

Assessing China's South China Sea Policy, 2009-2015

ZHANG Feng*

This paper identifies three phases of China's South China Sea policy since 2009: reactive assertiveness from 2009 to 2011, forceful response from 2012 to 2013, and proactive adjustment from 2014 to the present. These three distinct phases suggest that China does not have a grand strategy for the South China Sea. The paper also assesses the consequences of China's island building in the South China Sea and the costs of its deliberate ambiguity on the international legal front.

CHINESE OFFICIALS AND analysts always claim that China's apparent assertiveness in the South China Sea since 2009 is a reactive response to provocations from other countries. The claim has some truth. In May 2009, Vietnam and Malaysia made submissions to the United Nations (UN) Commission on the Limits of the Continental Shelf, seeking to extend their continental shelves into the South China Sea beyond the normal 200 nautical miles.

*ZHANG Feng is a Fellow at the Australian National University's Department of International Relations and an Adjunct Professor at the National Institute for South China Sea Studies in China.

China responded with a two-pronged approach. On the legal front, it submitted a Note Verbale challenging Vietnam's and Malaysia's infringement on its rights in the South China Sea. On the "ground", it stepped up its law enforcement activities in the South China Sea—measured in terms of the number and frequency of ships sent to the region as well as readiness to confront the maritime activities of other countries, particularly Vietnam and the Philippines.

While China may have been in a reactive mode in 2009, that reactivity cannot explain all of its South China Sea policy since 2009. It will have particular difficulty explaining that policy after Xi Jinping assumed responsibility for maritime policy in 2012.

In fact, China's South China Sea policy since 2009 can be roughly divided into three periods, each with a set of distinguishing characteristics. The three distinct phases show the evolutionary trajectory of China's South China Sea policy. They also suggest that the so-called "assertiveness", if unqualified, is a poor and misleading characterisation of the policy. At the same time, they reveal that China really does not have a grand strategy for the South China Sea.

Reactive Assertiveness

The first phase was from 2009 to 2011, a period when China's South China Sea policy can be characterised as "reactive assertiveness." China's various law enforcement agencies significantly enhanced their patrolling activities at sea, challenging and confronting vessels from other countries.

It was this enhanced law enforcement that gave the outside world the impression of Chinese assertiveness. However, the mode of behaviour is still largely a response to perceived infringement of China's sovereignty and maritime rights by countries like the Philippines and Vietnam. There was no uniform or coherent strategy during this period, other than the enhancement of maritime law enforcement activities.

There are two possible explanations for this reactive assertiveness. One has to do with the cautious leadership of President Hu Jintao and the other is with China's complicated decision-making system in maritime affairs. Neither explanation suggests a premeditated coherent strategy in action.

The period 2009-2011 was the final years of the Hu presidency. At a time of leadership transition, Hu valued general stability in maritime affairs or in foreign affairs in general more than risky adventures. Reactive assertiveness would be able to keep tensions manageable while also, to a limited degree, satisfying domestic nationalist voices for a more assertive approach. Such caution is consistent with Hu's generally low-key foreign policy style.

The other explanation lies in what is often referred to as the "nine dragons stirring up the sea" phenomenon—the fact that there were so many bureaucratic interests involved in the South China Sea affairs and competing with one another for policy influence that effective decision-making in this area was compromised. This factor is often noted by analysts and had certainly played a role in China's South China Sea policy during this period.

Before 2013 there were at least five civilian maritime law enforcement agencies, each with its own fleet, and each administratively subordinate to a different central government ministry or agency. They include the China Coast Guard, China Maritime Surveillance, China Maritime Safety Administration, China Fishing Law Enforcement Command and China General Administration of Customs. Each has its own mandate, stake in the South China Sea and the wish to increase its bureaucratic influence in national decision-making.

Forceful Response

The second phase, from 2012 to 2013, may be characterised as “forceful response”. China’s handling of the Scarborough Shoal standoff best exemplified this approach. On 10 April 2012, sailors from a Philippine naval frigate boarded several Chinese fishing vessels anchored in the lagoon at Scarborough Shoal to investigate possible illegal fishing.

Two nearby Chinese Maritime Surveillance ships soon arrived after receiving distress signals from the fishermen. A standoff ensued that at its peak involved dozens of vessels. It was finally resolved when Chinese ships took control of the area after Philippine vessels withdrew.

During the initial phase of this incident, Chinese law enforcement ships were responding to and challenging the Philippine sailors’ investigation of Chinese fishermen. What was remarkable and constituted a significant departure from past policy was the determination to wrestle physical control of Scarborough Shoal from the Philippines, without fearing regional repercussions or US pressure given that the Philippines is a US treaty ally.

The approach of “forceful response” was thus marked by a readiness to retaliate against other countries’ provocations, supported by a comprehensive pressure campaign in political, diplomatic and economic areas. It was meant to send an implicit message of deterrence to other claimant countries.

Again there are two explanations for this approach. They run parallel to the explanations offered for the previous approach of reactive assertiveness, albeit in a contrasting manner. The cautious approach of Hu Jintao was replaced by Xi Jinping’s new forceful decisiveness. Meanwhile, the bureaucratic decision-making structure was also streamlined under Xi’s watch.

Although Xi formally assumed the position of Chinese Communist Party (CCP) general secretary only after the 18th Party Congress in November 2012, he had taken control of some foreign policy areas, particularly maritime affairs in the South China Sea and East China Sea, by the middle of 2012.

Xi was behind China’s forceful response to the Scarborough Shoal standoff with the Philippines in April-June 2012, and the Diaoyu Islands crisis in September 2012 after the Japanese government’s nationalisation of three of the islands.

Institutionally, Xi tried to centralise decision-making authority over maritime affairs by establishing a new CCP Central Committee Leading Small Group (LSG) for the Protection of Maritime Rights, sometime in mid-2012. While Xi

heads the LSG, its operation is managed by Yang Jiechi, the state councillor in his capacity as director of the Office of the CCP Central Committee Leading Small Group for Foreign Affairs.

The LSG for the Protection of Maritime Rights is thus bureaucratically incorporated into the LSG for Foreign Affairs, though the two LSGs have a different membership drawn from different combinations of government ministries and agencies.

In March 2013, Beijing decided to reorganise and simplify the bewildering array of maritime bureaucracies by creating a unified China Coast Guard which incorporates the fleets of all maritime law enforcement agencies except that of the Maritime Safety Administration.

However, the process of bureaucratic consolidation has been slow and cumbersome, and the “nine dragon” problem remains unsolved. However, according to officials familiar with the matter, the bureaucratic scene is now considerably tidier than it was a couple of years ago.

Proactive Adjustment

The third phase of China’s South China Sea policy, from 2014 to the present, exhibits an approach of “proactive adjustment”. This approach demonstrates a more qualitative change from the earlier approaches of reactive assertiveness and forceful response, which were both largely reactive in their mode of behaviour.

Proactive adjustment seeks to move beyond and transform this past reactivity and create Chinese initiatives in the South China Sea, without nudging or provocations from other countries. The ability to create such policy initiatives is considered highly valuable in its own right by many Chinese officials and analysts.

Two such policies best exemplify this new approach of proactive adjustment, while revealing its pitfalls and flaws. The first is the so-called “981 incident” of May-July 2014. In May 2014, Beijing deployed HYSY 981—its first indigenous deep-water drilling rig developed by the China National Offshore Oil Corporation (CNOOC)—in waters around the Paracels considered by Vietnam to be within its own Exclusive Economic Zone (EEZ).

This triggered intense and at times violent face-offs and collisions between dozens of Chinese and Vietnamese law enforcement vessels. Both sides rammed and used water cannons against the other side’s vessels, and the naval ships from

In March 2013, Beijing decided to reorganise and simplify the bewildering array of maritime bureaucracies by creating a unified China Coast Guard which incorporates the fleets of all maritime law enforcement agencies except that of the Maritime Safety Administration.

both sides monitored the situation at a distance. The confrontation at sea fuelled large-scale anti-China protests across Vietnam, escalating into deadly riots in mid-May. This two-month long crisis finally abated when China removed the rig in July—ahead of its announced schedule.

The decision to send the 981 rig to the disputed waters of the Paracels was clearly a proactive decision made at the highest level of the Chinese government. Neither Vietnam nor any other country had provoked China into action. It is clear that Beijing had miscalculated. At the very least it failed to anticipate the virulent response from Vietnam. China paid a heavy diplomatic price for this proactive—and, to Vietnam, provocative—move.

The practical benefits of energy resources CNOOC had extracted from the two-month unpalatable work in the disputed area were limited. The 981 rig only dug two wells during the operation, far from enough for producing a stable oil supply. There is no indication when, if ever, the rig will return to the area again.

The 981 incident reveals the piecemeal nature of China's South China Sea policy, even during this period of proactive adjustment. Among many Chinese analysts, and among some government officials as well, the policy is considered a strategic mistake—and the first major foreign policy blunder of Xi Jinping.

The second policy, which has dominated international attention on the South China Sea since 2015, is China's massive and rapid land reclamation and island construction in the seven features it controls in the Spratly chain. This decision was made near the end of 2013 and reclamation formally began in early 2014.

In fact, policy proposals for reclamation and construction in the South China Sea, from both military and civilian quarters, were already submitted to the central government during Hu Jintao years. However, Hu's trusted aide in foreign policy, Dai Bingguo, the state councillor for foreign affairs, repeatedly blocked such proposals from reaching Hu's desk.

The decision in late 2013 therefore shows that such proposals finally reached Xi Jinping when no one was blocking (or was able to block) it and that Xi was himself inclined for such an assertive approach in the South China Sea.

Sending an oil rig to the Paracels and constructing islands in the Spratlys are both assertive actions. However, there is another dimension of proactive adjustment during this period that is more moderate and flexible.

In August 2014, at a press conference held after the China-ASEAN foreign ministers' meeting in Naypyidaw, Foreign Minister Wang Yi proposed a “dual-track thinking” for dealing with South China Sea disputes—territorial disputes should be peacefully resolved through friendly negotiations between the claimant countries while peace and stability of the South China Sea region should be maintained by both China and ASEAN countries.

The significance of this proposal is its acceptance of, for the first time, a multilateral approach to the South China Sea problem. Although China still insists on bilateral negotiations for resolving specific disputes, it opened an important policy space for ASEAN to play a constructive role in managing regional tension.

A year later, in August 2015, at a press conference held in Singapore, Wang Yi committed China to “five insists” in managing South China Sea tension: China will insist on maintaining regional peace and stability; insist on peaceful resolution of disputes through negotiation and consultation; insist on managing and controlling disagreements through rules and institutions; insist on freedom of navigation and over-flight in the South China Sea; and insist on achieving mutually beneficial cooperation.

In addition to bilateral negotiation of territorial disputes and multilateral management of regional tension that are already included in the “dual-track thinking”, the “five insists” incorporated a new principle of maintaining freedom of navigation and over-flight.

This was clearly a nod to a central concern of the United States and other regional states generated by China’s island construction in the Spratlys. Beijing evidently wants to send a signal that freedom of navigation and over-flight in the South China Sea is in the Chinese, American and regional interest and that this common interest provides room for cooperation rather than conflict. Beijing’s verbal pledge however did not reassure the region and the United States has undertaken unilateral assertions of freedom of navigation in waters near China’s Spratly features.

On 27 October 2015, the US navy sailed *USS Larsen*, a state-of-the-art guided-missile destroyer, within 12 nautical miles of Subi reef, one of the seven China-controlled features in the Spratlys under construction. China responded with monitoring, tracking and warning the vessel without ramming or repelling it—a relatively mild reaction.

China’s restraint in this case demonstrates the limits of its assertiveness, probably because the leadership realised that it made little strategic sense to start a fight (or even just a standoff) with the United States over a freedom of navigation operation (FONOP).

China’s latest approach of proactive adjustment towards the South China Sea thus contains elements of both assertiveness and moderation. The 981 rig incident with Vietnam and the massive island construction were clearly unilateral assertions of its power and interest, but the new “dual track” and “five insists” policy thinking and the restrained response to the first US FONOP shows more flexibility and moderation. This awkward combination points to multiple dilemmas in China’s South China Sea policy.

Leadership character and bureaucratic politics have seemingly great influence over the reactive assertiveness and forceful response. In the current period of proactive adjustment, leadership character—Xi Jinping’s forceful decisiveness—can be assumed to be constant since Xi still presides over policy in this area. Bureaucratic politics can also be assumed to resemble the preceding period of forceful response, since maritime bureaucracies had begun to be streamlined by 2013, with no major policy decision to further reorganise the decision-making structure.

Interest-group competition for policy influence could be another explanation for the contradictory and even competing elements of China's proactive South China Sea policy since 2014. In sending the oil rig to the Paracels, Xi and the central leadership were acting in the interest of the "energy lobby" in China.

In giving the green light for island construction, the leadership was satisfying a strong demand long held by the military as well as some significant civilian interest groups, such as the State Oceanic Administration which has long argued for the expansion and protection of China's maritime interests.

On the other hand, the foreign ministry, the CCP propaganda machine and other government agencies are facing the uncomfortable task of conveying benign Chinese intentions and salvage the deterioration of China's international image. They are put into a defensive position to justify and promote Chinese positions. A lot of such work is poorly coordinated mopping-up operations for consequential policies elsewhere.

Island construction is an excellent case in point. A well-coordinated policy would demand a diplomatic campaign to make a strong case for reclamation and construction well before or at least in tandem with actual activities in the sea.

Instead China waited for those activities to be discovered by the US military and international media, and was subsequently forced by the outside world into self-defence and self-justification in a self-inflicted way. This example shows that even in the more confident approach of proactive adjustment, there is no coherent strategy in operation.

Island Construction

Beijing has several motivations for island construction in the Spratlys. The most important is the strengthening of its physical presence in the region as it has long felt that it has lagged dangerously behind the construction activities of Vietnam, Malaysia and the Philippines. China asserts that its construction activities follow a pattern established by Vietnam, Malaysia and the Philippines over the past several decades, and therefore it should not be singled out for international castigation. The assertion is certainly true.

The difference lies in the scale and speed the building project has been executed. US Secretary of Defence Ashton Carter claimed in his speech at the May 2015 Shangri-La Dialogue in Singapore that China had reclaimed over 2,000 acres, more than all the other claimants combined and more than in the entire history of the region, over an 18-month period from the beginning of 2014 to the first half of 2015. Beijing has not publicly disputed that claim.

China has not halted its construction activities since. All the seven reefs and rocks under construction have now been transformed into physical "islands". For example, it has built up Fiery Cross Reef from what was largely a "low tide elevation" into the largest island in the South China Sea.

With an expanded area of 2.8 square kilometres according to some estimates, it is larger than the 2.6 square kilometres of Yongxing island in the Paracels,

also controlled and constructed by China. Fiery Cross Reef now even contains a 3,160-metre airstrip that is capable of handling any type of Chinese aircraft, military and civil.

This impressive infrastructure construction, of potentially great military utility, has caused international concern. In public, Chinese officials insist that the constructed islands and their facilities are international public goods provided by China for civil use and are thus non-threatening. In practice, there is a palpable military dimension underpinned by a strong desire to establish a limited deterrence capability in the South China Sea region.

That China wants to have a physical and military presence in the South China Sea is unsurprising from a realist point of view that emphasises the importance of relative power in international politics. In fact, realism seems the most useful theory for explaining this dimension of China's South China Sea policy. Barring some major disruptions, Beijing is likely to continue with island construction and may even proceed with military installations given favourable or excusable conditions.

This realist policy, however, is increasingly coming into conflict with America's strategic objective of maintaining unchallenged naval supremacy—including unimpeded access to the entire South China Sea area—in the Western Pacific. The United States had thus executed its first FONOP in October 2015 and is now trying to regularise such exercises in the future. Island construction is also creating mounting suspicions and even fear among some Southeast Asian countries, pushing them further—though not completely—into the fold of the United States.

In 2016, the United States is likely to undertake more FONOPs and China will have to come up with sensible responses. A China-US conflict over FONOPs is unlikely to occur, given the relative insignificance of the operation and the substantial and wide-ranging cooperation between the two countries in many other areas. However, brewing suspicion, mistrust and miscalculation may lead to incidents, crises and eventually military clashes and conflicts.

Although China's response to the first FONOP was restrained, there is no guarantee that it will do the same in the future, especially if the United States escalates its challenge to Chinese interests. The United States and China will do well to discuss crisis management mechanism over FONOPs or devise a new set of arrangements for preserving freedom of navigation in the South China Sea, which, as Beijing claims, is a common interest among China, the United States and the entire East Asian region.

Although China's response to the first FONOP was restrained, there is no guarantee that it will do the same in the future, especially if the United States escalates its challenge to Chinese interests.

The International Legal Battle

One of the most puzzling aspects of China's South China Sea policy is the ambiguity of its claims to territorial sovereignty and maritime rights in the South China Sea. That ambiguity also raises important questions about its attitudes towards international law in managing and resolving the disputes.

At a time when regional states, including the United States, emphasise the importance of maintaining a rule-based order in the Asia-Pacific, China's attitude towards international maritime law will be an important factor in the development of the South China Sea situation.

When submitting a Note Verbale to the UN Commission on the Limits of the Continental Shelf in response to Vietnam's and Malaysia's submissions in May 2009, China attached to the note a map delineating its claims using a nine-dash line that encompasses the majority of the South China Sea, including both the Paracel and the Spratly Islands.

This was the first time that the People's Republic of China (PRC) had formally used the nine-dash line (or the U-shape line) to justify its claims. However, the use of the line as the legal basis for claiming sovereignty and maritime rights in the South China Sea has puzzled and alarmed regional states.

Particularly alarming from the standpoints of the Southeast Asian claimant countries of Vietnam, the Philippines and Malaysia is the fact that the line cuts into their EEZs as defined according to their interpretations of the United Nations Convention on the Law of the Sea (UNCLOS).

The nine-dash line raises several crucial questions as to whether China is claiming the entire South China Sea region encompassed by the line or is it only claiming sovereignty for the maritime features (rocks, reefs, shoals, atolls etc) inside the line. It is also unknown as to the attitudes China holds towards the large body of water inside the line.

There is also the question of whether China will accept delimitation of maritime rights according to the provisions of UNCLOS or whether it regards the water encompassed by the line as China's "historic waters" with "historic rights". Given the current round of land reclamation and island construction, the question of whether China will assert additional rights for the features under construction beyond their original status as "rocks" or "low-tide elevations" before construction has also been raised.

China has clarified none of these thorny and profound legal questions. Apparently, ambiguity on the legal front is a deliberate policy pursued by Beijing mainly for the purpose of preserving flexibility and room of manoeuvre for future policy adjustment.

Chinese policymakers and the various interest groups involved are also seemingly unable to arrive at a consensual "national view" of the nine-dash line. The fact that the line was a product of the Nationalist government of the Republic of China in the late 1940s has added further complexities.

Beijing's passive approach on the legal front is perfectly illustrated by its

response to the Philippines' initiation of international legal arbitration against China at the International Tribunal for the Law of the Sea in January 2013. Manila has asked for the invalidation of China's maritime claims based on the nine-dash line as contrary to UNCLOS.

China responded that it would neither take part in the arbitration process nor accept the ruling. It accused the Philippines of violating the consensus outlined in the 2002 Declaration on the Conduct of Parties (DOC) to resolve disputes through negotiations between directly concerned sovereign states. In December 2014, China issued a position paper arguing that the tribunal lacks the jurisdiction to decide a case that inevitably concerns territorial sovereignty. It also pointed out that its 2006 declaration has rejected UNCLOS compulsory settlement procedures on maritime delimitation, including arbitration.

China's non-participation in international arbitration with the Philippines thus has its grounds. A more important reason, however, is China's fear of losing the case in the event of participation. If there is the slightest chance of losing a legal battle, non-participation is seen as a better option.

Beijing is also concerned that its participation in the Philippines's arbitration case may open a Pandora's Box for arbitration challenges from other countries such as Vietnam, Indonesia and Malaysia—a dreadful prospect from China's standpoint.

Yet the decision of non-participation and non-acceptance in this case and the larger policy position of legal ambiguity have their costs. The ambiguity of Chinese claims was, of course, itself an important reason for the Philippines to initiate international arbitration. In October 2015, an arbitral tribunal based in The Hague decided that it has jurisdiction to proceed to the merits on seven out of 15 of the Philippines' claims. A final ruling is expected in mid-2016, a challenge to which China will again have to respond.

Meanwhile, partly because of the ambiguity of China's claims, the United States has, as earlier mentioned, decided to undertake FONOPs in the South China Sea in order to compel China to clarify its claims. Although it is unlikely to succeed as intended, FONOPs have put additional pressures on Chinese policy.

It seems clear that as long as China maintains legal ambiguity as its preferred policy position, it will have to face international legal challenges as well as strategic and military challenges from the United States. Ambiguity may work for a while, but it cannot be a long-term policy. The international legal challenge China faces is no less significant than the strategic challenges of managing regional tensions. ■

The international legal challenge China faces is no less significant than the strategic challenges of managing regional tensions.