



Interview with Raul (Pete) Pedrozo:

U.S. South China Sea Policy, Freedom of Navigation Operations, and Accession to UNCLOS

Jonathan Spangler and Raul (Pete) Pedrozo / *Perspectives 9* / 2016

The South China Sea Think Tank interviews Raul (Pete) Pedrozo about the U.S. responses to the Philippines v. China arbitration case, recent U.S. Navy freedom of navigation operations in the South China Sea, and the possibility of U.S. accession to the United Nations Convention on the Law of the Sea (UNCLOS).

Raul (Pete) Pedrozo is Deputy General Counsel, Department of Defense, and non-resident Research Fellow at the Stockton Center for the Study of International Law, Naval War College. He previously served as Special Assistant to the Under Secretary of Defense for Policy and senior legal advisor to Commander, U.S. Pacific Command.

South China Sea Think Tank: In your chapter for *South China Sea Lawfare*, the report published last week by the South China Sea Think Tank, you note that “[a]s a seafaring nation and the world’s preeminent naval power, the United States should have enthusiastically supported the Tribunal’s decision. Yet, U.S. reaction to the Tribunal’s Award has been relatively restrained.” What factors do you think contribute to that restraint?

Raul (Pete) Pedrozo: U.S. restraint was primarily due to two factors. First, since the mid-90s, the U.S. has maintained a position of neutrality on the competing sovereignty claims to the South China Sea islands. Enthusiastically supporting the Tribunal’s decision through public statements by Administration officials could be perceived as a

significant deviation from pre-existing U.S. policy and embolden claimants, like Vietnam and the Philippines, to more actively advance their territorial claims in the South China Sea—a result that would certainly raise tensions in the region. Second, openly supporting the Tribunal’s decision could also have the unintended effect of hardening China’s position with regard to third-party dispute settlement and further discouraging China from complying with the Tribunal’s decision on the merits should that decision be adverse to Chinese interests.

SCSTT: What other ways could the U.S. government have responded?

RP: Although there will be serious repercussions, it is time for the U.S. to abandon its position of



neutrality by officially stating that it does not recognize China’s territorial or maritime claims in the South China Sea. By not taking a position, the U.S. has, in effect, taken a position in favor of China, which has emboldened China to advance its territorial and maritime claims in the region to the detriment of the other claimants. In the case of the Philippines, this is particularly troublesome given our long-standing defense relationship.

SCSTT: Earlier this week, the USS *Curtis Wilbur*, an Arleigh Burke-class guided missile destroyer, transited within 12 nm of Triton Island in the Paracel Islands. This was the second “freedom of navigation” operation in the South China Sea in recent months, following an earlier transit by the USS *Lassen* in the Spratly Islands last year. What would you say are the similarities between the two operations?

RP: Both operations suffer from the same fallacy—they both “challenged” maritime claims that do not exist. In the case of the *Lassen*, the U.S. warship conducted innocent passage in a non-existent territorial sea. Under international law, including UNCLOS, a nation must “establish” its maritime zones; such zones are not self-proclaiming. In the case of the Spratlys, none of the claimants have declared maritime zones from their claimed land features. Therefore, there are no maritime claims to challenge, so high seas freedoms of navigation and overflight apply. Similarly, with regard to the Paracels, only China has established maritime zones, yet the U.S.

proclaimed that the *Curtis Wilbur* had challenged China’s, Vietnam’s and Taiwan’s unlawful claims around Triton Island by conducting innocent passage through the territorial sea. In the case of China, since we do not recognize Chinese sovereignty over the Paracels, it follows that we cannot recognize China’s claimed territorial sea in the Paracels. In short, any future U.S. FON assertions in the South China Sea should be premised on our right to conduct high seas freedoms of navigation and overflight throughout the region irrespective of any unlawful maritime claims advanced by the claimants.

SCSTT: How about the differences?

RP: The main difference was that the *Curtis Wilbur* operation was not leaked in advance to the press. The FON program operates on the premise that the U.S. will not pre-notify challenges to unlawful maritime claims because the U.S. believes it has a right to operate in the challenged area as a matter of right under international law.

SCSTT: You wrote an article in 2013 in *International Law Studies* entitled “Arctic Climate Change and U.S. Accession to UNCLOS,” concluding that “[a]s a nation with both coastal and maritime interests, the United States would benefit immensely from becoming a party to UNCLOS—accession will restore U.S. oceans leadership, protect U.S. ocean interests and enhance U.S. foreign policy objectives, not only in the Arctic, but



globally.” Today, in the context of the South China Sea, where do you think we stand in that regard?

RP: Unfortunately, I do not believe the U.S. is any closer to becoming a party to UNCLOS than it was thirty years ago when the Convention was first opened for signature in 1982. That said, U.S. accession to UNCLOS will not resolve the South China Sea disputes, nor will it encourage countries like China or Iran to abandon their unlawful maritime claims and interference with freedom of navigation. Becoming a party to the Convention will, however, eliminate a common

argument raised by some nations that, as a non-party, the U.S. does not have standing to object to coastal state claims that it perceives are inconsistent with UNCLOS. U.S. accession will also send a strong message to the international community that the world’s greatest maritime power respects the rule of law and considers that the rights and obligations contained in UNCLOS apply to all nations, small or large, developed or developing, and that the U.S. will exercise its rights and undertake its obligations in accordance with the Convention.

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