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80 Percent of Zero: China's Phantom South China Sea Claims

After the U.S. FONOPs, how long can China get away with "enforcing" claims it hasn't made?

By Steven Stashwick
February 09, 2016

Baudelaire said the devil's best trick was convincing us he did not exist. China's best trick might be convincing us its claims over the South China Sea do exist. Official rhetoric about its "indisputable sovereignty over the South China Sea islands" certainly sounds like a definitive Chinese position. And, of course, China occupies many islands in the area, its Coast Guard chases off foreign fishing vessels, and massive Chinese land reclamation projects provide new, persistent regional presence. But with the notable exception of the Paracel islands between Hainan Island and Vietnam, China has made no valid legal claim over the South China Sea. Instead, China's official ambiguity appears carefully calibrated to produce international media coverage that proselytizes far more expansive claims than really exist. That popular narrative (like the perennial "fact" that it claims 80 percent of the South China Sea) helps China legitimate its increasingly assertive activity in the region without having to expand its legal positions in kind. Without those formal legal stakes, China has so far skillfully avoided painting itself into a strategic corner over the South China Sea with no need to militarily defend claims it has not actually made.

But the limits of this strategy are showing. The extraordinary media coverage leading up to the USS *Lassen*'s Freedom of Navigation (FON) operation through the Spratly islands in October of last year focused unprecedented front-page attention on the territorial, legal, and strategic issues in the South China Sea. That public pressure strained China's ability to respond in a way that balanced the constraints of its official legal positions with its need to maintain the popular global impressions it has cultivated and placate the expectations of its own nationalists. While its rhetoric sounds steadfast, China clearly does not want to risk even low-level antagonism with the U.S. military over its South China Sea claims.

In the wake of the *Lassen* transit, coverage featured contradictory posturing over whether the transit was conducted as innocent passage (the U.S. secretary of defense only recently clarified that while it was not explicitly innocent passage, the transit was consistent with innocent passage's requirements) to analysis based on incorrect geographic features, and even early confusion over which features the *Lassen* actually transited (Subi Reef but not Mischief Reef). But whatever the particulars, it was generally agreed that the *Lassen*'s transit was intended as a "challenge to China's territorial claims" since China "claims most of the South China Sea" as its own.

Except that it does not, technically.

Reporting that China "claims 80 percent of the South China Sea" is commonly provided as context in news on the region, a "fact" the Chinese government no doubt welcomes and does nothing to explicitly discourage. (For a sense of the statistic's media saturation, a recent internet search returned almost 2 million results). Coverage of the *Lassen*'s FON passage also frequently noted that China claims 12 nautical miles (nm) of territorial seas around the Spratlys. When those two ideas appear together in the same reporting (and they often do), it should be clear there is a problem with the popular narrative. For China to claim 80 percent of the South China Sea, it would also have to claim most of the water far beyond 12 nautical miles from any of those islands, artificial or not.

So what is China's claim? Contrary to the impressions it has cultivated in the media, China has not *claimed* anything near what most accounts ascribe. A few commentators note that there is substantial uncertainty about Chinese claims in the South China Sea because China has not formalized or clarified those claims. Article 16 of the United Nations Law of the Sea requires states to publicize their claimed territorial seas and baselines (boundaries that maritime claims are measured from) and provide them to the UN either on "charts… adequate for ascertaining their position" or in a "list of geographical coordinates of points." But for all the contentiousness, China's deposits to the UN contain few such explicit claims.

In their 1958 declaration on territorial seas, China claimed a baseline existed around the Spratlys and other islands, but did not identify what it considered the extent of those islands or provide the geographic coordinates of the baselines. The absence of specifics for mariners, cartographers, or lawyers to work with meant that in practice, China's baselines, and thus its territorial seas, only existed to whatever extent those parties chose to respect. Leaving compliance up to the geographic guesswork of others is not a firm legal foundation, and in 1996 China finally provided the U.N. geographic coordinates for its claimed baselines. This included coordinates

around two major contested island chains, the Paracel Islands in the South China Sea and the Senkaku/Diaoyu Islands in the East China Sea. But while competing parties at least have something concrete to argue over with respect to the Paracels and Senkakus, the 1996 UN submission did *not* include references or data for the Spratly islands, or any other groups in the South China Sea.

Instead of making a legal claim to the South China Sea, China has sought to build a *de facto* position, using its construction projects and marine law enforcement to convince others to recognize Chinese control practically if not legally. Perhaps uncertain of how much of the region it can credibly control, China has chosen not to circumscribe what it can get away with by making its legal boundaries and claims explicit. A careful public relations kabuki seeks to make mass media reporting unknowingly complicit in normalizing the idea that China controls, or thinks it should control, the entire region by inducing frequent repetition of that unofficial claim.

The infamous Nine-Dash Line (which occasionally appears with ten or even eleven dashes) is probably China's most successful piece of over-inferred strategic communication to be taken up by the media. It first appeared officially in a *note verbale* to the UN articulating China's opposition to a joint claim made by Vietnam and Malaysia. Circumscribing almost the entire South China Sea, it is the likely source of media and commentator assertions that China claims all or most (or "80 percent") of the region. But *notes* are informal diplomatic communications, not signed official claims. Further, the map does not meet the standard of geographic specificity required in Article 16 to communicate territorial sea claims.

A detailed analysis prepared by the U.S. State Department determined the map lacked geographic, legal, or historic basis to form a maritime claim. Though the Nine-Dash map now typically appears as a standalone graphic in the media, the context of the *note* it accompanies suggests that the map at best describes a territorial claim over the *islands* of the South China Sea, not the sea itself. Claims over those islands are contested, and though the *note* articulates the official Chinese position on those islands, it probably does not constitute a useful legal claim itself. In any case, the United States does not recognize China's or any other states' claims while sovereignty over the Spratlys remains in dispute, and as James Kraska and Pete Pedrozo, both former U.S. Navy Law of the Sea attorneys, point out, until the sovereignty of the islands is resolved, the territorial sea issue is legally moot.

This context is consistent with careful reading of official statements by the Chinese Foreign Ministry and President Xi Jinping, which always refer to sovereignty over the *islands*, not the *sea*. But by pairing circumscribed specificity (e.g. "China has indisputable sovereignty over the [Spratly] Islands") with generic rhetoric about sovereignty and security in the abstract (e.g. "[China] is steadfast in safeguarding its territorial sovereignty and security"), the impression is of a far more expansive claim and assertive posture. After the *Lassen*'s FON passage, Graham Webster, a researcher at Yale Law School, showed just how careful Chinese officials are in their use of language, noting that despite rhetorical condemnation of the transit, China nonetheless "[avoided] taking an explicit or implied position on: whether Subi Reef can produce a 12 nm territorial sea, whether the U.S. Navy violated Chinese sovereignty, what specific maritime areas China claims sovereignty over, and what if any escalation thresholds may exist in any future encounters."

I have written before about the strategic flexibility maritime disputes and naval incidents-at-sea permit governments that do not want to be too specific about what they do and do not actually claim. Maritime ambiguity allows a state to try to get away with as much as possible by establishing customary practice while still leaving itself a politically acceptable "out" from unwanted military escalation. Not wanting to give away the game, China's Foreign Ministry called the *Lassen*'s transit illegal, damaging to "China-U.S. relations and regional peace and stability," and admonished the U.S. to "refrain from any dangerous or provocative actions." The Chinese Defense Ministry went on to insist that the Chinese Navy performed all necessary "duties and missions to unswervingly safeguard national sovereignty, maritime rights and interests, and peace and stability in the South China Sea". But as Rep. Randy Forbes, influential chair of the U.S. House Seapower Subcommittee explained, "China's bark is usually worse than its bite. Their statements on foreign policy are often really intended for consumption by domestic audiences, and I think Beijing's reaction to the Freedom of Navigation operations should be viewed in this context."

China's banal physical response to the transit only reinforces the conclusion that Chinese rhetoric is really targeted at domestic audiences and the international press. The media impression of the response was that an "angry" China sent warships to shadow the *Lassen* and "warn" against the "illegal" and "coercive" U.S. transit. The reality of the Chinese navy's response, as relayed by the captain of the *Lassen*, was that the shadowing warship was one the *Lassen* had interacted with frequently and cordially for weeks while patrolling the region, and that after communicating the "warnings" the Foreign Ministry referred to, they wished the U.S. ship a "pleasant voyage" and relayed their hope to "see them again" before proceeding home.

China clearly had no intention to *actually* escalate an incident with the U.S. Navy, but just as clearly wished to cultivate the *impression* that it could or would, as media coverage of a follow-on conference between the top Admirals of the two navies dutifully reported. The depth of contrast between reality and reporting shows China's preference to consolidate its South China Sea gains by bolstering the impression that it is willing to fight to convince American audiences that the U.S. government should not "risk" intervention, rather than actually risking a fight themselves.

But this strategy becomes problematic at home to the degree that Chinese nationalists make the same (or greater) over-inference about the territorial claims and security posture that are intended for foreign audiences. Then China could face significant pressure from domestic forces that do not appreciate the careful nuance of its official positions. *Foreign Policy* magazine reported on Chinese nationalists' "frustration at what they see as the Chinese government tendency to issue protests rather than take military action" against the *Lassen's* FON transit. Reassuringly, analysis by Nhung Bui, an expert on Chinese media and nationalism, still sees enough popular calls for moderation to give the Chinese government political space to resist nationalistic demands for more aggressive responses to the U.S.

And so the ultimate danger is if both the U.S. and China begin believing their own posturing—or worse, the posturing of media and commentators, which is disconnected from official strategy. It seems clear for now that neither the U.S. nor China wants to risk a confrontation in the South China Sea, even if neither likes the way the other is behaving. But at what point does keeping up

appearances require you to actually do the things you are talking about—or really just *seem* to be talking about—even if neither side wants to?