



South China Sea Disputes: Background and U.S. Policy

Overview

Tensions in the South China Sea (SCS) have become a pressing challenge for U.S. policymakers in recent years, raising questions for Congress about U.S. goals and strategy in the Asia-Pacific region. The heavily trafficked SCS is home to sovereignty disputes among Brunei, the People's Republic of China (PRC), Malaysia, the Philippines, Taiwan, and Vietnam. (Japan has other disputes with China and Taiwan in the East China Sea.) The United States has no territorial claim in the South China Sea and does not take a position on the sovereignty of any of the geographic features in the SCS, but has urged that disputes be settled without coercion and on the basis of international law. Separate from the sovereignty disputes, the United States and China have a long-simmering disagreement over the right of foreign militaries to operate in waters near China, including in the South China Sea. The disagreement has led to incidents between Chinese and U.S. ships and aircraft in international waters and airspace.

Since 2013, the sovereignty disputes and the U.S.-China dispute over freedom of the seas for military ships and aircraft have both been at play in the controversy over China's moves to build artificial islands with military installations on disputed features in the SCS' Spratly Islands. Of particular concern to the U.S. military is the possibility that China's island building may be part of an effort to dominate the South China Sea, with the ultimate goal of making China a regional hegemon that can set the rules by which other regional actors must operate. A long-standing goal of U.S. grand strategy has been to prevent the emergence of a regional hegemon in Eurasia. U.S. and regional observers have been alert to other actions China might take to achieve dominance in the SCS, including initiating reclamation on another SCS landmass, such as Scarborough Shoal, or declaring an Air Defense Identification Zone (ADIZ) over parts of the SCS.

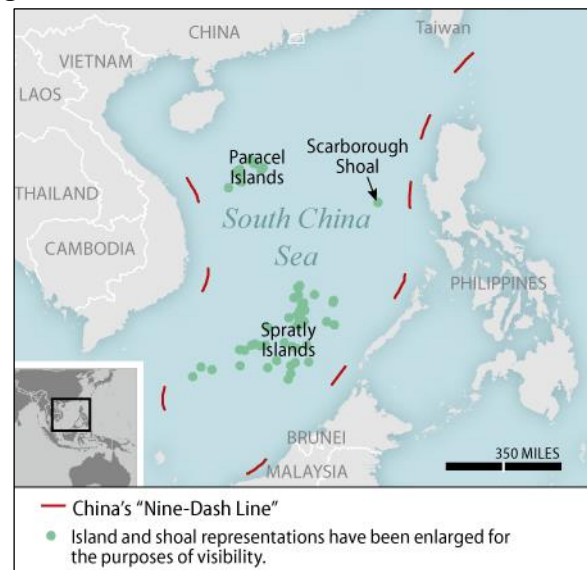
President Trump's first statements as president on Asian maritime disputes and the South China Sea came in a February 10, 2017, joint statement with visiting Japanese Prime Minister Shinzo Abe. The two leaders said their countries are committed to "maintaining a maritime order based on international law, including freedom of navigation and overflight and other lawful uses of the sea." They said their countries "oppose any attempt to assert maritime claims through the use of intimidation, coercion or force," and called on "countries concerned to avoid actions that would escalate tensions in the South China Sea, including the militarization of outposts, and to act in accordance with international law."

Key Facts

The SCS is one of the world's most heavily trafficked waterways. An estimated \$5.3 trillion in ship-borne

commerce transits the SCS each year, including energy supplies to U.S. allies Japan and South Korea. According to the U.S. Energy Information Administration, the SCS contains about 11 billion barrels of oil rated as proved or probable reserves—a level similar to the amount of proved oil reserves in Mexico—and 190 trillion cubic feet of natural gas. The SCS is also among the largest sources of fish for the countries surrounding it, and it contains significant coral and other undersea resources.

Figure 1. The South China Sea



Source: CRS graphic

The Sovereignty Disputes

Beijing states that it has "indisputable sovereignty over the South China Sea islands and their adjacent waters," without defining "adjacent waters." On maps, China depicts its claims with a "nine-dash line" that, if connected, would enclose an area covering approximately 90% of the sea. Beijing has never explained definitively what the line signifies. In the northern part of the sea, China, Taiwan, and Vietnam contest sovereignty of the Paracel Islands; China has occupied them since 1974. In the southern part of the sea, China, Taiwan, and Vietnam claim all of the approximately 200 Spratly Islands, while Brunei, Malaysia, and the Philippines, a U.S. treaty ally, claim some of them. Vietnam controls the greatest number of Spratly features. In the eastern part of the sea, China, Taiwan, and the Philippines all claim Scarborough Shoal; China has controlled it since 2012. China's "nine-dash line" and Taiwan's similar "eleven-dash line" overlap with the 200-nautical-mile (nm) Exclusive Economic Zones (EEZs) that five Southeast Asian nations—Brunei, Indonesia, Malaysia, the Philippines, and Vietnam—claim under the 1994 United Nations Convention on the Law of the Sea (UNCLOS).

The U.S.-China Dispute Over Freedom of the Seas

A dispute over how to interpret UNCLOS lies at the heart of tensions between China and the United States over the activities of U.S. military vessels and planes in and over the South China Sea and other waters off China's coast. China, Vietnam, Malaysia, Brunei, and the Philippines are all parties to UNCLOS. The United States is not, but has long had a policy of abiding by UNCLOS provisions relating to maritime disputes and rights. UNCLOS allows state parties to claim 12-nm territorial seas and 200-nm EEZs around their coastlines and around "naturally formed" land features that can "sustain human habitation." Rocks that are above water at high tide but not habitable generate territorial seas but not EEZs.

The United States and most other countries interpret UNCLOS as giving coastal states the right to regulate economic activities within their EEZs, but not the right to regulate navigation and overflight through the EEZ, including by military ships and aircraft. China's position is that UNCLOS allows it to regulate both economic activity and foreign militaries' navigation and overflight through its EEZ. China objects strenuously to U.S. survey and ocean surveillance operations in its EEZ, and to U.S. freedom of navigation operations (FONOPs) and patrols near disputed features it controls. China says it "respects the freedom of navigation and overflight" under international law, but opposes "relevant countries threatening and undermining the sovereignty and security of coastal states under the pretext of such freedom." In 2016, Chinese Foreign Minister Wang Yi summed up China's position as, "Freedom of navigation does not equal the freedom to run amok." On February 4, 2017, Secretary of Defense Jim Mattis stated, "freedom of navigation is absolute, and whether it be commercial shipping or our U.S. Navy, we will practice in international waters and transit international waters as appropriate." In proposed amendments to its 1984 Maritime Traffic Safety Law announced in February 2017, China also appears to be seeking to tighten rules for foreign vessels operating in its territorial sea.

China's Artificial Island Building

Since 2013, China has undertaken extensive land reclamation and construction in the Spratly Island chain in the SCS. According to the U.S. Department of Defense (DOD), China's reclamation has created over 3,200 acres (5 square miles) of artificial landmasses on the seven reefs that China controls. China portrays its actions as part of an effort to play catch-up to other claimants, several of which control more Spratlys features and carried out earlier reclamation and construction work on them, although China's reclamation work has been far greater in scale. Since 2015, China has built facilities with potential military uses on the artificial islands, including three airstrips—two more than 10,000-feet-long and one nearly 9,000-feet-long—hangars that could shelter fighter jets, harbors, anti-aircraft batteries, radars, and structures that could house surface-to-air missiles. An April 2016 DOD report judged that China would be able to use its new artificial islands "as persistent civil-military bases to enhance its long-term presence in the South China Sea significantly." China has undertaken military training exercises and bomber patrols

in the SCS, but has not used its artificial islands in such operations.

In 2013, the Philippines sought arbitration under UNCLOS over Chinese behavior in the SCS. In July 2016, an UNCLOS arbitral tribunal ruled that China's nine-dash line claim had "no legal basis." It also ruled that none of the land features in the Spratlys is entitled to any more than a 12-nm territorial sea; three of the Spratlys features that China occupies generate no entitlement to maritime zones; and China violated the Philippines' sovereign rights by interfering with Philippine vessels, and by damaging the maritime environment and engaging in reclamation work on a feature in the Philippines' EEZ. The United States has urged China and the Philippines to abide by the ruling, which under UNCLOS is binding on both parties. China, however, has declared the ruling "null and void." Philippine President Rodrigo Duterte, who took office just before the tribunal's ruling, has not sought to enforce it. The Philippines has signaled that it is focused on pursuing a Code of Conduct between China and the Association of Southeast Asian Nations (ASEAN). The Philippines holds the rotating chairmanship of ASEAN for 2017.

U.S. Actions

In response to the situation in the SCS, the United States has taken steps to improve the ability of the Philippines and Vietnam to maintain maritime domain awareness (MDA) and patrol their EEZs, part of a DOD five-year \$425 million Southeast Asia Maritime Security Initiative announced in May 2015. The United States has taken steps to strengthen U.S. security cooperation with Japan, Indonesia, Malaysia, the Philippines, Singapore, and Vietnam; expressed support for the idea of Japanese patrols in the SCS; and stated that the United States would support a multinational maritime patrol of the SCS by members of ASEAN. The U.S. Navy has conducted FONOPs in the SCS, challenging maritime claims by Asian countries that the United States considers to be excessive, and has regularly sent single or dual carrier strike groups into the sea. The USS Carl Vinson strike group began "routine operations" in the SCS in February 2017. Issues for Congress include whether U.S. actions have been appropriate and effective, and whether the United States should take different or additional actions.

Action in the 114th Congress

In the 114th Congress, the National Defense Authorization Act (NDAA) for FY2016 (P.L. 114-92) authorized the South China Sea Initiative. The NDAA for FY2017 (P.L. 114-328) re-designated it the Southeast Asia Maritime Security Initiative and required DOD to describe China's activities in the SCS in an annual report to Congress on China's military. The Senate agreed to S.Res. 153, supporting U.S.-Japan cooperation the SCS. Other legislation related to the SCS considered by the 114th includes S. 2865 and H.R. 5890, S. 3509, S.Res. 183, S.Res. 370, and S.Res. 526 and H.Res. 830.

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