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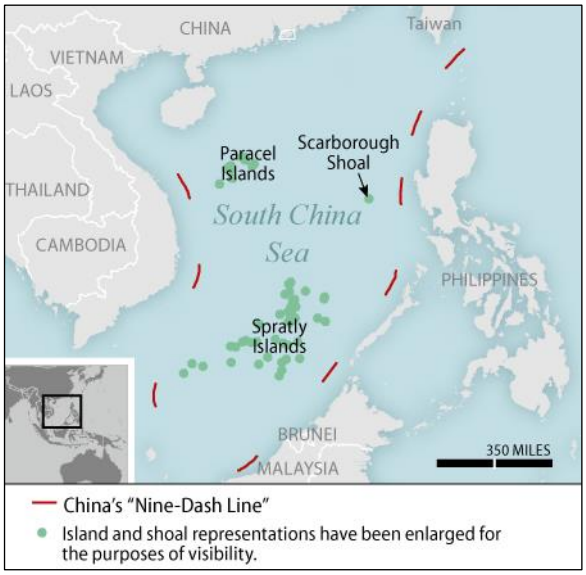
South China Sea Disputes: Background and U.S. Policy

Overview

Multiple Asian governments assert sovereignty over rocks, reefs, and other geographic features in the heavily trafficked South China Sea (SCS), with the People's Republic of China (PRC or China) arguably making the most assertive claims. The United States has no territorial claim in the SCS and does not take a position on sovereignty over 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 disagree over what rights international law grants foreign militaries to right to fly, sail, and operate in a country's territorial sea or Exclusive Economic Zone (EEZ).

Since 2013, the sovereignty disputes and the U.S.-China dispute over freedom of the seas for military ships and aircraft have converged in the controversy over military outposts China has built on disputed features in the SCS. Of particular concern to the U.S. military is the possibility that the outposts may be part of a Chinese 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. strategy has been to prevent the emergence of such a regional hegemon. 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 geographic feature, such as Scarborough Shoal, or declaring an Air Defense Identification Zone (ADIZ) over parts of the SCS.

Figure 1. The South China Sea



Source: CRS graphic

Key Facts

The SCS is one of the world's most heavily trafficked waterways. An estimated $3.4 trillion in ship-borne commerce transits the SCS each year, including energy supplies to U.S. treaty 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 also contains significant fish stocks, coral and other undersea resources.

The Sovereignty Disputes

China asserts "indisputable sovereignty over the islands in the South China Sea and the adjacent waters" without defining the scope of its "adjacent waters" claim. On maps, China depicts its claims with a "nine-dash line" that, if connected, would enclose an area covering approximately 62% of the sea, according to the U.S. Department of State. China 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 theoretical 200-nautical-mile (nm) EEZs that five Southeast Asian nations—Brunei, Indonesia, Malaysia, the Philippines, and Vietnam—could claim from their mainland coasts under the 1994 United Nations Convention on the Law of the Sea (UNCLOS). In addition, Indonesia disputes China's assertions of maritime rights near its coast.

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. 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 and some fellow SCS claimants hold that UNCLOS allows them to regulate both economic activity and foreign militaries' navigation and overflight through their EEZs.

In recent years, the U.S. Navy and Air Force have stepped up the pace and public profile of their activities in the South China Sea. The U.S. Navy conducts Freedom of Navigation

Operation (FONOPs), challenging maritime claims that the United States considers to be excessive. It also seeks to maintain an ongoing presence in the SCS "to uphold a free and open international order that promotes security and prosperity," while the U.S. Air Force periodically flies bombers over the SCS. China, which regularly conducts military patrols and training in the SCS, objects strenuously to such U.S. military activities. In response to U.S. FONOPs in 2020, China twice accused the United States of "trespassing" in its territorial waters and demanded that the United States "strictly control" its SCS military activities in order to avoid "unexpected incidents."

China and the other SCS claimants (except Taiwan, which is not a member of the United Nations) are 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 "naturally formed" land features that can "sustain human habitation." Rocks that are above water at high tide but not habitable generate only territorial seas.

China's Artificial Island Building

Between 2013 and 2015, China undertook extensive land reclamation in the Spratly Island chain in the SCS. According the U.S. Department of Defense (DOD), China's reclamation created over 3,200 acres (five square miles) of artificial landmasses on the seven disputed sites that China controls. China built military infrastructure on the outposts, and beginning in early 2018, deployed advanced anti-ship and anti-aircraft missile systems and military jamming equipment. 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 and militarization have exceeded that of other claimants. DOD's 2020 report on PRC military and security developments stated that the Spratly Island outposts "allow China to maintain a more flexible and persistent military and paramilitary presence in the area," which "improves China's ability to detect and challenge activities by rival claimants or third parties and widens the range of response options available to China."

UNCLOS and the SCS

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, 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, 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. China and the 10-member Association of Southeast Asian Nations (ASEAN) are negotiating a separate Code of Conduct for parties in the SCS, although many observers believe that a mutually acceptable Code will be difficult to conclude.

U.S. Actions

Several U.S. Administrations have sought to address tensions in the SCS. In July 2020, the Trump Administration's State Department issued a statement calling many of China's claims and behavior in the SCS "completely unlawful" and stating that "America stands with our Southeast Asian allies and partners in protecting their sovereign rights to offshore resources." In August and December 2020, the Commerce Department added to its Entity List Chinese construction, energy, and shipbuilding companies involved in the SCS, barring U.S. companies from exporting to the firms without a government license.

Under a DOD Indo-Pacific Maritime Security Initiative originally announced in 2015 and broadened in 2019, the United States has sought to improve the ability of the Philippines, Vietnam, and other Southeast Asian countries to maintain maritime domain awareness (MDA) and patrol their EEZs. The United States has stepped up security cooperation with Japan, Indonesia, Malaysia, the Philippines, Singapore, and Vietnam; undertaken joint patrols in the SCS with other partners, including Japan, India, and Australia; and expressed support for other multilateral actions in the region.

Select Legislation in the 116th Congress

In the 116th Congress, the National Defense Authorization Act (NDAA) for FY2021 (H.R. 6395) would establish a Pacific Deterrence Initiative to strengthen U.S. defense posture in the Indo-Pacific Region, addressing issues such as those in the SCS. It would also include a sense of Congress statement that China's "baseless territorial claims," including in the SCS, "are destabilizing and inconsistent with international law." The NDAA for FY2020 (P.L. 116-92) states that it is U.S. policy that an armed attack on Philippine armed forces, vessels or aircraft, including in the South China Sea, would trigger mutual defense obligations under the U.S.-Philippines defense treaty. It also requires that the annual DOD report to Congress on PRC military developments discuss the implications of a change in the China Coast Guard's command structure for PRC "gray zone" activities in the East China Sea and SCS.

The Consolidated Appropriations Act, 2021 (H.R. 133) would condition assistance for Cambodia on a State Department certification that Cambodia is taking effective steps to "strengthen regional security and stability, particularly regarding territorial disputes in the [SCS]." It would also require the National Geospatial-Intelligence Agency to undertake and make public unclassified analysis of PRC activities, including "[m]aritime land reclamation activities conducted by China in the [SCS]."

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