



Claimant and Non-Claimant Views on SLOCs and Freedom of Navigation

By Jonathan Spangler / *Issue Briefings*, 7 / 2015

Freedom of navigation concerns both South China Sea claimants and non-claimant stakeholders, yet the latter in particular have taken it up as their primary justification for involvement in the disputes.

For claimant states, two issues reign supreme in the South China Sea (SCS) maritime territorial disputes: (1) territorial sovereignty over islands and sea features and (2) the corresponding legal rights to maritime resource exploration and exploitation in the surrounding waters. For non-claimant stakeholders, particularly those dependent on maritime trade passing through the region, freedom of navigation and the continued security of sea lines of communication (SLOCs) have provided the key impetus for involvement.

The high seas have long been an arena free from the control of individual states. More than any other geographic location, maritime territory is the quintessential international space. This



status originates from the impracticality of enforcement in broad oceanic expanses and has more recently been reinforced by its codification into international maritime law. Because international law, however, is characterized by ambiguity, states are left to craft their maritime policies based on interpretations that suit their own interests. The analysis that follows synthesizes key aspects of the perspectives of select SCS claimants and non-claimant stakeholders.

China

While Beijing has advocated freedom of navigation on the high seas, its support for maritime vessels operating within the boundaries of its SCS maritime territorial claims is less clear-cut. During his tenure, President Xi Jinping has offered his support for joint collaboration with SCS littoral states. In a speech to the Australian parliament in 2014, for example, Xi declared, “The Chinese government is ready to enhance dialogue and cooperation with relevant countries to jointly maintain freedom of navigation and safety of maritime rules, and ensure a maritime order of peace, tranquility and a win-win cooperation.” (Hurst 2014) However, other official references to freedom of navigation add ambiguity to the issue. In a statement elaborating China’s SCS policy, Chinese Ambassador to the U.S. Cui Tiankai claimed that the “building-



up of China's capabilities in the South China Sea provides public goods to all and serves the interests of maintaining security, stability and freedom of navigation there." (MOFA 2015) Such a policy stance makes it unclear to whom the freedom of navigation principle applies.

From Beijing's perspective, the waters of the SCS are an integral part of domestic territory, so guaranteeing the freedom of navigation of its own maritime vessels in the area is a given. Whether or not China is willing to accommodate the interests of other countries' merchant and military vessels in the SCS, however, is not a given. Because the SCS is considered to be under the PRC's jurisdiction, several policies have been put into effect in order to monitor, limit, or otherwise regulate the activities of foreign vessels. Hainan's announcement that, beginning on January 1, 2014, all non-Chinese fishing vessels operating in the SCS must report to the provincial government was met by harsh resistance from affected parties. Although the policy does not restrict freedom of navigation per se, it has nevertheless increased anxiety among those who must face the difficult choice of abiding by maritime policies that they see as illegitimate or accepting the increased risk of continuing with business as usual. For the most part, Beijing tends to subscribe to a relatively pure interpretation of freedom of navigation that



is inclusive of civilian maritime vessels. Friction has been the inevitable result when others have confounded the issue with freedom of overflight or sought to deem active military operations merely as navigation. (e.g., Sands 2015)

Thus, while Chinese policymakers have publicly expressed a general support for freedom of navigation and the security of SLOCs, whether or not such freedoms are extended to the maritime vessels of other countries operating in the SCS has not been clearly established. Like Japan and other countries in the region, China has voiced concern over the idea that foreign military vessels be allowed to operate within EEZs. Other than that, Beijing's stance on SLOCs and freedom of navigation in the SCS remains ambiguous and much depends on interpretations of the status of its maritime territorial claims within the nine-dash line on which its policy is based.

Vietnam

As with other claimants, Vietnamese policy prioritizes territorial sovereignty over islands and sea features and rights to resource extraction within its claimed EEZs. While Hanoi, like Beijing, has expressed its support for ensuring freedom of navigation and the security of SLOCs in the SCS, its policies on the issue remain relatively ambiguous and of secondary importance to its sovereignty concerns. For the most part,



Vietnamese leaders have only used the freedom of navigation issue in their efforts to further internationalize the SCS disputes, incorporating it into bilateral and other agreements and policy statements.

Hanoi's limited focus on freedom of navigation has only emerged in recent years, and high-profile references to the issue were all but nonexistent during the earlier years of the disputes. At an ASEAN–U.S. forum chaired by then-Vietnamese President Nguyen Minh Triet in September 2010, it was among the topics of discussion with an official announcement stating that the countries “agreed on the importance of peaceful resolution of disputes, freedom of navigation, regional stability and respect for international law, including in the South China Sea.” (AP 2010) Previously, Vietnamese political administrations had expressed minimal interest in the issue, and it was not until recently that freedom of navigation gained relevance for the country.

On a state visit to Vietnam from September 14–17, 2014, Indian President Pranab Mukherjee and his Vietnamese counterpart, President Truong Tan Sang, signed a joint communiqué strengthening economic and defense cooperation and increasing cultural and educational exchanges between the two countries. Section 13 of the document highlighted their



commitment to using international and regional agreements, including the United Nations Convention on the Law of the Sea (UNCLOS), the Declaration on the Conduct of Parties in the South China Sea, and the proposed Code of Conduct in the South China Sea, as tools for managing the maritime territorial disputes. The leaders reiterated their shared stance that “freedom of navigation in the East Sea/South China Sea should not be impeded” and pushed for further “cooperation in ensuring security of sea-lanes.” (VNA 2014) Sang has also voiced his general support for freedom of navigation in other political fora, including in a meeting with Indonesian President Joko Widodo at the Asian-African Conference in Jakarta on April 23, 2015. (Tuoi Tre News 2015)

Over the course of the SCS disputes, Hanoi has focused primarily on territorial sovereignty and resource extraction while limited attention has been paid to freedom of navigation. Only recently has the freedom of navigation issue been incorporated into its policy, and this has been done in the context of internationalizing the dispute through bilateral and multilateral agreements and policy statements. For Vietnam and other SCS claimants, freedom of navigation remains an important but secondary concern and is only employed in conjunction with other relevant policies.



Japan

In contrast to claimants' policies, non-claimant stakeholders have taken up freedom of navigation as a cornerstone of their policies related to the SCS disputes. As the country most heavily dependent on shipping passing through the SCS, it is no surprise that Japan has been an outspoken advocate of freedom of navigation and the security of SLOCs. With 96% of its primary energy supply dependent on foreign imports, (FEPC 2011) the majority of which transits the SCS in the form of crude oil or liquefied natural gas (LNG), disruptions to SLOCs in the SCS could have a devastating impact on the Japanese economy and political stability. Figures 1 and 2 show the trade flows of crude oil and LNG, respectively, in the SCS and highlight the significance of regional SLOCs for Japan's energy security.



Major crude oil trade flows in the South China Sea (2011)
million barrels per day

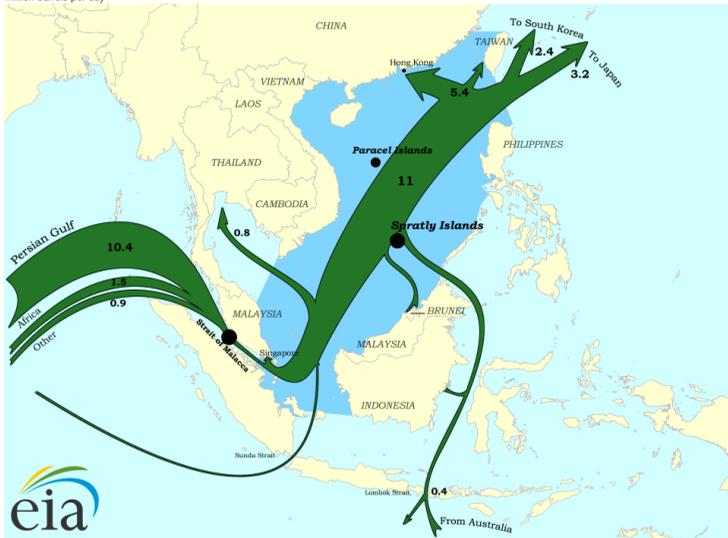


Figure 1: Major crude oil trade flows in the South China Sea (2011), million barrels per day (Source: EIA, 2013)



Major LNG trade flows in the South China Sea (2011)
trillion cubic feet

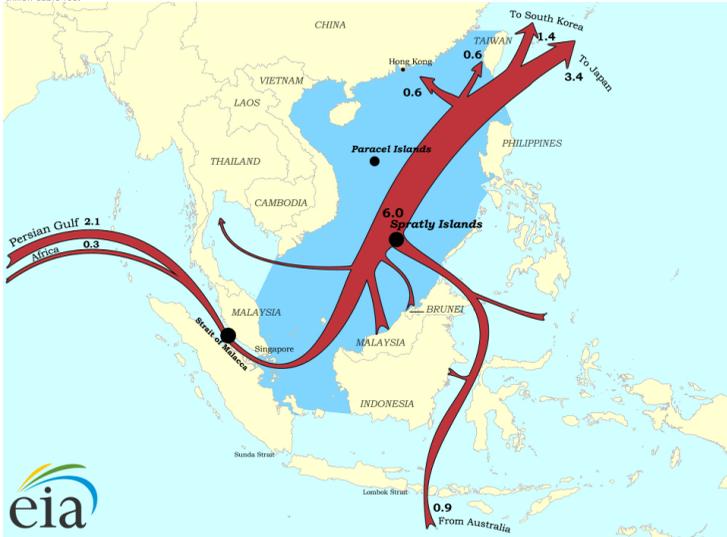


Figure 2: Major LNG trade flows in the South China Sea (2011), million barrels per day (Source: EIA, 2013)

Given the extent of its dependence on SLOCs traversing the SCS, Japan has taken freedom of navigation and securing SLOCs as a key mission of the Japan Maritime Self-Defense Force (MSDF) and a primary justification for involvement in the disputes. (Kotani 2011, 2) Moreover, the country has actively encouraged ASEAN member states to do the same. In his keynote address at the 2014 Shangri-La Dialogue, Japanese Prime Minister Shinzo Abe assured delegates that the country would “offer its utmost support for the efforts of the countries of ASEAN as they work to ensure the security of the seas and



the skies, and thoroughly maintain freedom of navigation and freedom of overflight.” (Abe 2014) He followed this up by expressing Japan’s intention to “play an even greater and more proactive role” in regional security. (Abe 2014)

With the Japan–U.S. security alliance a vital facet of maritime policy for both countries, the two SCS non-claimant states have much in common in terms of their adamant policies on SLOCs and freedom of navigation. However, in contrast to the U.S. stance that foreign military vessels are free to operate within the EEZs of other countries, Japan has expressed reservations about the issue because of the potential implications it would have for the security of its own coastlines. (Schwarck 2014) Thus, while Japanese maritime policy strongly advocates freedom of navigation in the SCS and is closely linked to that of the U.S., its perspective on military operations within EEZs coincides more closely with those of other countries in the region.

United States

For the past century, the promotion of so-called universal values has been part and parcel of the U.S. foreign policy narrative. President Woodrow Wilson’s idealism left an enduring legacy that can be seen today, albeit indirectly, in the context of the U.S. South China Sea strategy. In the South



China Sea, the traditional universal values-based approach is limited, and little more can be done than reiterate that unilateral actions by claimants to alter the status quo should not be tolerated. Unable to utilize its go-to approach to influence the sovereignty and resource issues driving the policies of littoral states, the U.S. has steadfastly championed the freedom of navigation issue as the focal point of its South China Sea policy.

On March 10, 1983, U.S. policy regarding freedom of navigation was elaborated in an official statement by President Ronald Reagan, which affirmed,

the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses. (Reagan 1983)

Released three months after the signing of UNCLOS on December 10, 1982, the statement intended to clarify the U.S. rationale for not signing or ratifying the agreement and outline the key tenets of U.S. maritime policy in general. It also



officially established the 200-nautical-mile exclusive economic zone (EEZ) around U.S. coastlines and afforded other countries their rights to freedom of navigation within the zone, stating, “Within this Zone all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the freedoms of navigation and overflight.” (Reagan 1983) The statement lent further support for the U.S. Freedom of Navigation (FON) Program, a collaborative effort between the Department of Defense (DoD) and Department of State (DoS). (DoS 2015; Mandsager 1997)

In the more than three decades since, U.S. administrations have reiterated the centrality of freedom of navigation to the country’s maritime policy. In *Turning to the Sea: America’s Ocean Future*, a report commissioned by the administration of President Bill Clinton, the rationale behind the U.S. freedom of navigation policy was reaffirmed:

The U.S. has always recognized and defended the traditional freedoms of navigation and overflight on and over the world’s oceans for military and commercial purposes. Internationally agreed-upon freedoms of navigation key to our ability to import raw materials and export finished products to global markets are essential to our economic security. Freedom of navigation is also essential for national security, enabling the



worldwide movement of U.S. military forces and the sealift and airlift needed for their support. (NOAA, 1999)

The report also recommended that the U.S. join UNCLOS, a policy recommendation that has yet to be achieved by subsequent administrations.

Under the administration of President George W. Bush, the U.S. continued to assert its position regarding freedom of navigation, placing it firmly under the “universal values” umbrella narrative. In a joint statement by Bush and Japanese Prime Minister Junichiro Koizumi, the leaders state,

The United States and Japan share interests in: winning the war on terrorism; maintaining regional stability and prosperity; promoting free market ideals and institutions; upholding human rights; securing freedom of navigation and commerce, including sea lanes; and enhancing global energy security. (Bush and Koizumi 2006, 1239–1240)

In terms of the country’s maritime policy, President Barack Obama has continued in a similar vein, asserting in a news conference with Chinese President Hu Jintao, “the United States has a fundamental interest in maintaining freedom of navigation, unimpeded commerce, respect for international law, and the peaceful resolution of differences.” (Obama 2011, 28)



Without its own maritime territorial claims to the South China Sea, successive U.S. administrations have maintained that freedom of navigation is at the heart of the country's relevant maritime policy. With the exception of Brunei, DoD has repeatedly challenged all SCS claimants' "excessive maritime claims" in its annual FON reports. (DoD 2013, 2014, 2015) The U.S. considers freedom of navigation in international waters, including within EEZs, to be an unalienable right of all countries and will continue to formulate foreign policy and pursue national interests in the SCS based on this stance.

Conclusion

While claimant and non-claimant stakeholders in the SCS have advocated freedom of navigation in the SCS, the latter have been particularly active in using it to protect national interests, safeguard economic activity, and justify their own involvement in the disputes. No claimant to date has expressed intentions to more generally restrict freedom of navigation or deny passage along SLOCs in the SCS. Despite differing interpretations of what freedom of navigation entails, it is an issue of economic importance to all countries involved in the SCS disputes. For the time being, it is likely that civilian vessels refraining from resource extraction in disputed areas and maintaining an



adequate distance from coastlines will not encounter any substantial interference. As for military vessels seeking innocent passage, it is safe to assume that the risk of confrontation while in transit will be negatively correlated with the distance maintained from sensitive coastlines.

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