017. "Freedom of Navigation in the South China Sea: A Practical Guide." Belfer Center for Science and International Affairs, Harvard Kennedy School, June.
- Gertz, Bill. 2020. "US Protests Beijing Illegal Sea Claim." *Washington Times*, June 3, 2020.
- He, Wendy, and Haridas Ramasamy, Haridas. 2020. "Naming and Shaming China: America's Strategy of Rhetorical Coercion in the South China Sea." *Contemporary Southeast Asia* 42, no. 3: 317–345.
- Heydarian, Richard. 2021. "QUAD Summit Next Step Towards an Asian NATO." *Asia Times*, March 13, 2021.
- Hindustan Times*. 2016. "US' Kerry Says No Military Solution to South China Sea Dispute." August 31, 2016.
- Hu, Bo. 2021. "Sino-US Competition in the South China Sea: Power, Rules and Legitimacy." *Journal of Chinese Political Science*.
- Kraska, James. 2021. "China's Maritime Militia Vessels May Be Military Objectives During Armed Conflict." *The Diplomat*, July 7, 2020.
- Lee, Matthew. 2021. "US Imposes New Sanction on Beijing over South China Sea." *Associated Press*, January 14, 2021.
- Lefebvre, Ben. 2021. "US Bans Exports to China's State-Owned Oil Company CNOOC." *Politico*, January 14, 2021.
- Lubold, Gordon, and Jeremy Page. 2018. "US Retracts Invitation to China to Participate in Military Exercise." *Wall Street Journal*, May 23, 2018.
- McDevitt, Michael. 2015. "The South China Sea: Assessing US Policy." *American Foreign Policy Interests* 37, no. 1: 23–30.
- Ng, Eileen. 2019. "US Official Urges ASEAN to Stand Up to China in Sea Row." *Associated Press*, October 31, 2019.
- Nguyen, Phuong. 2016. "Deciphering the Shift in America's South China Sea Policy." *Contemporary Southeast Asia* 38, no. 3: 389–421.
- O'Rourke, Ronald. 2021. "US-China Strategic Competition in South and East China Seas: Background and Issues for Congress." Congressional Research Service Report. R42784. March 18, 2021.
- \_\_\_\_\_. 2021. "Renewed Great Power Competition: Implications for Defense – Issues for Congress." Congressional Research Service Report. R43838. March 4, 2021.
- Pamuk, Humeyra, and David Brunnstrom. 2020. "US Says Room for Sanctions in Response to China in South China Sea." *Reuters*, July 14, 2020.
- Panda, Ankit. 2019. "The US Navy's Shifting View of China's Coast Guard and 'Maritime Militia'." *The Diplomat*, April 30, 2019.
- PCA [Permanent Council of Arbitration]. 2013. "The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)." Accessed March, 2021. <https://pca-cpa.org/cases>

# US Policy in the South China Sea Across Three Administrations

Written by Adam Gerval and Mark Henderson

Poling, Gregory. 2020. "How Significant is the New US South China Sea Policy?" Center for Strategic and International Studies, July 14, 2020.

*Politico*. 2021. "China and US Open Alaska Meeting with Undiplomatic War of Words." March 18, 2021. <https://www.politico.com/news/2021/03/18/china-us-alaska-meeting-undiplomatic-477118>

Quinn, Colm. 2020. "The US Declared China's South China Sea Claims 'Unlawful.' Now What?" *Foreign Policy*, July 14, 2020.

Reed, Jack, and Jim Inhofe. 2020. "The Pacific Deterrence Initiative: Peace Through Strength in the Indo-Pacific." War on the Rocks, May 28, 2020.

Scott, James. 2017. "The Challenge of the South China Sea: Congressional Engagement and the US Policy Response." *All Azimuth: A Journal of Foreign Policy and Peace* 7, no. 2: 1–26.

SIPRI [Stockholm International Peace Research Institute]. 2021. "Chinese Military Expenditure 2009-2019." Military Expenditure Database. Accessed May, 2021.

Stewart, Phil, and James Pearson. 2019. "US to Provide Ship to Vietnam to Boost South China Sea Patrols." *Reuters*, November 20, 2019.

US Department of Defense. 2017. "Annual Freedom of Navigation Report: Fiscal Year 2017." Report to Congress, December 31, 2017.

US Congress. 2018. "S.2736 – Asia Reassurance Initiative Act of 2018." 116th Congress (2017-2018). <https://www.congress.gov/bill/115th-congress/senate-bill/2736>

US Department of State. 2019. "A Free and Open Indo-Pacific, Advancing a Shared Vision." Media Note, November 4, 2019.

US Department of State. 2020. "H.R.2116 – Global Fragility Act." 116th Congress (2019-2020). <https://www.congress.gov/bill/116th-congress/house-bill/2116>

\_\_\_\_\_. 2020. "US Imposes Restrictions on Certain PRC State-Owned Enterprises and Executives for Malign Activities in the South China Sea." Press statement. Michael R. Pompeo, Secretary of State, August 26, 2020.

US Department of State. 2021. "Protecting and Preserving a Free and Open South China Sea." Media Note, January 14, 2021.

\_\_\_\_\_. 2021. "Secretary Blinken's Call with Philippine Secretary of Foreign Affairs Locsin." Media Note. January 27, 2021.

\_\_\_\_\_. 2021. "US-Japan Joint Press Statement." Media Note, March 16, 2021.

\_\_\_\_\_. 2021. "United States Strategy to Prevent Conflict and Promote Stability." Global Publishing Solutions (A/GIS/GPS). Accessed March, 2021.

Watts, Jake Maxwell. 2018. "Bolton Warns China Against Limiting Free Passage in South China Sea." *Wall Street Journal*, November 13, 2018.

Werner, Ben. 2019. "Beijing Irked at Twin US South China Sea FONOPS." *USNI News*, November 22, 2019.

Williams, Robert. 2020. "What did the US Accomplish With its South China Sea Legal Statement?" Brookings

# US Policy in the South China Sea Across Three Administrations

Written by Adam Gerval and Mark Henderson

Institution, July 22, 2020.

Zhen, Liu. 2019. "US War planes on Beijing's Radar in South China Sea, American Air Force Chiefs Say." *South China Morning Post*, December 9, 2019.

[<sup>1</sup>] The Kuomintang was the most influential political party in China from 1928 to 1949 and a common term to refer to the military forces of the Republic of China (ROC), founded by Sun Yat-sen in 1912 and led from 1925 to 1975 by Chiang Kai-shek.

[<sup>2</sup>] The term nine-dash line refers to the PRC demarcation for claims over large swathes of maritime areas in the South China Sea. Based as they are on a 1947 map, the United Nations Convention on the Law of the Sea has rejected those claims as excessive.

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## About the author:

**Adam Gerval** is an Economist with the U.S. Department of Agriculture. He serves as an analyst researching macroeconomic trends in Asian markets, including East Asian nations (i.e. Japan, South Korea, Hong Kong, and Taiwan), in addition to emerging economies in Southeast Asia and sub-Saharan Africa. He has received Master's degrees in economics and international studies from George Washington University and The Ohio State University.

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