



Let's Get Real about the South China Sea “Status Quo”

By Jonathan Spangler / *Issue Briefings*, 9 / 2015

In discussions of the South China Sea disputes, the term “status quo” gets tossed around like a tugboat in a typhoon, but few leaders or analysts take a step back to consider what they are really talking about.

Actors involved in the South China Sea (SCS) disputes use the notion of a “status quo” in the region with regularity. The term is but one of many in the toolboxes of political rhetoric that government officials and analysts use to further the interests of one country or counter those of another. In recent years, Beijing, in particular, has received the brunt of many such accusations with commentators coming out from the woodwork to challenge it on the basis of “unilaterally altering the status quo.” Yet such accusations are rarely grounded in any objective analysis of what exactly this status quo is, and even less often are they based on any agreed upon definition. This analysis argues that, for the notion of a South China Sea



status quo to have practical meaning, it must be complemented by a clear definition or way of measuring the concept. It then suggests two sets of possibilities for conceptualizing the *status quo de facto* and *status quo de jure* in the maritime territorial disputes.

Building the Narrative of the Status Quo

From Canberra to Tokyo to Washington, D.C., world leaders have been jumping on the bandwagon of political rhetoric, taking advantage of their time in the limelight to talk about the status quo in the region and how it is changing. Specifically, they have suggested that these changes are being made unilaterally and at the expense of many. More than any other issue, China's accelerated land reclamation efforts on disputed islands and sea features have been the impetus for these claims. With the chorus of political rhetoric coming from all angles, a narrative has emerged, and this narrative is becoming increasingly accepted by commentators.

Political leaders are on the front lines of these efforts. In mid-June 2015, shortly before engaging in joint military exercises with the Philippines in the SCS, Japanese Chief Cabinet Secretary Yoshihide Suga denounced Chinese development efforts, saying, "We hold serious and significant



concerns about the unilateral actions aimed at changing the status quo, which are bound to increase tension.”¹ The official Japanese position was reiterated by Prime Minister Shinzo Abe at a joint press conference with Vietnamese Prime Minister Nguyen Tan Dung, where he stated that the two countries “shared serious concerns over unilateral attempts to change the status quo.”²

Washington, of course, is also on board. In a speech at the Center for a New American Security, Deputy Secretary of State Antony Blinken expanded on the Japanese and Vietnamese line of reasoning, proposing that “[t]he way forward is for China, and all claimants, to freeze their reclamation activities and resolve their difference in accordance [with] the rule of law. ... In both eastern Ukraine and the South China Sea, we’re witnessing efforts to unilaterally and coercively change the status quo — transgressions that the United States and our allies stand united against.”³ His comparison of Russia–Ukraine and SCS relations suggests that Chinese dredging and

¹ AFP and Reuters, “Japan warns China against changing status quo with its island-building,” *Taipei Times*, 18 June 2015.

<http://www.taipetimes.com/News/front/archives/2015/06/18/2003620961>

² Associated Press, “Japan PM Shinzo Abe and Vietnam PM Nguyen Tan Dung share ‘serious concerns’ about Chinese reclamation,” *South China Morning Post*, 5 July 2015. <http://www.scmp.com/news/asia/diplomacy/article/1832713/japan-pm-shinzo-abe-and-vietnam-pm-nguyen-tan-dung-share-serious>

³ Reuters, “U.S. compares China’s South China Sea moves to Russia’s in Ukraine,” *Yahoo! News*, 26 June 2015. <http://news.yahoo.com/u-compares-chinas-south-china-sea-moves-russias-221614777.html>



construction on barely inhabited sea features in some way resembles the large-scale military operations and thousands of deaths that resulted in eastern and southern Ukraine beginning in 2013. It also fuels the narrative that development of currently occupied territories in the SCS is not unlike the violent, non-consensus-based redrawing of national borders that was a major outcome of that crisis.

World leaders of other non-claimant states have joined the chorus as well. At the televised press conference of the annual Australia–Singapore leaders’ meeting in Singapore on June 29, 2015, Australian Prime Minister Tony Abbott remarked, “we take no side in the territorial disputes but we certainly deplore any unilateral alteration of the status quo. We think that disputes should be resolved peacefully and in accordance with international law and like Singapore we strongly uphold freedom of navigation on the sea and in the air.”⁴ Again, condemnation of the “unilateral alteration of the status quo” here forms the centerpiece of non-claimants’ national policy on the SCS issue, and no attempt is made to define what this status quo is.

⁴ Tony Abbott, “Joint Press Conference with Prime Minister Lee, Singapore,” Department of the Prime Minister and Cabinet, 29 June 2015. <http://www.pm.gov.au/media/2015-06-29/joint-press-conference-prime-minister-lee-singapore>



Needless to say, SCS claimant states have also taken advantage of the regional status quo concept in formulating their political rhetoric. Attempting to garner international support for the ongoing Philippine arbitration case against China, Philippine Permanent Representative to the United Nations Lourdes Yparraguirre, in a speech to UNCLOS member states in New York, stated, “[t]here should be no attempt to assert territorial or maritime claims through intimidation, coercion or force, including through unilateral and aggressive action such as massive, large-scale land reclamation. There should be no pattern of forcing change in the status quo in order to advance a [claim] of undisputed sovereignty over nearly the entire South China Sea.”⁵ Beijing has used the rhetoric of the status quo as well. In a CNN interview, Chinese Ambassador to the U.S. Cui Tiankai offered the Chinese take on the idea, explaining that “the status quo has been changed by others for a long, long time. So what we are doing is to sort of restore the status quo as it should be.”⁶ Indeed, although China’s high-paced dredging initiatives have

⁵ Christine O. Avendaño, “PH envoy to UN: Sea row a global concern,” *Philippine Daily Inquirer*, 15 June 2015. <http://globalnation.inquirer.net/124648/ph-envoy-to-un-sea-row-a-global-concern>

⁶ Christiane Amanpour and Cui Tiankai, “China: We have right to set up air exclusion zone,” Interview on CNN, 5 June 2015. <http://edition.cnn.com/videos/world/2015/06/04/intv-amanpour-cui-tiankai-south-china-sea.cnn>



startled the region, land reclamation has long been underway in the SCS, and China was by no means the country that initiated it. In that sense, one can only conclude that land reclamation by itself is a far cry from unilaterally altering the status quo. In fact, continued land reclamation may well be the status quo in and of itself.

All of the high-profile comments and accusations mentioned above came within a one-month period. Loosely organized as the efforts are, they have attracted increasing attention towards the SCS and collectively contributed to a narrative about a regional status quo that is not entirely accurate.

Defining Regional Status Quos

The SCS maritime territorial disputes are driven by the lack of consensus over sovereignty and interpretations of international law. Because actors involved are unable to come to agreement on the current reality regarding these issues, it is impossible to define the status quo in a way that would represent an international consensus. Nevertheless, the term has been used abundantly by government officials and political analysts, few of whom have based their claims on objective analyses or any



agreed upon definition.⁷ However, disaggregating the notion of a general, all-encompassing status quo into its constituent components may offer some progress towards broader agreement. The reality is that many different status quos can be used to describe the region. In this analysis, these are divided into two categories: the *status quo de facto* and the *status quo de jure*.

The *status quo de facto* or “actual state(s) of affairs” in the SCS include a highly diverse set of issues. These include (1) the occupation of islands and sea features, (2) their land area, (3) their infrastructure, (4) presence in maritime territory, (5) control over maritime territory, and (6) activities in maritime territory. In terms of occupation, islands and sea features have a relatively simple set of possible status quos: occupied by a given claimant or unoccupied. Alteration of the status quo in this case would simply be a change in occupying country, a new occupation, or a relinquished occupation. These scenarios have occurred many times in the past but with less frequency in recent years. As for land area and infrastructure, the most straightforward methods of determining alterations of the status quo would be to define them as any increase in land area

⁷ One notable exception is an analysis piece written by Andrew Chubb of the University of Western Australia. See Andrew Chubb, “The South China Sea: Defining the 'Status Quo',” *The Diplomat*, 11 June 2015. <http://thediplomat.com/2015/06/the-south-china-sea-defining-the-status-quo/>



or number of structures. By that definition, all claimants are guilty of unilaterally altering the status quo with Brunei being a possible exception. An alternative method would be to set a rate for acceptable status quo development, such as a twenty percent increase in land area (e.g., above the surface at low tide) per year from land reclamation or number of each type of structure per year. Claimants exceeding such thresholds could then be objectively considered to have altered the status quo.⁸ Although land area is a relatively simple matter, conceptualizing infrastructural change would be particularly complicated because of the differing functions and sizes of each structure.

Even more difficult than determining changes to the status quo on islands and sea features would be doing so for maritime territory. Assuming that presence in, control over, and activities in maritime territory are its three primary dimensions, definitions would have to be based on combinations of the number, size, type, movement, and activities (e.g., resource extraction, military patrols) of naval vessels in specifically

⁸ Though unclear, such a method is in essence what U.S. Deputy Secretary of State Antony Blinken has alluded to in his remarks that “the size and scale of what China is doing dwarfs what these other countries are doing, but what we’ve suggested to all of them is a freeze on reclamation activities: the reclamation itself, the construction that goes on on these so-called islands, and any militarization, whether for defensive or other purposes.” See Antony J. Blinken, “Remarks at Center for a New American Security,” U.S. Department of State, 26 June 2015. <http://www.state.gov/s/d/2015/244421.htm>



defined geographic spaces. Despite recent advances in satellite-based ship tracking, conducting such measurements on a large-scale remains far beyond the capabilities of existing technology. Thus, the theoretical possibility of identifying changes in the status quo regarding maritime territory is limited by its feasibility.

The *status quo de jure* or “legal state(s) of affairs” in the SCS can be separated into those involving international law and those involving domestic law. In international law, definitions of islands and sea features and territorial sovereignty are the two issues vital to the future of the disputes. Today, the status quos regarding the definitions of islands and sea features are (1) international laws do define islands and sea features and (2) these definitions are ambiguous. Article 121 of UNCLOS defines an island as “a naturally formed area of land, surrounded by water, which is above water at high tide” but then goes on to muddle this definition by referring to “[r]ocks which cannot sustain human habitation or economic life of their own.”⁹ This suggests that not all sea features that fit the definition of an island receive the same treatment in international law. Moreover, the requirements for sustaining

⁹ “United Nations Convention on the Law of the Sea, Part VIII, Article 121, Regime of Islands,” United Nations Division for Ocean Affairs and the Law of the Sea. http://www.un.org/depts/los/convention_agreements/texts/unclos/part8.htm



human habitation or economic life are not sufficiently elaborated.

In terms of territorial sovereignty and international law, the status quos are (1) international laws regarding island and maritime territorial sovereignty in general do exist; (2) because of ambiguity in their definitions of islands and sea features, these laws do not determine rightful sovereignty over most of the islands and sea features in the SCS; and (3) although these laws are clear about maritime territorial sovereignty, issues of sovereignty over islands and sea features must be resolved as a prerequisite.

Domestic laws are also relevant to the SCS disputes and have serious potential implications for regional relations. The most prominent among these involve regulations about resource extraction in disputed waters and regulations affecting freedom of navigation and overflight. Defining the status quo in terms of domestic legislation can be accomplished by adopting a specific date (e.g., today) and arguing that any SCS-relevant domestic laws coming into force after that date represent a unilateral alteration of the status quo.¹⁰

¹⁰ This assumes that no regional consensus was reached regarding a domestic law before it became effective, as is almost invariably the case.



Interestingly, because of the wide variation in and poor conceptualization of regional status quos, analysts arrive at very different conclusions about who benefits from the status quo. An article published by the Brookings Institution, for example, concludes, “Chinese officials are largely happy with the status quo whereas the U.S. government is not. On reclamation in the South China Sea, cyber-theft, and access to China’s markets, the U.S. side is frustrated with lack of progress while the Chinese side prefers to see the current situation as stable and positive.”¹¹ In contrast, another analysis—one of the rare exceptions that actually tries to tackle the status quo issue head on—suggests that it “is a reminder of why China considers the status quo in the South China Sea to be so unfavorable: with the exception of the Taiwan-controlled Itu Aba (Taiping) Island, from China’s perspective all of ‘its’ genuine islands, and dozens more territorial features, are currently under foreign occupation. Furthermore, the last time the PRC attempted to change the occupational status quo was in 1995, when it occupied Mischief Reef. Since that time Malaysia and the Philippines have both occupied additional features, most recently in 1999. This is what the PRC’s

¹¹ David Dollar and Wei Wang, “S&ED: Chinese and American media tell two tales,” Brookings Institution, 29 June 2015. <http://www.brookings.edu/blogs/order-from-chaos/posts/2015/06/29-sed-chinese-american-media-dollar-wang>



representatives have in mind when they insist, straight-faced, that they have been acting with “great restraint” in the South China Sea.”¹² Different conceptualizations and definitions of the status quo can lead to different research outcomes, and the two conclusions above are a case in point.

For the notion of a regional status quo to have meaning in the policy context, it must be adequately conceptualized by those who choose to make use of it. The potential dimensions outlined above offer a basic framework for defining regional status quos, but individual analyses should take their own specific foci into account when formulating a framework. Depending on the evidence used and analysts’ own academic or political aims, important decisions regarding theoretical framework—whether formal or informal—will have to be made. At present, it remains clear that the vast majority of related commentary from political leaders, journalists, and academics has a long way to go before the idea of a status quo in the SCS carries actual meaning for either understanding the issue or state-to-state interaction.

¹² Andrew Chubb, “The South China Sea: Defining the ‘Status Quo,’” *The Diplomat*, 11 June 2015. <http://thediplomat.com/2015/06/the-south-china-sea-defining-the-status-quo/>



Jonathan Spangler is the Director of the South China Sea Think Tank and an Adjunct Lecturer with the College of Social Sciences at National Chengchi University in Taipei, Taiwan. His current research focuses on the effects of actor involvement on escalation and deescalation in the South China Sea maritime territorial disputes. He has spent the past seven years living in East Asia.

CITATION:

Spangler, Jonathan. 2015. "Let's Get Real about the South China Sea 'Status Quo'." *Issue Briefings*, 9. Taipei: South China Sea Think Tank.
<http://scstt.org/issue-briefings/2015/360/>