

The Import of Hybrid Activities in the South China Sea

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Abstract

Amid the intricate expanse of the South China Sea (SCS), enduring disputes intricately involve multiple nations. China deftly employs a strategic hybrid warfare approach, adroitly harnessing nonmilitary forces such as coast guards to execute coercive actions, thereby propelling its territorial and economic objectives. The intricacies of this approach intersect with the complexities of applying the UN Convention on the Law of the Sea. These intricacies are compounded by maritime security disagreements, prevailing power imbalances, and the persistent rivalry between the United States and China. This rivalry introduces an added layer of intricacy to an already intricate situation. Ensuring stability necessitates a united front among other actors to counter China's multifaceted strategies. Nevertheless, the potential lingers for China to ultimately succeed in its efforts to expel the United States from the South China Sea, resulting in its metamorphosis into an internally controlled body of water.¹

Multiple countries claim maritime zones in the South China Sea (SCS) based on various legal and historical rights. These states and some third parties engage in ongoing activities to pursue their disputes, which can be termed as *hybrid maritime warfare*. Hybrid warfare employs nonlethal means of coercion to influence opponents to adopt specific behaviors they would not otherwise choose.

Hybrid warfare distinguishes itself from traditional naval combat patterns, where parties' military forces resort to organized violence, aiming to compel a choice between incompatible aims. Instead, hybrid warfare involves gray-zone actions that fall between clear peace and definitive warfare. The SCS hosts intrac-

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table disputes over maritime rights, encompassing fisheries, and natural resources. Contentions arise over boundaries of exclusive maritime zones, independent determinations for seabed resource surveys, sea buoy anchoring, naval force deployment, and law enforcement. Hybrid warfare is frequently employed in the SCS to pursue these activities and dissuade competitors from similar actions.

In addition to hybrid warfare, the SCS hosts military maritime maneuvers, including freedom of navigation operations (FONOPs) and constabulary operations for law enforcement. FONOPs, in essence, constitute a type of naval diplomacy aimed at influencing other governments, and they can carry both symbolic and coercive implications.²

For the stabilization of the contentious situation in the SCS, a balance between military and legal approaches is imperative. Both methods have roles to play in crafting a diplomatic solution.

The Role of UNCLOS

The United Nations Convention on the Law of the Sea (UNCLOS), entered into force 1994, serves as the world's oceans' constitution. It establishes maritime zones with distinct rights and maritime jurisdictions.³ Nonetheless, fundamental differences of opinion regarding the rights and obligations of claimants in the SCS exist, particularly concerning historical rights. Several key UNCLOS concepts possess inherent ambiguities in practice. These encompass Exclusive Economic Zones (EEZs, where states hold exclusive resource exploitation rights), due regard principle, innocent passage (articles 17 and 18), marine protected areas (article 194), marine scientific research (article 56), and military activities in EEZs (articles 58 and 87).⁴

Despite these complexities, UNCLOS stands as the sole legal framework capable of providing a solution for SCS peace and stability. By defining entitlement to various maritime zones based on coastlines, UNCLOS restrains more potent states from overpowering weaker ones solely through military might. It grants exclusive independent maritime jurisdiction rights to coastal states and

² Command of the Defence Council, BR 1806 *British Maritime Doctrine*, Third Edition (London: TSO, 2004), 72.

³ Division for Ocean Affairs and Law of the Sea Office of Legal Affairs, *The Law of the Sea: Official Texts of the United Nations Convention on the Law of the Sea of 10 December 1982* (New York: United Nations, 1997), Introduction.

⁴ See: George Galdorisi, Doug Bandow, and M. Casey Jarman, *The United States and the 1982 Law of the Sea Convention: The Cases Pro & Con* (Honolulu, HI: Law of the Sea Institute, William S. Richardson School of Law, 1994).

affords all states rights of innocent passage, freedom of navigation, and freedom of overflight.

However, differing interpretations of UNCLOS by various states yield serious geopolitical and geo-economic ramifications. These encompass potential control over communication sea routes, global shipping paths, energy trade streams, and fisheries management. Other issues involve the conversion of marginal features into fortified artificial islands. Such manipulation of UNCLOS rules exacerbates SCS maritime disputes. Understanding UNCLOS, let's delve into the intricate realm of maritime security in the SCS.

Maritime Security

Maritime security in the SCS defies singular analysis.⁵ Broadly, it upholds peace and order within a legal framework. The SCS presents unique challenges due to its semi-enclosed geography, resulting in overlapping UNCLOS-defined maritime zone claims. Construction of artificial islands further complicates matters.⁶

Prejudiced interpretations of UNCLOS have sparked disputes over SCS maritime resources and hindered cooperative coastal state arrangements. Such discord undermines maritime security, unsettling the SCS's tranquility.

UNCLOS relies on specific land features to designate maritime resource rights. These features encompass reefs, rocks, shoals, and islands based on factors like tide elevation, submergence, and viability.⁷

Contentious land features include Paracel Islands, Spratly Islands, Scarborough Shoal, and Macclesfield Bank. Coastal and archipelagic states—the Philippines, China, Vietnam, Malaysia, Brunei, Taiwan—claim jurisdiction and sovereignty based on these.

Presently, China's coercive actions compromise SCS maritime security. Its gray-zone tactics, such as near-collisions, intimidate weaker states. Defending

⁵ See: Sam Bateman, "Solving the 'Wicked Problems' of Maritime Security: Are Regional Forums up to the Task," *Contemporary Southeast Asia* 33, no. 1 (2011): 1–28, <https://www.jstor.org/>.

⁶ See: Bill Hayton, *The SCS: The Struggle for Power in Asia* (London: Yale University Press, 2014).

⁷ See: C.J. Jenner and Tran Truong Thuy, ed, *The South China Sea: A Crucible of Regional Cooperation or Conflict-making Sovereignty Claim?* (Cambridge: Cambridge University Press, 2016).

national sovereignty, these states deserve support from interested parties to safeguard SCS maritime security.⁸

Capacity Discrepancies

In the twenty-first century, the traditional notion of sea power no longer reliably guides maritime capabilities. A broader perspective on capacity-building measures and maritime systems requires consideration.⁹

Among parties entangled in SCS maritime disputes, evident capacity disparities exist. States diverge in their commitment to UNCLOS principles, military might, economic influence, and alliances—most notably with the United States, a non-party of UNCLOS.

China wields the mightiest naval forces and substantial economic sway, a contrast to the comparatively weaker Taiwan and Association of Southeast Asian Nations (ASEAN) members. China's historical claims rest on the nine (or eleven)-dash-line maps from the 1940s. This U-shaped line defines China's sovereignty and claims, gradually established over history. China disregards the United States, a significant ally of several SCS states, as a valid party in SCS conflicts.

UNCLOS, a potential rectifier of capacity imbalances, furnishes redress avenues to assert maritime rights of weaker states. UNCLOS compulsory dispute mechanisms bind all members, offering four means of dispute settlement: International Tribunal for the Law of the Sea, International Court of Justice, UNCLOS Arbitral Tribunal, and UNCLOS Special Arbitral Tribunal. The Arbitral Tribunal is in default if resolution means are unresolved.

In 2016, a case brought by the Philippines against China showcased this mechanism. A tribunal appointed by the Permanent Court of Arbitration (PCA) ruled China interfered with Philippines' lawful rights, breaching maritime safety obligations. Notably, the tribunal deemed China's nine-dash-line devoid of legal weight, conferring no SCS entitlements beyond UNCLOS specifics.

However, China declined participation, dismissed the ruling as "null," and persists in asserting claims and controlling disputed features. This underscores UN-

⁸ Collin Koh, "David vs. Goliath: Southeast Asia Can Resist China's Grey Zone Aggression in the South China Sea . . . with Help," *Proceedings* 149 (May 2023): 78–83, <https://www.usni.org/>.

⁹ See: Geoffrey Till, *Seapower: A Guide for the Twenty-First Century* (London: Frank Cass, 2006).

CLOS's struggle to establish international credibility, proving inadequately reliable for SCS dispute resolution.¹⁰

Why Hybrid Warfare?

Conflicting claims in the SCS have ignited confrontations, marked by China's adoption of tactics often deemed hybrid warfare by observers.¹¹ China's ultimate objective seems to be gaining control over the entire SCS, transforming it into an *internal sea*, as part of a larger bid to reestablish regional Middle Kingdom hegemony. Unlike straightforward naval expansion, China employs a salami-slicing strategy, incrementally solidifying its SCS dominance through an array of gray-zone tactics, aiming to manifest its control as a *fait accompli*.

Since 2013, China has employed noncombatant maritime law enforcement vessels—coast guards, maritime police, militia—instead of its naval forces in confrontations. Consolidating five agencies into the China Coast Guard (CCG), China has rapidly built the world's largest coast guard fleet in a decade, distinguishing its capabilities.¹²

Simultaneously, China collaborates to craft a de-escalation mechanism, averting military clashes in the SCS. The Declaration on the Conduct of Parties in the SCS (DOC), established in 2002 by China and ASEAN, outlines a diplomatic framework for self-restraint in SCS activities. Although a confidence-building measure, the DOC remains advisory. Consequently, China and ASEAN have worked on a supposedly binding quasilegal Code of Conduct (COC) since August 2019, aiming to establish a rules-based SCS order.

While investing heavily in its naval forces, China's capabilities remain inferior to the US Navy's at present. Hence, China opts to avoid direct conflicts with SCS parties, many of whom are US allies. In contrast, the United States asserts its capabilities through FONOPs to challenge excessive maritime claims.¹³

To advance SCS goals, China leverages noncombatant vessels like the CCG instead of naval forces, claiming law enforcement activities. Yet, the scale and in-

¹⁰ See: Gordon Houlden, Scott N. Romaniuk and Nong Hong, ed., *Security, Strategy, and Military Dynamics in the South China Sea* (Bristol, UK: Bristol University Press, 2021).

¹¹ Sarang Joshi and S. Inderjit, "China's Hybrid Warfare in the South China Sea," *Journal of Defence Management, Social Science & Humanities* 4, no. 2 (2021): 105–15, <https://zulfaqarjdmssh.upnm.edu.my/>.

¹² Damien Cave, "China Uses Coast Guard to Exert Its Power at Sea," *New York Times*, 14 June 2023, 1–2, <https://www.nytimes.com/>.

¹³ Scott N. Romaniuk, "Maritime Hybrid Warfare and the SCS Dispute," *Geopolitical Monitor*, 7 February 2023, <https://www.geopoliticalmonitor.com/>.

timidating conduct of these forces effectively coerce neighbors and propel China toward its ultimate goal of altering the SCS status quo.

A recent illustration of this intimidation transpired on 28 April 2023: as stated by the Philippines government, two CCG vessels intercepted Philippine patrol vessels close to Second Thomas Shoal, referred to locally as Ayungin Shoal. The Chinese vessels adopted a near-collision trajectory, employing these assertive tactics that imposed a notable hazard to the safety and well-being of the Philippine vessels and their crews.¹⁴

Amid its endeavor for SCS dominance, China seeks global community acceptance. China's engagement with DOC and COC aims to offer plausible deniability regarding its ambition to internalize the SCS. Historically, China's leaders have flouted rules-based international orders, undermining such agreements.

The Effects of US-China Competition in the SCS

Strategic rivalry between the United States and China possesses a global scope, with heightened focus in the Asia Pacific region and culminating acutely in the SCS. The preservation of maritime peace and stability within the SCS faces threats not only from military confrontations but also from intricate hybrid activities.¹⁵

China's military expansion, prominently observed in the SCS militarization, raises alarm in the United States. The rapid growth of the People's Liberation Army Navy (PLAN) prompts a US response primarily through its FONOPs.

The SCS has consistently stood as a prominent stage for US-China rivalry and a rigorous trial of the US's capability to uphold the rules-based international order. The recent deterioration in US-China relations has, however, reshuffled the SCS dynamics. Previously marked by intermittent confrontations between US military expeditionary forces and the PLAN, China's behavior has now shifted in scope and pattern. It has transitioned from direct aggressive actions to a diverse array of hybrid and indirect tactics.¹⁶ These hybrid confrontational patterns have effectively heightened the US-China rivalry within the SCS.

A pivotal recent change is geographical. China has engineered artificial islands since 2013 by dredging and reclaiming land on shoals and reefs. This move carries

¹⁴ Camille Elemia and Jason Gutierrez, "Philippines Reports Near-collision with Chinese Vessels in South China Sea," *Radio Free Asia*, 28 April 2023, <https://www.rfa.org/>.

¹⁵ See: Brahma Chellaney, "China's Global Hybrid War," *The Strategist*, 10 December 2021, <https://www.aspistrategist.org.au/>.

¹⁶ Kunal Sharma, "How China Uses Geoengineering to Pursue a Hybrid Warfare Strategy," *The Diplomat*, 31 January 2023, <https://thediplomat.com/>.

dual significance. Firstly, China has militarized these islands, contradicting earlier claims of nonmilitarization, effectively crafting stationary aircraft carriers. This militarization empowers China to exert threatening influence, particularly concerning Taiwan. Secondly, under UNCLOS, the original augmented features were not considered in defining territorial seas. Nonetheless, China bases an insubstantial claim to expanded territorial seas on these islands. Both aspects bolster China's aspiration to counter US naval forces and eventually expel them from the SCS.

For China, embroiling PLAN forces in major confrontations within the SCS holds no appeal, echoing other states with naval forces in disputed territories. Such risks magnify with modern heavily armed naval platforms. This led to the 2014 Western Pacific region agreement on the Code for Unplanned Encounters at Sea, regulating approach distances. China, however, shifted tactics, expanding the CCG, which now undertakes similar intimidating missions as PLAN but with lower chances of uncontrollable escalation.¹⁷

China converted naval vessels, including Type 054 frigates and Type 056 corvettes, into coast guard forces, augmenting hybrid warfare and power projection capabilities. Methods employed to deter intruders into claimed maritime jurisdiction zones often involve nonlethal techniques. These include loudspeaker warnings and water cannon usage, yet recent instances incorporate more lethal measures like projecting laser beams at operators of US Navy and Australian military platforms, posing grave consequences with minimal evidence of Chinese actions.

China capitalizes on US engagement in the SCS by portraying the US as an interfering third party. It holds true that the United States lacks direct stakes in SCS maritime disputes, and the US omission from joining UNCLOS is regrettable. The United States asserts its primary motive is safeguarding navigation freedom for *all* nations. Nevertheless, substantial naval exercises near the SCS, involving aircraft carriers and amphibious assault ships, provide China an opportunity to assume the victim role. Despite this, instead of directly challenging the United States, such displays of US might generally embolden China to amplify coercive actions against ASEAN members, aiming to create a rift between the United States and its regional allies.

Recommendations and Suggestions

Amid these disruptive factors, various experts have proposed recommendations to effectively counter Chinese hybrid warfare in the SCS.

¹⁷ See: Ian Bowers and Swee Lean Collin Koh, ed., *Grey and White Hulls: An International Analysis of the Navy-Coastguard Nexus* (London: Palgrave, 2021).

First, the zero-sum strategic power struggle between China, the primary claimant, and the most influential external stakeholder, the United States, poses a significant hindrance to resolving long-standing SCS disputes through UNCLOS. While China persists in its quest for SCS dominance, all other parties must unify their stance by emphasizing adherence to maritime law as the central objective. Consequently, the focus should be on the legal framework, making US FONOPs counterproductive.

Second, an early warning system should be established for hybrid warfare, surveilling claimants in SCS disputes as well as external actors. This mechanism would curtail all parties' actions, reducing the risk of perilous skirmishes and gradually lowering tensions in the SCS.

Third, the current state of bilateral maritime relations between China and other claimants remains strained, primarily due to divergent interpretations of UNCLOS as applied to the SCS. China frequently justifies SCS hybrid warfare based on its self-serving UNCLOS interpretation, though Beijing's underlying objective is evidently to make the SCS an internal Chinese sea. Other claimants must unite to expose this hypocrisy and thwart Chinese hegemony.

Fourth, stakeholders should collaborate to reconcile conflicting legal claims and achieve mutual UNCLOS interpretations. This approach stands as the sole viable path to satisfactorily resolving the future status of the SCS. Regrettably, populist and nationalist movements have often exploited territorial claims, undermining rules-based resolutions and paving the way for quasi-military actions such as hybrid warfare. An extensive legal approach will render such measures unnecessary.

While the SCS issues deeply involve major powers, persuading China to change its behavior seems improbable, and the United States' constructive role remains limited. In response to Chinese coercion, all other stakeholders share a compelling interest in collaborating and voicing a unified stance. Without such coordination, hybrid warfare will persist as a blight on the SCS, accompanied by escalated military tensions.

Conclusion

China employs hybrid warfare in the SCS to assert its maritime jurisdictional rights and sovereignty, simultaneously showcasing its ambition to establish itself as a significant maritime power. This involves demonstrating control over disputed SCS maritime zones. Nonetheless, Beijing harbors broader aspirations.

Heightened strategic rivalry between the United States and China within the SCS introduces a substantial destabilizing element. This sparks proxy confronta-

tions among coastal states and intensifies aggressive behaviors, leading to near-lethal conflicts propelled by increasingly advanced and intricate weaponry.

Presently, China's capacity to execute various hybrid warfare techniques on a large scale empowers its dominion over the SCS, though Indonesia and Malaysia have pushed back against Chinese hegemony in the southern portion of the SCS. The intricacy of maritime disputes, involving seven nations with conflicting claims works to China's advantage. Thus far, efforts to modify China's conduct through legal avenues, particularly the 2016 PCA ruling favoring the Philippines, have yielded no success. China will persist in its pursuit to make the SCS an internal sea, likely attaining this goal in the medium to long term, despite US endeavors to thwart it. 🌟

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