

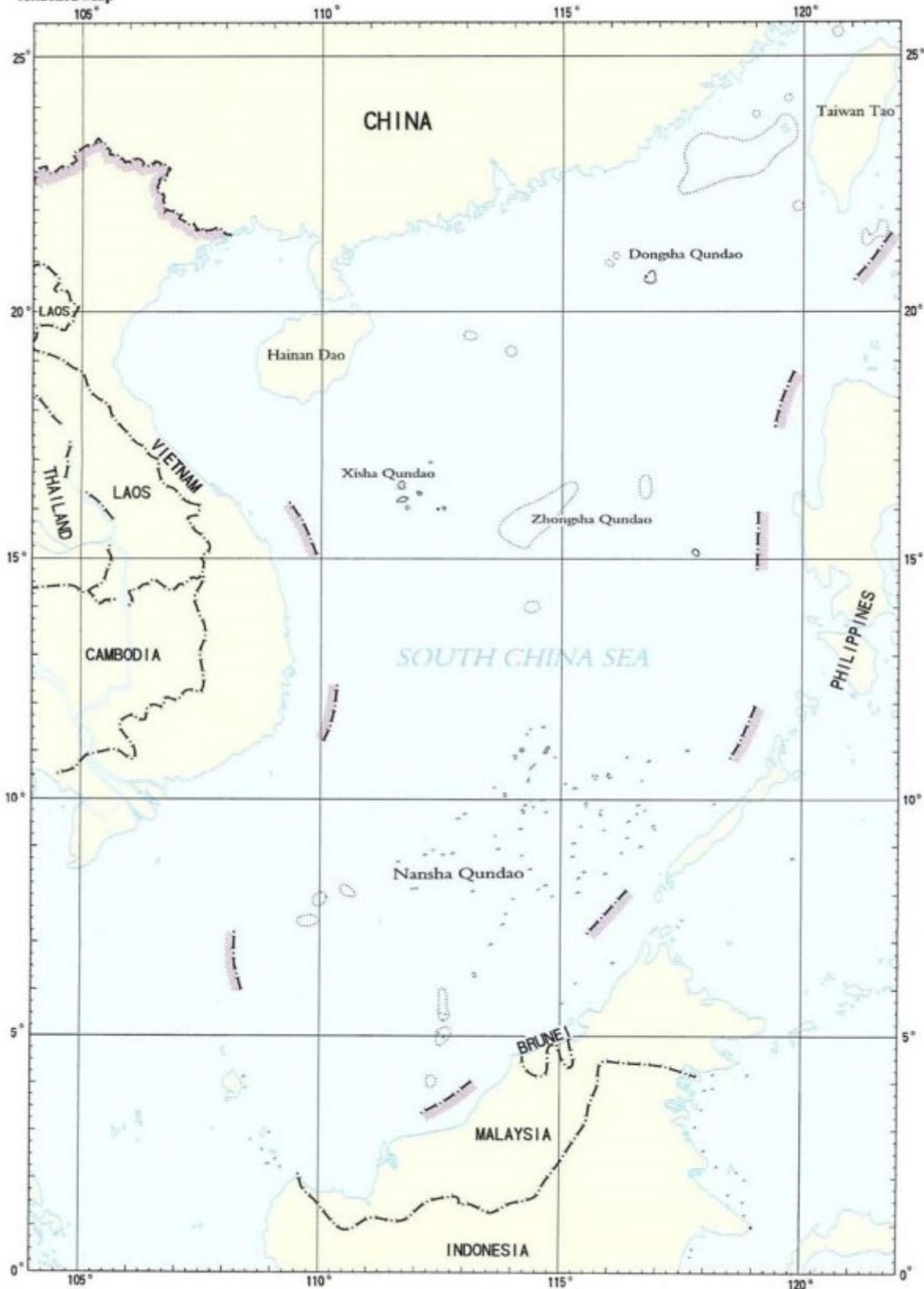


The South China Sea: What China Could Say



The NAPSNet Policy Forum provides expert analysis of contemporary peace and security issues in Northeast Asia. As always, we invite your responses to this report and hope you will take the opportunity to participate in discussion of the analysis.

Attached Map



CHINA'S NINE-DASHED LINE CLAIM AS ATTACHED TO DOCUMENTS SUBMITTED TO THE UN COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF, 7 MAY 2009

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by Mark Valencia

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I. Introduction

In this Policy Forum Mark Valencia sets out the kind of statement China could issue in order to 'clarify its position regarding its maritime claims and actions in the South China Sea.' Valencia writes 'For China such a statement would indicate it has "risen" and is ready to challenge the existing world system and contemporary interpretations of international law—if necessary to protect its interests.'

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II. POLICY FORUM BY MARK VALENCIA

The South China Sea: What China Could Say

China's claims in the South China Sea have been criticized as ambiguous. China has also been accused of having claims that are inconsistent with international law and the 1982 UN Convention on the Law of the Sea which it has ratified. More specifically China has been accused of threatening freedom of navigation and "stretching" international law. The United States and several ASEAN nations have repeatedly asked China to clarify its position regarding its maritime claims and actions in the South China Sea. China could oblige them by issuing a statement along the following lines.



CHINA'S NINE-DASHED LINE CLAIM AS ATTACHED TO DOCUMENTS SUBMITTED TO THE UN COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF, 7 MAY 2009

*As stated in its Law on the Exclusive Economic Zone and the Continental Shelf, China claims historic rights in much of the South China Sea. This claim is symbolized by its nine-dashed line map. This claim includes sovereignty over all the islands, rocks, reefs and banks within this nine-dashed line. It also includes sovereign rights over the living and non-living resources as well as the quality of the marine environment. The extent of its claim, the sharing of resources within it, and the details of the regime itself are subject to negotiation.

*The 1982 UNCLOS does not define historic title, historic rights or historic waters. China's claim of historic rights is distinct from the concept of historic waters in that the latter is commonly considered to imply a regime of internal waters that does not permit freedom of navigation and over flight. China has not and will not impede the freedom of navigation for commercial and normal peaceful purposes.

*China also reserves its rights under the 1982 UNCLOS to claim territorial waters, continental shelf, extended continental shelf, and EEZs from its sovereign territory within the nine-dashed line.

*Since maritime boundaries within the nine-dashed line area have not been agreed and the area is in

dispute, there should be no unilateral drilling for hydrocarbons. The claimants should enter into interim arrangements of a practical nature such as joint development of resources in disputed areas.

*China has been consistent in its policy of being willing to negotiate these issues. China has proven its sincerity in negotiating and abiding by conflict management agreements in similar situations such as with Vietnam in the Beibuwan, with Japan in the East China Sea regarding oil and gas, fisheries and scientific research, and with the Republic of Korea in the Yellow Sea regarding fisheries. China has also offered to fund cooperative activities in the South China Sea without prejudice to any state's claims to the area.

*China believes that the United States, despite its claims to the contrary, is not neutral in this matter. The U.S. insists that China must base its claims solely on the 1982 UNCLOS although the U.S. itself has not ratified it. The U.S. insists that any claims to maritime jurisdiction in the South China Sea must be from land implying that China's claim to historic rights within the nine-dashed line is invalid. The U.S. also insists that China negotiate these issues multilaterally with a bloc of claimants and non-claimants. China believes that settlement of the disputes should be negotiated by 'sovereign states directly concerned' as stipulated in the 2002 ASEAN-China agreed Declaration of Conduct in the South China Sea (DoC) and that non-regional parties should not be involved. China also urges the ASEAN claimants to resolve relevant outstanding issues between themselves first.

*Regarding creation, evolution and interpretations of international law, it should be borne in mind that the U.S. itself unilaterally initiated the concept of "extended maritime jurisdiction" via the 1945 Truman Proclamation on the Continental Shelf. It justified doing so by "the long range world-wide need for new sources of petroleum and other minerals"; that "efforts to discover and make available new supplies of these resources should be encouraged"; and that "recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken."

* China maintains that other claimants are violating the 2002 DoC by conducting 'activities that would complicate or escalate disputes and affect peace and stability' such as occupying or building structures on disputed features, unilaterally exploring for petroleum, internationalizing the issues, conducting military exercises with outside powers, and violating China's fisheries laws. China urges other claimants to abide by the DoC and refrain from such activities.

*China is hopeful that a mutually agreeable Code of Conduct (CoC) can be negotiated with ASEAN. However, the CoC should contain guidelines for peaceful cooperative behavior and a crisis management mechanism--not a dispute settlement mechanism.

*China looks forward to peaceful settlement of the disputes and cooperative use of the South China Sea.

Issuing an official statement along these lines would clarify China's position without fundamentally sacrificing its claims or interests. More important it would bring the debate within the realm of international comity and parlance. Further, it should help mollify the naval powers regarding the 'freedom of navigation'.

Of course the legal purists who think international law is absolute and unchanging and are wedded to the status quo -which favors Western powers--will criticize this position. But the reality is that 'international law is the arms of geopolitics' and its evolution and interpretation will be influenced by rising nations -just as they have been influenced by today's 'global leaders'. For China such a statement would indicate it has "risen" and is ready to challenge the existing world system and contemporary interpretations of international law--if necessary to protect its interests.

III. NAUTILUS INVITES YOUR RESPONSES

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